

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

ALANT CORP., a California corporation; and DOES 1 to 100, inclusive

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

RAMON MIZQUES, individual, on behalf of the State of California, as private attorney general, and on behalf of all aggrieved employees

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

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

JAN 20 2021

Sharrl R. Carter, Executive Officer/Clerk of Court

By: Kristina Vargas, Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

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. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

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.sucorte.ca.gov), 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.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Los Angeles Superior Court

Stanley Mosk Courthouse, 111 North Hill Street, Los Angeles, CA 90012

CASE NUMBER:
(Número del Caso):

21STCV02357

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):

James M. Treglio; Potter Handy, LLP; 8033 Linda Vista Rd, Suite 200; San Diego, CA 92111; (858) 375-7385

DATE:
(Fecha)

Clerk, by
(Secretario)

, 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

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):
- ☒ on behalf of (specify): Alant Corp., a California corporation
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):
- ☐ by personal delivery on (date):

JAN 20 2021

Sherril R. Carter, Executive Officer/Clerk of Court

By: Kristina Vargas, Deputy

POTTER HANDY LLP

Mark D. Potter (SBN 166317)

mark@potterhandy.com

James M. Treglio (SBN 228077)

jimt@potterhandy.com

8033 Linda Vista Rd, Suite 200

San Diego, CA 92111

Tel: (858) 375-7385

Fax: (888) 422-5191

Attorneys for Plaintiff and all Aggrieved Employees

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

RAMON MIZQUES, individual, on behalf
of the State of California, as private attorney
general, and on behalf of all aggrieved
employees,

Plaintiff,

v.

ALANT CORP., a California corporation;
and DOES 1 to 100, inclusive

Defendants.

CASE NO: **21STCV02357**

**REPRESENTATIVE ACTION COMPLAINT
FOR:**

Penalties Pursuant to Labor Code § 2699, *et seq.* for violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and IWC Wage Order No. 7-2001 and 9-2001

Plaintiff Ramon Mizques ("Plaintiff"), on behalf of the people of the State of California and as an "aggrieved employee" acting as private attorney general under the Labor Code Private Attorneys General Act of 2004, § 2699, *et seq.* ("PAGA") complains of Defendants Alant Corp. ("Alant" or "Defendant"), and DOES 1 to 100 (collectively "Defendants") and each of them, as follows:

INTRODUCTION

1. This is a representative action brought pursuant to Labor Code § 2699, *et seq.*, on behalf of the State of California and the groups of aggrieved employees defined as follows:
 - a. all individuals who are or were employed by Defendant or its predecessor or merged entities in California as hourly, non-exempt employees, who remained on-call even during their meal periods, from October 26, 2019 through the present ("meal period aggrieved employees");

COPY

BY FAX

- b. all individuals who are or were employed by Defendant, or its predecessor or merged entities in California as hourly, non-exempt employees, who work or worked in excess of eight hours in a day or forty hours in a workweek from any time from October 26, 2019 through the present ("overtime aggrieved employees"); and
- c. all individuals who are or were employed by Defendant, or its predecessor or merged entities in California as hourly, non-exempt employees from October 26, 2019 through the present ("wage statement aggrieved employees").

JURISDICTION AND VENUE

4. This Court has personal jurisdiction over Defendants because Defendants have caused injuries in the County of Los Angeles and State of California through their acts, and by their violation of the California Labor Code and California state common law.

1 **THE PARTIES**

2 **A. The Plaintiff**

3 6. Plaintiff Ramon Mizques is a resident of California and at all times pertinent hereto
4 worked for Defendants in Los Angeles County.

5 7. Plaintiff and all aggrieved employees are, and at all times pertinent hereto, have
6 been hired by Defendants to work in California.

7 8. Plaintiff represents the State of California as well as the three groups of aggrieved
8 employees described in paragraph 1, above.

9 **B. The Defendants**

10 9. Defendant Alant Corp. is a California corporation based in Santa Ana, California,
11 and is a citizen of the State of California. Defendant is a company that operates motor vehicle
12 dealerships. Defendant contracts with employees such as Plaintiff and the aggrieved employees to
13 take on various roles such as auto mechanic, all within the County of Los Angeles.

14 10. The true names and capacities, whether individual, corporate, associate, or
15 otherwise, of Defendants sued herein as DOES 1 to 100, inclusive, are currently unknown to
16 Plaintiff, who therefore sue Defendants by such fictitious names under Code of Civil Procedure §
17 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
18 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to
19 herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
20 capacities of the Defendants designated hereinafter as DOES when such identities become known.

21 11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
22 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
23 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
24 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
25 employer and/or joint employer of Plaintiff and the aggrieved employees.

26 12. California courts have recognized that the definition of “employer” for purposes of
27 enforcement of the California Labor Code goes beyond the concept of traditional employment to
28

1 reach irregular working arrangements for the purpose of preventing evasion and subterfuge of
2 California's labor laws. *Martinez v. Combs* (2010) 49 Cal. 4th 35, 65. As such, anyone who
3 directly or indirectly, or through an agent or any other person, engages, suffers, or permits any
4 person to work or exercises control over the wages, hours, or working conditions of any person,
5 may be liable for violations of the California Labor Code as to that person. Cal. Labor Code §§558
6 and 558.1.

7 **FACTUAL ALLEGATIONS**

8 13. Defendant Alant Corp. is a company that operates motor vehicle dealerships.

9 14. Plaintiff Ramon Mizques was employed by Defendant on October 1, 2007 as an
10 auto mechanic at the Circle Audi in Long Beach.

11 15. Like all Aggrieved Employees, Plaintiff was required to take all meal periods on-
12 call and to remain available in person or by phone while on break. In some instances, Plaintiff and
13 the Aggrieved Employees were called to handle projects while on their meal break.

14 16. Plaintiff and the Aggrieved Employees were not allowed by Defendant to clock in
15 before 7:50 a.m., regardless of whether they were already working or not. In addition, Plaintiff and
16 the Aggrieved Employees had to work beyond their regular hours but they would still be required
17 to clock out at 5:10 p.m. even if they were still working. Plaintiff and the aggrieved employees are
18 not compensated for all hours worked before and after their regular hours.

19 **Plaintiff and the Aggrieved Employees Are and Were Not Compensated for All Hours**

20 **Worked**

21 17. Labor Code § 1197 states the California requirement that employees must be paid at
22 least the minimum wage fixed by the Commission, and any payment of less than the minimum
23 wage is unlawful.

24 18. Labor Code § 1194 entitles "any employee receiving less than the legal minimum
25 wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage."

26 19. IWC Wage Order 7-2001 and 9-2001 § 4 also obligate employers to pay each
27 employee minimum wages for all hours worked.

1 20. As noted above, Plaintiff and the aggrieved employees were only compensated for
2 the hours they spent while clocked in. Plaintiff and the aggrieved employees were only allowed to
3 clock in at 7:50 a.m. and were required to clock out at 5:10 p.m. even if they were already working
4 prior to the clock in time and they had to finish up work beyond the clock out time. Plaintiff and
5 the aggrieved employees were not compensated even if they had to work before and after their
6 regular hours.

7 21. Plaintiff and the aggrieved employees were also required to take their meal periods
8 on-call and they had to remain available by phone or in person. In some instances, Plaintiff and the
9 Aggrieved Employees were called to handle projects while on their meal break. However, Plaintiff
10 and the aggrieved employees are not paid for these times even if they are already performing tasks
11 related to their jobs and are required to be on-call. As a result, Plaintiff and the aggrieved
12 employees are not compensated for all hours worked.

13 22. In 2018, the California Supreme Court held in *Troester v. Starbucks, Inc.* (2018) 5
14 Cal.5th 829, that an employee must be compensated for any time in which they are under the
15 control of their employer, and performing work, even if that amount of time, as here, is limited to a
16 few minutes per day. Thus, by not compensating Plaintiff and the aggrieved employees for the
17 time spent working before and after the designated clock in and clock out times and their meal
18 periods while they are on-call, Defendant has violated the Labor Code and the Wage Order.

19 23. Labor Code § 1194.2 authorizes employees to recover wages to recover liquidated
20 damages for violations of Labor Code § 1194. Where an employee, as Plaintiff and the meal period
21 aggrieved employees are not paid for all hours worked under Labor Code § 1194, the employee
22 may recover minimum wages for the time associated with the overtime for which they received no
23 compensation. (See *Sillah v. Command Int'l Sec. Servs.* (N.D. Cal. 2015) 154 F. Supp. 3d 891
24 [holding that employees suing for failure to pay overtime could recover liquidated damages under
25 § 1194.2 if they also showed they were paid less than minimum wage]; accord *Andrade v. Arby's*
26 *Rest. Grp., Inc.* (N.D. Cal. Dec. 12, 2016) No. 15-cv-03175 NC, 2016 U.S. Dist. LEXIS 172319, at
27 *20-21.) Since Defendant failed to provide Plaintiff and all aggrieved employees with
28

1 compensation for all hours worked, including overtime hours, each are entitled to recover
2 liquidated damages under Labor Code § 1194.2 through PAGA. Based upon these same factual
3 allegations, Plaintiff also seeks penalties on behalf of all aggrieved employees penalties under
4 Labor Code § 1199.

5 **Plaintiff and the Meal Period Aggrieved Employees Are and Were Not Provided With Meal**
6 **Periods or Compensation for Missed Meal Periods**

7 24. Labor Code § 512 requires employers to provide employees with thirty (30) minute
8 uninterrupted and duty-free meal period within the first five hours of work. “An on-duty meal
9 period is permitted only when the nature of the work prevents an employee from being relieved of
10 all duty and the parties agree in writing to an on-duty paid meal break.” (*Lubin v. The Wackenhut*
11 *Corp.* (2016) 5 Cal. App. 5th 926, 932.) The written agreement must include a provision allowing
12 the employee to revoke it at any time. *Id.*

13 25. Generally, the DLSE and courts have “found that the nature of the work exception
14 applies: ‘(1) where the work has some particular external force that requires the employee to be on
15 duty at all times, and (2) where the employee is the sole employee of a particular employer.’” (*Id.* at
16 p. 945; *Abdullah v. U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) “[I]t is
17 the employer’s obligation to determine whether the nature of the work prevents an employee from
18 being relieved before requiring an employee to take an on-duty meal period.” (*Lubin, supra*, 5 Cal.
19 App. 5th at p. 946.) Nor may an employer “discharge its duty by arguing that its clients who
20 requested on-duty meal periods determined that the nature of the work prevented officers from
21 being relieved of all duty.” (*Id.* at p. 947; *Benton, supra*, 220 Cal. App. 4th at p. 729.

22 26. As with rest periods, under Labor Code § 512, if an employer maintains a uniform
23 policy that does not authorize and permit the amount of meal time called for under the law (as
24 specified in the applicable Wage Order), “it has violated the wage order and is liable.” The
25 Brinker Court explained in the context of rest breaks that employer liability attaches from adopting
26 an unlawful policy:

27 An employer is required to authorize and permit the amount of rest break
28 time called for under the wage order for its industry. If it does not—if, for
example, it adopts a uniform policy authorizing and permitting only one

1 rest break for employees working a seven-hour shift when two are
2 required—*it has violated the wage order and is liable.* *Brinker Rest.*
Corp. v. Sup. Ct. (2012) 53 Cal.4th 1004, 1033. (Emphasis added.)

3 27. As a result of its meal period policies requiring Plaintiff and the aggrieved
4 employees to remain on call during meal periods or calling them to handle projects while on their
5 meal breaks, Defendant violated Labor Code § 512 and IWC Wage Order No. 7 and 9 by failing to
6 provide duty-free meal periods to Plaintiff and the aggrieved employees of 30 minutes or more.
7 While there were no restrictions on where they can have their meal periods when they were
8 actually able to take them, Plaintiff and the aggrieved employees had no choice but to take these
9 breaks on property because they had to remain available in person or by phone. They could be
10 called back anytime if they leave the office.

11 28. Thus, Defendant unlawfully retained control of Plaintiff and the aggrieved
12 employees during their meal periods, even though the nature of the work did not necessitate an on-
13 duty meal period (and by failing to enter into proper on-duty meal period agreements). See
14 *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 275 (holding that on-premises
15 breaks violate California law). As a result of Defendant's failure to authorize or permit lawful meal
16 periods, Plaintiff and the aggrieved employees frequently did not receive duty-free thirty-minute
17 duty-free meal periods within the first five (5) hours of their work. Defendant also failed to pay
18 Plaintiff and the meal period aggrieved employees meal period premiums for each workday that
the employees did not receive a compliant meal period.

19 29. Labor Code § 226.7 provides “an employer shall not require an employee to work
20 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
21 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Similarly, IWC
22 Wage Order 7-2001 and 9-2001 prohibit an employer from “employ[ing] any person for a work
23 period of more than five (5) hours without a meal period of not less than 30 minutes. IWC Wage
24 Order 7-2001 and 9-2001 further obligate employers to provide an employee to “pay the employee
25 one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal
26 period is not provided. Accordingly, for each day that Plaintiff and the aggrieved employees did
27 not receive compliant meal periods, they are entitled to receive meal period premiums pursuant to
28

1 Labor Code § 226.7 and Wage Order 7-2001 and 9-2001.

2 **Plaintiff and the Aggrieved Employees Were Not Paid Proper Overtime Compensation for**
3 **All Hours Worked in Excess of 8 Hours in a Day or Forty Hours in a Workweek**

4 30. Labor Code § 510 requires an employer to compensate an employee who works
5 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight
6 (8) hours worked on the seventh consecutive day no less than one and one-half times the regular
7 rate of pay for an employee.

8 31. Further, Labor Code § 510 obligates employers to compensate employees at no less
9 than twice the regular rate of pay when an employee works more than twelve (12) hours in a day
10 or more than eight (8) hours on the seventh consecutive day of work. In accordance with Labor
11 Code § 1194, Plaintiff and the overtime aggrieved employees could not then agree and cannot now
12 agree to work for a lesser wage than the amount proscribed by Labor Code §§ 510 and 1194.

13 32. For the reasons stated above, Plaintiff and the overtime aggrieved employees
14 worked certain hours for which they were not paid. Plaintiff and the overtime aggrieved employees
15 had to work before and after their regular hours but they would still be required to clock in and out
16 on designated times. However, before and after clocking out, Plaintiff and the Aggrieved
17 Employees would already and still be working. This time amounts and amounted to around eight
18 hours per week. Because Plaintiff and the aggrieved employees spent eight hours or more working
19 on “compensated” time, this uncompensated time for working before and after the designated
20 clock in and clock out times and meal periods while on-call on the property should have been
21 compensated at the overtime rate. Instead, no compensation was paid at all, in violation of Cal.
22 Labor Code §§ 510, 1194, and Wage Order 7-2001 and 9-2001. Plaintiff is an aggrieved employee
23 for purposes of seeking penalties under PAGA.

24 **Defendants’ Violate and Violated Labor Code § 204**

25 33. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in
26 any employment are due and payable twice during each calendar month, on days designated in
27 advance by the employer as the regular paydays.” Pursuant to Labor Code § 204(d), these
28

1 requirements are “deemed satisfied by the payment of wages for weekly, biweekly or semimonthly
2 payroll if the wages are paid not more than seven calendar days following the close of the payroll
3 period.

4 34. Due to Defendant’s failure to pay Plaintiff and the aggrieved employees for all rest
5 and meal period premiums and overtime, Defendant failed to timely pay the aggrieved employees
6 within seven (7) days of the close of the payroll period in accordance with Labor Code § 204 on a
7 regular and consistent basis. See *Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299,
8 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after Ling that a failure to pay rest
9 period premiums can support claims under Labor Code §§ 203 and 204).

10 35. Labor Code § 210 provides that “in addition to, an entirely independent and apart
11 from, any other penalty provided in this article, every person who fails to pay the wages of each
12 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any
13 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) for each
14 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each
15 failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the
16 faulty compensation policies and practices described in detail above, Plaintiff and the other late
17 payment aggrieved employees are entitled to recover penalties under Labor Code § 210 through
18 PAGA.

19 **Defendants’ Violation of Labor Code §§ 201-203**

20 36. As a result of Defendant’s failure to pay wages to Plaintiff and the aggrieved
21 employees for overtime, meal period minimum wages, and meal/rest period premiums, Defendant
22 violated Labor Code § 203. Labor Code § 203 provides “if an employer willfully fails to pay . . .
23 any wages of an employee who is discharged or who quits, the wages of the employee shall
24 continue as a penalty. . .” for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68
25 Cal.App.4th 487, 492.

26 37. Due to Defendant’s faulty policies described above, all aggrieved employees whose
27 employment with Defendant concluded were not compensated at the appropriate rate.

1 Additionally, Defendant has failed to pay all aggrieved employees for all overtime, meal period
2 premiums, and rest period premiums, whose sums were certain, at the time of termination or
3 within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30)
4 days thereafter.

5 **Plaintiff and the Aggrieved Employees Are and Were Not Provided with Accurate Wage**
6 **Statements**

7 38. As to Plaintiff and all Aggrieved Employees, Defendants also failed to provide
8 accurate itemized wage statements in accordance with Labor Code § 226(a)(1, 2, 5, 9). Labor Code
9 § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized
10 wage statement in writing showing:

- 11 (1) gross wages earned;
- 12 (2) total hours worked by the employee;
- 13 (3) the number of piece-rate units earned and any applicable piece rate if
the employee is paid on a piece rate;
- 14 (4) all deductions, provided that all deductions made on written orders of
the employee may be aggregated and shown as one item;
- 15 (5) net wages earned;
- 16 (6) the inclusive dates of the period for which the employee is paid;
- 17 (7) the name of the employee and only the last four digits of his or her
social security number or an employee identification number other than a
social security number;
- 18 (8) the name and address of the legal entity that is the employer...;
- 19 (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...

20 39. Similarly, Labor Code § 226(e) provides:

21 (e) (1) An employee suffering injury as a result of a knowing and
22 intentional failure by an employer to comply with subdivision (a) is
23 entitled to recover the greater of all actual damages or fifty dollars (\$50)
for the initial pay period in which a violation occurs and one hundred
dollars (\$100) per employee for each violation in a subsequent pay period,
not to exceed an aggregate penalty of four thousand dollars (\$4,000), and
24 is entitled to an award of costs and reasonable attorney's fees.

25 (2) (A) An employee is deemed to suffer injury for purposes of this
subdivision if the employer fails to provide a wage statement.

26 (B) An employee is deemed to suffer injury for purposes of this
subdivision if the employer fails to provide accurate and complete
27 information as required by any one or more of items (1) to (9), inclusive,
of subdivision (a) and the employee cannot promptly and easily determine
28

from the wage statement alone one or more of the following:

(i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

(ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).

(iii) The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer during the pay period.

(iv) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number.

40. Due to Defendant's failure to provide Plaintiff and the Aggrieved Employees lawful meal and rest periods (and pay missed rest period premiums), the wage statements issued by Defendant do not indicate the correct amount of gross wages earned, the correct total hours worked, the correct net wages earned, or the applicable and/or correct hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9).

41. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code § 226(a)(1), (2), (5), and (9) with respect to Plaintiff and the aggrieved employees.

42. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226." As explained in detail above, Defendant failed to provide Plaintiff and the other aggrieved employees with accurate itemized wage statements. Accordingly, Plaintiff and the other aggrieved employees may also recover Labor Code § 226.3 penalties for Defendant's violations of Labor Code § 226(a).

1 See *Finder v. Leprino Foods Co.* (E.D. Cal. Mar. 12, 2015) No. 1:13-CV-2059 AWI-BAM, 2015
2 WL 1137151, at *7 [“the weight of authority counsels that violations of Section 226.3 may be the
3 basis of a PAGA claim.”]; *Pedroza v. PetSmart, Inc.*, No. ED CV 11-298 GHK DTB, 2012 WL
4 9506073, at *6 (C.D. Cal. June 14, 2012) (“Lab. Code § 226.3 merely provides that failure to
5 perform actions mandated by § 226(a) may trigger civil penalties.”).

6 43. Furthermore, for purposes of establishing a claim for PAGA penalties based on
7 Labor Code Section 226, Plaintiff need not establish any “injury” other than showing that the
8 paystubs lacked the hours worked required by Labor Code section 226(a)(2). See, *McKenzie v.*
9 *Fed. Express Corp.*, 765 F.Supp.2d 1222 (C.D. 2011) (holding that newspaper carriers’ wage
10 statements were deficient because, inter alia, the statements lacked newspaper carriers’ total hours
11 worked, and also determining that to recover PAGA penalties based on a deficient wage statement,
12 a Plaintiff need not prove an “injury”, and could move for summary judgment on behalf of other
13 Aggrieved Employees).

14 **FIRST CAUSE OF ACTION**
15 **PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS FOR**
16 **PENALTIES PURSUANT TO LABOR CODE § 2699, ET SEQ. FOR VIOLATIONS OF**
LABOR CODE §§ 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1,
1198, 1199, and IWC Wage Order No. 7-2001 and 9-2001

17 44. Plaintiff, on behalf of himself and all aggrieved employees, re-alleges and
18 incorporates by reference all previous paragraphs.

19 45. Based on the above allegations incorporated by reference, Defendants have violated
20 Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198,
21 1199, as well as IWC Wage Order No. 7-2001 and 9-2001.

22 46. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and
23 all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial
24 subject to the following formula:

25 \$100 for the initial violation per employee per pay period; and

26 \$200 for each subsequent violation per employee per pay period.

1 These penalties shall be allocated seventy-five percent (75%) to the Labor and Workforce
2 Development Agency (LWDA) and twenty-five percent (25%) to the affected employees. These
3 penalties may be stacked separately for each of Defendants violations of the California Labor
4 Code. *See e.g. Hernandez v. Towne Park, Ltd.*, No. CV 12-02972 MMM (JCGx) 2012 U.S. Dist.
5 LEXIS 86975, at *59, fn. 77 (C.D.Cal. June 22, 2012) (holding that although the plaintiff did not
6 seek stacked PAGA penalties, that “PAGA penalties can be ‘stacked,’ *i.e.*, multiple PAGA
7 penalties can be assessed for the same pay period for different Labor Code violations.”); *See Lopez*
8 *v. Friant & Assocs., LLC*, No. A148849, 2017 Cal. App. LEXIS 839, at *1 (Ct. App. Sep. 26,
9 2017) (“hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of Labor Code
10 section 226(a) does not have to satisfy the ‘injury’ and ‘knowing and intentional’ requirements of
11 section 226(e)(1) and acknowledging that a Plaintiff could recover separately under PAGA for
12 violations of Labor Code §§ 226(a) and 226(e)); *accord Schiller v. David's Bridal, Inc.*, No. 1:10-
13 cv-00616 AWI SKO) 2010 U.S. Dist. LEXIS 81128, at *17 (E.D. Cal. July 14, 2010); *Pulera v. F*
14 *& B, Inc.*, No. 2:08-cv-00275-MCE-DAD, 2008 U.S. Dist. LEXIS 72659, 2008 WL 3863489, at *
15 2-3 (E.D. Cal. Aug. 19, 2008); *Smith v. Brinker Intern, Inc.*, No. C 10-0213 VRW, 2010 U.S. Dist.
16 LEXIS 54110, 2010 WL 1838726, at * 2-6 (N.D. Cal. May 5, 2010).

17 47. In addition, to the extent permitted by law, Defendants have failed to provide
18 Plaintiff and all aggrieved employees with accurate itemized wage statements in compliance with
19 Labor Code § 226(a). Plaintiff seeks separate PAGA penalties for Defendants’ violations of Labor
20 Code §§ 226(a) and 226(e). *Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017); *Bell*
21 *v. Home Depot U.S.A.* (E.D. Cal. Dec. 11, 2017) No. 2:12-cv-02499 JAM-CKD, 2017 U.S. Dist.
22 LEXIS 204493, at *5 [finding after *Friant* that “[t]o the extent the Court's Order [granting
23 summary judgment to Home Depot] was ambiguous, the Court now clarifies that it granted
24 summary judgment on Plaintiff’s derivative claim for [PAGA] penalties under section 226(e)...the
25 Court's Order should not be read to grant summary judgment on Plaintiff’s claim for PAGA
26 penalties based on violation of section 226(a).”]). For violations of Labor Code § 226(a), Plaintiff
27 seeks the default penalty provided by Labor Code § 226.3. Labor Code § 226.3 provides that
28

1 “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in
2 the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation
3 and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for
4 which the employer fails to provide the employee a wage deduction statement or fails to keep the
5 required in subdivision (a) of Section 226.” Accordingly, through PAGA and to the extent
6 permitted by law Plaintiff and the aggrieved employees are entitled to recover penalties for
7 violations of Labor Code § 226.3 and seek default PAGA penalties for each of Defendants’
8 numerous violations of Labor Code § 226(e).

9 48. In addition, as Defendants have failed to pay Plaintiff and the Aggrieved
10 Employees on a weekly basis, and failed to pay Plaintiff and the Aggrieved Employees within
11 seven days of the close of payroll, Plaintiff, the State of California, and the Aggrieved Employees
12 are entitled to civil penalties pursuant to California Labor Code § 210. Labor Code § 210 provides
13 that “in addition to, an entirely independent and apart from, any other penalty provided in this
14 article, every person who fails to pay the wages of each employee as provided in
15 Sections...204...shall be subject to a civil penalty as follows: (1) For any initial violation, one
16 hundred dollars (\$100) for each failure to pay each employee; (2) for each subsequent violation, or
17 any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each
18 employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty compensation
19 policies and practices described in detail above, Plaintiff and the other late payment aggrieved
20 employees are entitled to recover penalties under Labor Code § 210 through PAGA.

21 49. Pursuant to Labor Code § 2699.3 (a), on October 26, 2020, Plaintiff gave written
22 notice by certified mail to Defendant, and to the LWDA of their claims for violations of Labor
23 Code §§ 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198, 1199, as
24 well as IWC Wage Order No. 7-2001 and 9-2001, and theories supporting these claims as alleged
25 herein. As of the date of this Complaint, the LWDA has not responded to Plaintiff’s PAGA letter.
26 Accordingly, Plaintiff has fulfilled all administrative prerequisites to the filing and pursuit of his
27 PAGA claims for himself and all other current and former Aggrieved Employees of Defendants.

1 50. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code
2 § 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198, 1199, as well
3 as IWC Wage Order No. 7-2001 and 9-2001.

4
5
6
7 **RELIEF REQUESTED**

8 **WHEREFORE**, Plaintiff prays for the following relief:

9 1. For penalties and other relief allowable under Labor Code § 2699, *et seq.* for
10 Plaintiff and all aggrieved employees because of Defendants' violation of Labor Code §§ 201, 202,
11 203, 204, 210, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198, 1199, as well as IWC Wage
12 Order No. 7-2001 and 9-2001;

13 2. A civil penalty against Defendants in the amount of \$100 for the initial violation and
14 \$200 for each subsequent violation as specified in section 2699(f)(2) of the California Labor Code
15 for Plaintiff and all aggrieved employees for each and every pay period during that occurred
16 between October 26, 2019 and the date of judgment and/or approval of settlement;

17 3. A civil penalty against Defendants, pursuant to Labor Code § 1197.1 for the initial
18 violation that is intentionally committed, in the amount of one hundred dollars (\$100) for each
19 underpaid employee for each pay period for which the employee is underpaid and for each
20 subsequent violation, two hundred fifty dollars (\$200) for each underpaid employee for each pay
21 period for which the employee is underpaid regardless of whether the initial violation was
22 intentionally committed, for Plaintiff and all aggrieved employees for each and every payperiod
23 during that occurred between October 26, 2019 and the date of judgment and/or approval of
24 settlement;

25 4. A civil penalty against Defendants pursuant to Labor Code § 210 for the initial
26 violation that is committed, in the amount of one hundred dollars (\$100) for each underpaid
27 employee for each pay period for which the employee is underpaid and for each subsequent
28

1 violation, two hundred dollars (\$250) for each underpaid employee for each pay period for which
2 the employee is underpaid, for Plaintiff and all aggrieved employees for each and every payperiod
3 during that occurred between October 26, 2019 and the date of judgment and/or approval of
4 settlement;

5 5. A civil penalty against Defendants pursuant to Labor Code § 226.3 for the initial
6 violation that is committed, in the amount of two hundred fifty dollars (\$250) for the initial each
7 inaccurate wage statement provided to Plaintiff and the Aggrieved Employees and for each
8 subsequent violation, one thousand dollars (\$1000) for each underpaid employee for each pay
9 period for which the employee is provided an incomplete or inaccurate wage statement, for Plaintiff
10 and all aggrieved employees for each and every pay period during that occurred between October
11 26, 2019 and the date of judgment and/or approval of settlement;

12 6. An award of reasonable attorney's fees against Defendants as specified in Labor
13 Code § 2699(g)(1), for all the work performed by the undersigned counsel in connection with the
14 PAGA claims;

15 7. An award of all costs incurred by the undersigned counsel for Plaintiff in connection
16 with Plaintiff's and the aggrieved employees' claims against Defendants as provided for in Labor
17 Code § 2699(g)(1);

18 8. Such other and further relief as this Court may deem proper and just.
19
20

21 Dated: January 18, 2021

Respectfully,

POTTER HANDY LLP.

23
24 James Treglio

25 By: James M. Treglio
26 Counsel for Plaintiff and the Aggrieved
27 Employees
28

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

James M. Treglio (SBN 228077)
 Potter Handy, LLP
 8033 Linda Vista Rd, Suite 200, San Diego, CA 92111

TELEPHONE NO.: (858) 375-7385

FAX NO. (Optional): 888-422-5191

ATTORNEY FOR (Name): Plaintiff, Ramon Mizques

FOR COURT USE ONLY

CONFORMED COPY
 ORIGINAL FILED
 Superior Court of California
 County of Los Angeles

JAN 20 2021

Sheri R. Carter, Executive Officer/Clerk of Court

By: Kristina Vargas, Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

STREET ADDRESS: 111 North Hill Street

MAILING ADDRESS:

CITY AND ZIP CODE: Los Angeles, CA 90012

BRANCH NAME: Stanley Mosk Courthouse

CASE NAME:

Mizques v. Alant Corp., a California corporation, et al.

CIVIL CASE COVER SHEET

☒ **Unlimited**
 (Amount
 demanded
 exceeds \$25,000)

☐ **Limited**
 (Amount
 demanded is
 \$25,000)

Complex Case Designation

☐ Counter ☐ Joinder
 Filed with first appearance by defendant
 (Cal. Rules of Court, rule 3.402)

CASE NUMBER:

21STCV02357

JUDGE:

DEPT.:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort

☐ Auto (22)
☐ Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)

☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

☐ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence (25)
☐ Other non-PI/PD/WD tort (35)

Employment

☐ Wrongful termination (36)
☒ Other employment (15)

Contract

☐ Breach of contract/warranty (06)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☐ Insurance coverage (18)
☐ Other contract (37)

Real Property

☐ Eminent domain/Inverse
 condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)

Unlawful Detainer

☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)

Judicial Review

☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)

Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)

☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the
 above listed provisionally complex case
 types (41)

Enforcement of Judgment

☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint

☐ RICO (27)
☐ Other complaint (not specified above) (42)

Miscellaneous Civil Petition

☐ Partnership and corporate governance (21)
☐ Other petition (not specified above) (43)

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
 b. ☒ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
 c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): 1 - Violations of PAGA, Cal. Labor Code section 2699, et seq.

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: January 18, 2021

James M. Treglio

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)–Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition