

Kane Moon (SBN 249834)
kane.moon@moonyanglaw.com
Lilit Ter-Astvatsatryan (SBN 320389)
lilit@moonyanglaw.com
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125

Attorneys for Plaintiff Clemente Rodriguez

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 12/1/2021 1:51 PM
Reviewed By: R. Walker
Case #21CV385440
Envelope: 7767057**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

CLEMENTE RODRIGUEZ, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

APCT, INC., a California corporation; CARTEL
ELECTRONICS, LLC, a limited liability
company; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 21CV385440

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT:**

1. Civil Penalties Under PAGA [Cal. Lab.
Code § 2699, et seq.].

DEMAND FOR JURY TRIAL

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1 Plaintiff Clemente Rodriguez (“Plaintiff”), based upon facts that either have evidentiary
2 support or are likely to have evidentiary support after a reasonable opportunity for further
3 investigation and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendants APCT, Inc., Cartel Electronics, LLC,
6 Cartel Electronics, Inc., and Does 1 through 10 (collectively referred to as “Defendants”), as joint
7 employers of Plaintiff and the Aggrieved Employees for California Labor Code violations
8 stemming from Defendants’ failure to pay minimum and regular rate wages, failure to pay
9 overtime wages, failure to provide meal periods, failure to authorize and permit rest periods,
10 failure to maintain accurate records of hours worked and meal periods, failure to timely pay all
11 wages to terminated employees, and failure to furnish accurate wage statements.

12 2. For over 50 years, California’s courts and legislature have recognized that this State’s
13 wage-and-hour laws serve a compelling public interest of fostering a stable job market. Wages
14 are not ordinary debts. Because of the economic position of the average worker and his or her
15 family, it is essential to the public welfare that employers obey the wage-and-hour laws so that
16 employees are promptly paid the minimum/overtime wages that the Legislature has required for
17 employees. So fundamental are California’s wage-and-hour laws that the Legislature has
18 criminalized certain types of violations. In extending extra protection to deter violations of these
19 underlying statutes—since Plaintiff is not seeking general and/or special damages, restitution or
20 other damages other than civil penalties—California has enacted the PAGA to permit an
21 individual to bring an action for PAGA penalties only, which is the precise and sole nature of this
22 action.

23 3. All non-exempt California employees of Defendants beginning August 9, 2020, to the
24 present, are “Aggrieved Employees.”

25 4. Plaintiff brings this action against Defendants seeking only to recover penalties on
26 behalf of all Aggrieved Employees that worked for Defendants, and on behalf of the State of
27 California. Plaintiff does not seek to recover anything other than penalties as permitted by
28 California Labor Code Section 2699 at this time. To the extent that statutory violations are

1 mentioned for wage violations, Plaintiff does not seek underlying general and/or special damages
2 for those violations, but simply penalties as permitted by California Labor Code Section 2699,
3 declaratory relief, and injunctive relief for themselves, and all aggrieved employees as permitted
4 by the PAGA.

5 5. Defendants own/owned and operate/operated an industry, business, and establishment
6 within the State of California, including Santa Clara County. As such and based upon all the facts
7 and circumstances incident to Defendants' business in California, Defendants are subject to the
8 California Labor Code, Wage Orders issued by the Industrial Welfare Commission ("IWC"), and
9 the California Business & Professions Code.

10 6. Despite these requirements, throughout the statutory period Defendants maintained a
11 systematic, company-wide policy and practice of:

- 12 (a) Failing to pay employees for all hours worked, including all minimum
13 wages, overtime wages, in compliance with the California Labor Code and
14 IWC Wage Orders;
- 15 (b) Failing to maintain accurate records of the hours employees worked;
- 16 (c) Failing to provide employees with timely and duty-free meal periods in
17 compliance with the California Labor Code and IWC Wage Orders, failing
18 to maintain accurate records of all meal periods taken or missed, and
19 failing to pay an additional hour's pay for each workday a meal period
20 violation occurred;
- 21 (d) Failing to authorize and permit employees to take timely and duty-free rest
22 periods in compliance with the California Labor Code and IWC Wage
23 Orders, and failing to pay an additional hour's pay for each workday a rest
24 period violation occurred;
- 25 (e) Willfully failing to pay employees all minimum wages, overtime wages,
26 meal period premium wages, and rest period premium wages due within
27 the time period specified by California law when employment terminates;
28 and

(f) Failing to provide employees with accurate, itemized wage statements containing all the information required by the California Labor Code and IWC Wage Orders.

7. On information and belief, Defendants, and each of them were on actual and constructive notice of the improprieties alleged herein and intentionally refused to rectify their unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were willful and deliberate.

8. At all relevant times, Defendants were and are legally responsible for all of the unlawful conduct, policies, practices, acts and omissions as described in each and all of the foregoing paragraphs as the employer of Plaintiff and the Aggrieved Employees. Further, Defendants are responsible for each of the unlawful acts or omissions complained of herein under the doctrine of "respondeat superior".

THE PARTIES

A. Plaintiff

9. Plaintiff is a California resident who worked for Defendants in Santa Clara County, California as a machine operator from approximately March 2016 to June 2021.

10. Plaintiff reserves the right to seek leave to amend this complaint to add new plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v. American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

B. Defendants

11. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendant APCT, Inc. is:

- (a) A California corporation with its principal place of business in Santa Clara, California;
- (b) A business entity conducting business in numerous counties throughout the State of California, including in Santa Clara County; and
- (c) The former employers of Plaintiff, and the current and/or former employer of the Aggrieved Employees. APCT, Inc. suffered and permitted Plaintiff

1 and the Aggrieved Employees to work, and/or controlled their wages,
2 hours, or working conditions.

3 12. Plaintiff is informed and believes, and based upon that information and belief
4 alleges, that Defendant Cartel Electronics, LLC is:

- 5 (a) A California limited liability company with its principal place of business
6 in Santa Clara, California;
- 7 (b) A business entity conducting business in numerous counties throughout the
8 State of California, including in Santa Clara County;
- 9 (c) The former employers of Plaintiff, and the current and/or former employer
10 of the Aggrieved Employees. Cartel Electronics, LLC suffered and
11 permitted Plaintiff and the Aggrieved Employees to work, and/or
12 controlled their wages, hours, or working conditions; and

13 13. Plaintiff does not know the true names or capacities of the persons or entities sued
14 herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious names.
15 Each of the Doe Defendants was in some manner legally responsible for the damages suffered by
16 Plaintiff and the Aggrieved Employees as alleged herein. Plaintiff will amend this complaint to
17 set forth the true names and capacities of these Defendants when they have been ascertained,
18 together with appropriate charging allegations, as may be necessary.

19 14. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and
20 each of them, were residents of, doing business in, availed themselves of the jurisdiction of,
21 and/or injured a significant number of the Plaintiff and the Aggrieved Employees in the State of
22 California.

23 15. Plaintiff is informed and believes and thereon alleges that at all relevant times
24 each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and
25 the Aggrieved Employees, and exercised control over their wages, hours, and working
26 conditions. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each
27 Defendant was the principal, agent, partner, joint venturer, officer, director, controlling
28 shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in

1 interest of some or all of the other Defendants, and was engaged with some or all of the other
2 Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the
3 other Defendants so as to be liable for their conduct with respect to the matters alleged below.
4 Plaintiff is informed and believes and thereon alleges that each Defendant acted pursuant to and
5 within the scope of the relationships alleged above, that each Defendant knew or should have
6 known about, and authorized, ratified, adopted, approved, controlled, aided and abetted the
7 conduct of all other Defendants.

8 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

9 16. Plaintiff worked for Defendants in Santa Clara County, California as a machine
10 operator from approximately March 2016 to June 2021. At all times Defendants classified
11 Plaintiff as non-exempt from California's overtime requirements. During the statutory time
12 period, Plaintiff was typically scheduled to work 6 to 7 days in a workweek, and typically in
13 excess of 10 hours in a single workday.

14 17. Throughout the statutory period, Defendants failed to pay Plaintiff for all hours
15 worked (including minimum wages and overtime compensation), failed to provide Plaintiff with
16 uninterrupted meal periods, failed to authorize and permit Plaintiff to take uninterrupted rest
17 periods, failed to maintain accurate records of the hours Plaintiff worked, failed to timely pay all
18 final wages to Plaintiff when Defendants terminated Plaintiff's employment, and failed to furnish
19 accurate wage statements to Plaintiff. As discussed below, Plaintiff's experience working for
20 Defendants was typical and illustrative.

21 18. Throughout the statutory period, Defendants maintained a policy and practice of
22 not paying Plaintiff and the Aggrieved Employees for all hours worked, including all overtime
23 wages. Throughout the statutory period, Plaintiff and the Aggrieved Employees were required to
24 work "off the clock". For example, Plaintiff and the Aggrieved Employees were required to wait
25 in line in order to clock into work each workday and when returning from meal periods,
26 uncompensated. In maintaining a practice of not paying all wages owed, Defendants failed to
27 maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

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1 19. Throughout the statutory period, Defendants have wrongfully failed to provide
2 Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendants
3 regularly, but not always, required Plaintiff and the Aggrieved Employees to work in excess of
4 five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-
5 free meal period for every five hours of work, or without compensating Plaintiff and the
6 Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of
7 work or tenth hour of work. Defendants did not adequately inform Plaintiff and the Aggrieved
8 Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts
9 greater than 10 hours, by the end of the tenth hour of work. Defendants also did not have
10 adequate policies or practices to document and verify whether Plaintiff and the Aggrieved
11 Employees were taking their required meal periods. Accordingly, Defendants' policy and
12 practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance
13 with California law.

14 20. Throughout the statutory period, Defendants have wrongfully failed to authorize
15 and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods.
16 Defendants regularly, but not always, required Plaintiff and the Aggrieved Employees to work in
17 excess of four consecutive hours a day without Defendants authorizing and permitting them to
18 take a 10-minute, continuous and uninterrupted, rest period for every four hours of work (or
19 major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees
20 for rest periods that were not authorized or permitted. Further, Plaintiff and the Aggrieved
21 Employees were not authorized to take a third rest period in those instances where they worked
22 in excess of 10 hours per workday. Accordingly, Defendants' policy and practice was to not
23 authorize and permit Plaintiff and the Aggrieved Employees to take rest periods in compliance
24 with California law.

25 21. Throughout the statutory period, Defendants willfully failed and refused to timely
26 pay Plaintiff and the Aggrieved Employees at the conclusion of their employment all wages,
27 including overtime wages, meal period premium wages, and rest period premium wages.
28 Further, Defendants failed to pay Plaintiff and the Aggrieved Employees their final paychecks

1 immediately upon termination.

2 22. Throughout the statutory period, Defendants failed to furnish Plaintiff and the
3 Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly
4 rates, and all gross and net wages earned (including correct hours worked, correct wages earned
5 for hours worked, correct overtime hours worked, correct wages for meal periods that were not
6 provided in accordance with California law, and correct wages for rest periods that were not
7 authorized and permitted to take in accordance with California law). As a result of these
8 violations of California Labor Code § 226(a), Plaintiff and the Aggrieved Employees suffered
9 injury because, among other things:

- 10 (a) the violations led them to believe that they were not entitled to be paid
11 minimum wages, overtime wages, meal period premium wages, and rest
12 period premium wages to which they were entitled, even though they were
13 entitled;
- 14 (b) the violations led them to believe that they had been paid the minimum,
15 overtime, meal period premium, and rest period premium wages to which
16 they were entitled, even though they had not been;
- 17 (c) the violations led them to believe they were not entitled to be paid
18 minimum, overtime, meal period premium, and rest period premium wages
19 at the correct California rate even though they were;
- 20 (d) the violations led them to believe they had been paid minimum, overtime,
21 meal period premium, and rest period premium wages at the correct
22 California rate even though they had not been;
- 23 (e) the violations hindered them from determining the amounts of minimum,
24 overtime, meal period premium, and rest period premium owed to them;
- 25 (f) in connection with their employment before and during this action, and in
26 connection with prosecuting this action, the violations caused them to have
27 to perform mathematical computations to determine the amounts of wages
28 owed to them, computations they would not have to make if the wage

statements contained the required accurate information;

- (g) by understating the wages truly due them, the violations caused them to lose entitlement and/or accrual of the full amount of Social Security, disability, unemployment, and other governmental benefits;
- (h) the wage statements inaccurately understated the wages, hours, and wage rates to which Plaintiff and the Aggrieved Employees were entitled, and Plaintiff and the Aggrieved Employees were paid less than the wages and wage rates to which they were entitled.

Thus, Plaintiff and the Aggrieved Employees are owed the amounts provided for in California Labor Code § 226(e).

FIRST CAUSE OF ACTION

(Against all Defendants for Civil Penalties Under the Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 et seq.)

23. Plaintiff incorporate by reference and re-allege as if fully stated herein paragraphs 1 through 22 in this First Amended Complaint.

24. At all times herein mentioned, Defendants were subject to the Labor Code of the State of California and the applicable Industrial Welfare Commission Orders.

25. California Labor Code § 2699(a) specifically provides for a private right of action to recover penalties for violations of the Labor Code: “Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.”

26. Plaintiff has exhausted his administrative remedies pursuant to California Labor Code § 2699.3. On August 6, 2021 Plaintiff gave written notice by online filing to the Labor and Workforce Development Agency and by certified mail to Defendants of the specific provisions

1 of the Labor Code that Defendants have violated against Plaintiff and current and former
2 Aggrieved Employees, including the facts and theories to support the violations. At the time of
3 this filing, 65 days has elapsed since Plaintiff provided notice, but the Labor and Workforce
4 Development Agency has not indicated that it intends to investigate Defendants' Labor Code
5 violations discussed in the notice. Accordingly, Plaintiff may commence a civil action to recover
6 penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code
7 described in this First Amended Complaint. These penalties include, but are not limited to,
8 penalties under California Labor Code §§ 210, 226.3, 558, 1197.1, and 2699(f)(2).

9 27. In addition, Plaintiff seeks penalties for Defendants' violation of California
10 Labor Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any
11 entity, employing labor who willfully fails to maintain accurate and complete records required by
12 California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable
13 IWC Order § 7(A)(3), every employer shall keep time records showing when the employee
14 begins and ends each work period. Meal periods, and total hours worked daily shall also be
15 recorded. Additionally, pursuant to the applicable IWC Order § 7(A)(5), every employer shall
16 keep total hours worked in the payroll period and applicable rates of pay.

17 28. During the time period of employment for Plaintiff and the Aggrieved Employees,
18 Defendants failed to maintain records pursuant to the Labor Code and IWC Orders by failing to
19 maintain accurate records showing meal periods, and accurate records showing when employees
20 begin and end each work period. Defendants' failure to provide and maintain records required by
21 the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to
22 know, understand and question the accuracy and frequency of meal periods, and the accuracy of
23 their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved
24 Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an
25 unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved
26 Employees have suffered and continue to suffer, substantial losses related to the use and
27 enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking
28 to compel Defendants to fully perform its obligation under state law, all to their respective

1 damage in amounts according to proof at trial. Because of Defendants' knowing failure to
2 comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved
3 Employees have also suffered an injury in that they were prevented from knowing,
4 understanding, and disputing the wage payments paid to them.

5 29. Based on the conduct described in this First Amended Complaint, Plaintiff is
6 entitled to an award of civil penalties on behalf of himself, the State of California, and similarly
7 Aggrieved Employees of Defendants. The exact amount of the applicable penalties, in all, is in
8 an amount to be shown according to proof at trial.

9 30. In addition, Plaintiff seeks an award of reasonable attorney's fees and costs
10 pursuant to California Labor Code § 2699(g)(1), which states, "Any employee who prevails in
11 any action shall be entitled to an award of reasonable attorney's fees and costs."

12 **PRAYER FOR RELIEF**

13 Plaintiff, on behalf of himself, the State of California, and similarly Aggrieved Employees
14 of Defendants, prays for relief and judgment against Defendants, jointly and severally, as
15 follows:

16 **As to the First Cause of Action**

17 31. That the Court declare, adjudge and decree that Defendants violated the California
18 Labor Code by failing to pay wages for all hours worked (including minimum, regular rate, and
19 overtime wages), failing to provide meal periods, failing to maintain accurate records of meal
20 periods, failing to authorize and permit rest periods, failing to maintain accurate records of all
21 hours worked and meal periods, failing to pay final wages at termination, and failing to furnish
22 accurate wage statements;

23 32. For all civil penalties pursuant to California Labor Code § 2699, et seq., and all
24 other applicable Labor Code provisions;

25 33. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
26 California Labor Code § 2699;

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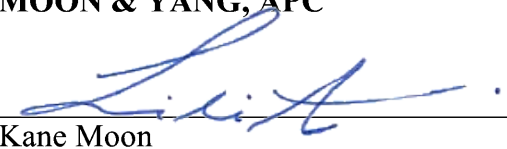
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1 34. For such other and further relief as the Court may deem equitable and appropriate.

2
3 Respectfully submitted,

4 Dated: November 4, 2021

MOON & YANG, APC

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6 By: 

Kane Moon

Lilit Ter-Astvatsatryan

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8 Attorneys for Plaintiff

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10 **DEMAND FOR JURY TRIAL**

11 Plaintiff demands a trial by jury as to all causes of action triable by jury.

12 Dated: November 4, 2021

MOON & YANG, APC

13
14 By: 

Kane Moon

Lilit Ter-Astvatsatryan

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16 Attorneys for Plaintiff

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1055 W. 7th Street, Suite 1880, Los Angeles, CA 90017.

On the date indicated below, I served the document described as: **FIRST AMENDED REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this action by sending [] the original [or] [✓] a true copy thereof [✓] to interested parties as follows [or] [] as stated on the attached service list:

Jeffrey K. Brown,
Rana Ayazi,
PAYNE & FEARS LLP
4 Park Plaza, Suite 1100
Irvine, California 92614
Telephone: (949) 851-1100
Facsimile: (949) 851-1212
jkb@paynefears.com
ra@paynefears.com

Attorneys for Defendants APCT, Inc. and Cartel Electronics, LLC

[✓] **BY U.S. MAIL:** I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[✓] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this **December 1, 2021** at Los Angeles, California.

Ivette Hernandez
Type or Print Name



Signature