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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

MARTINEZ ANDRE GILES, on behalf of
the State of California, as a private
attorney general,

Plaintiff,

vs.

CANUS CORPORATION, a California
Corporation; PG&E CORPORATION, a
California Corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No. _____

C22-00368

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code §
2699, *et seq.* for violations of Labor Code
§§ 201, 202, 203, 204 *et seq.*, 210, 221,
226(a), 226.7, 351, 510, 512, 558(a)(1)(2),
1194, 1197, 1197.1, 1198, 1198.5, 2802,
California Code of Regulations, Title 8,
Section 11040, Subdivision 5(A)-(B)

PER LOCAL RULE, THIS
CASE IS ASSIGNED TO
DEPT **39** FOR ALL
PURPOSES.

SUMMONS ISSUED

1 Plaintiff Martinez Andre Giles (“PLAINTIFF”) on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for his own acts and knowledge which are based on personal
5 knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Defendants Canus Corporation and/or
8 PG&E Corporation (referred to as “DEFENDANT”) seeking only to recover PAGA civil
9 penalties for himself, and on behalf of all current and former aggrieved employees that worked
10 for DEFENDANT. PLAINTIFF does **not seek to recover anything other than penalties as**
11 **permitted by California Labor Code § 2699.** To the extent that statutory violations are
12 mentioned for wage violations, PLAINTIFF does not seek underlying general and/or special
13 damages for those violations, but simply the civil penalties permitted by California Labor Code
14 § 2699.

15 2. California has enacted the PAGA to permit an individual to bring an action on
16 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
17 nature of this action.

18 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
19 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
20 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
21 complaint should be construed as attempting to obtain any relief that would not be available in
22 a PAGA-only action.

23 **THE PARTIES**

24 4. Defendant Canus Corporation is a California corporation that at all relevant times
25 mentioned herein conducted and continues to conduct substantial business in the state of
26 California.
27

28 5. Defendant PG&E Corporation is a California corporation that at all relevant times

1 mentioned herein conducted and continues to conduct substantial business in the state of
2 California.

3 6. Canus Corporation and PG&E Corporation were the joint employers of
4 PLAINTIFF as evidenced by paycheck and by the company PLAINTIFF performed work for
5 respectively, and are therefore jointly responsible as employers for the conduct alleged herein,
6 and are therefore collectively referred to herein as "DEFENDANT."

7 7. PLAINTIFF was employed by DEFENDANT from January of 2015 to May of
8 2021 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an
9 hourly basis, and entitled to the legally required meal and rest periods and payment of minimum
10 and overtime wages due for all time worked.

11 8. PLAINTIFF, and such persons that may be added from time to time who satisfy
12 the requirements and exhaust the administrative procedures under the Private Attorney General
13 Act, brings this Representative Action on behalf of the State of California with respect to
14 himself and all individuals who are or previously were employed by Canus Corporation and/or
15 PG&E Corporation in California and classified as non-exempt employees ("AGGRIEVED
16 EMPLOYEES") during the time period of September 15, 2020 until a date as determined by the
17 Court (the "PAGA PERIOD").

18 9. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
19 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
20 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
21 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 351,
22 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 1198.5, 2802, California Code of
23 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s).
24 Based upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved
25 employees within the meaning of Labor Code § 2699, *et seq.*

26 10. The true names and capacities, whether individual, corporate, subsidiary,
27 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
28 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant

1 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
2 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
3 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
4 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
5 responsible in some manner for one or more of the events and happenings that proximately
6 caused the injuries and damages hereinafter alleged.

7 11. The agents, servants and/or employees of the Defendants and each of them acting
8 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
9 agent, servant and/or employee of the Defendants, and personally participated in the conduct
10 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
11 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
12 all Defendants are jointly and severally liable to PLAINTIFF and the other AGGRIEVED
13 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
14 agents, servants and/or employees.

15 THE CONDUCT

16
17 12. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
18 required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all their time worked,
19 meaning the time during which an employee is subject to the control of an employer, including
20 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
21 and other AGGRIEVED EMPLOYEES to work from time to time while they were clocked out
22 for what was supposed to be their off duty meal break. DEFENDANT required PLAINTIFF
23 and the AGGRIEVED EMPLOYEES to work off the clock without paying them for all the time
24 they performed duties while on their meal break, specifically by failing to provide enough labor
25 hours to accomplish all the job tasks that DEFENDANT expected PLAINTIFF and other
26 AGGRIEVED EMPLOYEES to complete on a daily and/or weekly basis. PLAINTIFF and
27 other AGGRIEVED EMPLOYEES also worked off the clock with respect to time spent
28 undergoing mandatory drug testing or any other testing and/or examination required as a

1 condition of employment. Additionally, DEFENDANT engaged in the practice of requiring
2 PLAINTIFF and other AGGRIEVED EMPLOYEES to perform work off the clock in that
3 DEFENDANT, as a condition of employment, required these employees to submit to mandatory
4 screening questions prior to arriving to the work site for and prior to clocking into
5 DEFENDANT's timekeeping system for the workday. Further, PLAINTIFF and other
6 AGGRIEVED EMPLOYEES from time to time were not paid wages for all time worked,
7 including overtime wages, such that in the aggregate employees were underpaid wages as a
8 result of DEFENDANT's pattern and practice of unevenly rounding time worked by its
9 employees. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited
10 minimum wage and overtime compensation by from time to time working without their time
11 being accurately recorded and without compensation at the applicable minimum wage and
12 overtime rates. DEFENDANT's policy and practice not to pay PLAINTIFF and other
13 AGGRIEVED EMPLOYEES for all time worked is evidenced by DEFENDANT's business
14 records.

15 13. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
16 EMPLOYEES were also from time to time unable to take off duty meal breaks and were not
17 fully relieved of duty for meal periods. PLAINTIFF and other AGGRIEVED EMPLOYEES
18 were from time to time required to perform work as ordered by DEFENDANT for more than
19 five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT
20 failed to provide PLAINTIFF and other AGGRIEVED EMPLOYEES with a second off-duty
21 meal period from time to time in which these employees were required by DEFENDANT to
22 work ten (10) hours of work from time to time. DEFENDANT also engages in the practice of
23 rounding the meal period times to avoid paying penalties to PLAINTIFF and other
24 AGGRIEVED EMPLOYEES. PLAINTIFF and the other AGGRIEVED EMPLOYEES
25 therefore forfeited meal breaks without additional compensation and in accordance with
26 DEFENDANT's corporate policy and practice.

27 14. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
28 were also required from time to time to work in excess of four (4) hours without being provided

1 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
2 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
3 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
4 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
5 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
6 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one hour
7 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
8 AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods by
9 DEFENDANT and DEFENDANT's managers. Additionally, the applicable California Wage
10 Order requires employers to provide employees with off-duty rest periods, which the California
11 Supreme Court defined as time during which an employee is relieved from all work related
12 duties and free from employer control. In so doing, the Court held that the requirement under
13 California law that employers authorize and permit all employees to take rest period means that
14 employers must relieve employees of all duties and relinquish control over how employees
15 spend their time which includes control over the locations where employees may take their rest
16 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -
17 five minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and
18 other AGGRIEVED EMPLOYEES from unconstrained walks and was unlawful based on
19 Defendant's rule which stated PLAINTIFF and other AGGRIEVED EMPLOYEES could not
20 leave the work premises during their rest period.

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

25 16. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
26 compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF
27 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
28 DEFENDANT, including but not limited to shift differential wages for working undesirable

1 shifts, cash in lieu of benefits, and other non-discretionary incentive bonus wages. The non-
2 discretionary incentive program provided all employees paid on an hourly basis with incentive
3 compensation when the employees met the various performance goals set by DEFENDANT.
4 However, when calculating the regular rate of pay in order to pay overtime and meal and rest
5 break premium pay to PLAINTIFF and other AGGRIEVED EMPLOYEES, DEFENDANT
6 failed to include the incentive compensation as part of the employees' "regular rate of pay" for
7 purposes of calculating overtime and meal and rest break premium pay. Management and
8 supervisors described the incentive program to potential and new employees as part of the
9 compensation package. As a matter of law, the incentive compensation received by
10 PLAINTIFF and other AGGRIEVED EMPLOYEES must be included in the "regular rate of
11 pay." The failure to do so has resulted in an underpayment of overtime compensation and meal
12 and rest break premium pay to PLAINTIFF and other AGGRIEVED EMPLOYEES by
13 DEFENDANT.

14 17. DEFENDANT also failed to provide PLAINTIFF and the other AGGRIEVED
15 EMPLOYEES with complete and accurate wage statements which failed to show, among other
16 things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every
17 employer shall furnish each of his or her employees with an accurate itemized wage statement
18 in writing showing, among other things, gross wages earned and all applicable hourly rates in
19 effect during the pay period and the corresponding amount of time worked at each hourly rate.
20 Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES were paid on an hourly basis.
21 As such, the wage statements should reflect all applicable hourly rates during the pay period and
22 the total hours worked, and the applicable pay period in which the wages were earned pursuant
23 to California Labor Code Section 226(a). The wage statements DEFENDANT provided to
24 PLAINTIFF and other AGGRIEVED EMPLOYEES failed to identify such information. More
25 specifically, the wage statements failed to identify the accurate total hours worked each pay
26 period. When the hours shown on the wage statements were added up, they did not equal the
27 actual total hours worked during the pay period in violation of Cal. Lab. Code Section
28 226(a)(2). Aside, from the violations listed above, DEFENDANT failed to issue to PLAINTIFF

1 an itemized wage statement that lists all the requirements under California Labor Code 226 *et*
2 *seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the other
3 AGGRIEVED EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

4 18. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any
5 employment are due and payable twice during each calendar month, on days designated in
6 advance by the employer as the regular paydays.” Further, Cal. Lab. Code § 204(d) expressly
7 requires employers to pay employees all wages owed within seven (7) days of the close of the
8 payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
9 AGGRIEVED EMPLOYEES all wages owed to them within seven (7) days of the close of the
10 payroll period.

11 19. Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer
12 to collect or receive from an employee any part of wages theretofore paid by said employer to
13 said employee.” DEFENDANT failed to pay all compensation due to PLAINTIFF and other
14 AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
15 PLAINTIFF and other AGGRIEVED EMPLOYEES, failed to disclose all aspects of the
16 deductions from compensation payable to PLAINTIFF and other AGGRIEVED EMPLOYEES,
17 and thereby failed to pay these employees all wages due at each applicable pay period and upon
18 termination.

19 20. DEFENDANT underpaid sick pay wages to PLAINTIFF and other AGGRIEVED
20 EMPLOYEES by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
21 Code Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-
22 discretionary remuneration. Rather than pay sick pay at the regular rate of pay, DEFENDANT
23 underpaid sick pay to PLAINTIFF and other AGGRIEVED EMPLOYEES at their base rates
24 of pay.

25 21. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
26 employees be calculated by dividing the employee’s total wages, not including overtime
27 premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days
28 of employment.

1 22. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
2 the regular rate of pay. PLAINTIFF and other AGGRIEVED EMPLOYEES routinely earned
3 non-discretionary incentive wages which increased their regular rate of pay. However, when
4 sick pay was paid, it was paid at the base rate of pay for PLAINTIFF and other AGGRIEVED
5 EMPLOYEES, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab.
6 Code Section 246.

7 23. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and
8 other AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time
9 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes
10 and based thereon alleges that such failure to pay sick pay at regular rate was willful, such that
11 PLAINTIFF and other AGGRIEVED EMPLOYEES whose employment has separated are
12 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

13 24. In violation of the applicable sections of the California Labor Code and the
14 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
15 a matter of company policy, practice and procedure, intentionally and knowingly failed to
16 compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES for missed meal and rest
17 periods. This policy and practice of DEFENDANT is intended to purposefully avoid the
18 payment for all time worked as required by California law which allows DEFENDANT to
19 illegally profit and gain an unfair advantage over competitors who complied with the law. To
20 the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against
21 DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

22 25. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
23 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which fails
24 to accurately calculate and record all missed meal and rest periods and failed to pay all
25 minimum and overtime wages due to PLAINTIFF and other AGGRIEVED EMPLOYEES. The
26 proper recording of these employees' missed meal and rest breaks is the DEFENDANT's
27 burden. As a result of DEFENDANT's intentional disregard of the obligation to meet this
28 burden, DEFENDANT fails to properly calculate and/or pay all required compensation for work

1 performed by the AGGRIEVED EMPLOYEES and violated the California Labor Code and
2 regulations promulgated thereunder as herein alleged.

3 26. All of the conduct and violations alleged herein occurred during the PAGA
4 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
5 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
6 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018.

7
8 **JURISDICTION AND VENUE**

9 27. This Court has jurisdiction over this Action pursuant to California Code of Civil
10 Procedure, Section 410.10.

11 28. Venue is proper in this Court pursuant to California Code of Civil Procedure,
12 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT, resides
13 in this County, and DEFENDANT (i) currently maintains and at all relevant times maintained
14 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
15 committed the wrongful conduct herein alleged in this County against PLAINTIFF and other
16 AGGRIEVED EMPLOYEES.

17
18 **FIRST CAUSE OF ACTION**

19 **For Violation of the Private Attorneys General Act**

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

21 **(By PLAINTIFF and Against All Defendants)**

22 29. PLAINTIFF realleges and incorporates by this reference, as though fully set
23 forth herein, the prior paragraphs of this Complaint.

24 30. PAGA is a mechanism by which the State of California itself can enforce state
25 labor laws through the employee suing under the PAGA who do so as the proxy or agent of
26 the state's labor law enforcement agencies. An action to recover civil penalties under
27 PAGA is fundamentally a law enforcement action designed to protect the public and not to
28

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

7 31. PLAINTIFF, and such persons that may be added from time to time who
8 satisfy the requirements and exhaust the administrative procedures under the Private
9 Attorney General Act, brings this Representative Action on behalf of the State of California
10 with respect to himself and all individuals who are or previously were employed by
11 Canus Corporation and/or PG&E Corporation in California and classified as non-exempt
12 employees ("AGGRIEVED EMPLOYEES") during the time AGGRIEVED EMPLOYEES
13 of September 15, 2020 until a date as determined by the Court (the "PAGA PERIOD").

14 32. On September 15, 2021, PLAINTIFF gave written notice by electronic mail to
15 the Labor and Workforce Development Agency (the "Agency") and by certified mail to the
16 employer of the specific provisions of this code alleged to have been violated as required by
17 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
18 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
19 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
20 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

21 33. The policies, acts and practices heretofore described were and are an unlawful
22 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
23 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
24 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
25 (d) failed to pay overtime wages and sick pay wages, and (e) failed to pay wages when due,
26 all in violation of the applicable Labor Code sections listed in Labor Code §§ 201, 202, 203,
27 204 *et seq.*, 210, 221, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198,
28 1198.5, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B),

1 and the applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such
2 conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the
3 Labor Code Private Attorney General Act of 2004 as the representative of the State of
4 California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
5 EMPLOYEES.

6 **PRAYER FOR RELIEF**

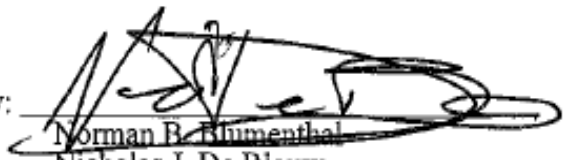
7 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
8 severally, as follows:

9 1. On behalf of the State of California and with respect to all AGGRIEVED
10 EMPLOYEES:

11 A) Recovery of civil penalties as prescribed by the Labor Code Private
12 Attorneys General Act of 2004; and,

13 B) An award of attorneys' fees and cost of suit, as allowable under the
14 law, including, but not limited to, pursuant to Labor Code §2699.

15 Dated: February 22, 2022 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
16 LLP

17
18 By: 

19 Norman B. Blumenthal
20 Nicholas J. De Blouw
21 Attorneys for Plaintiff
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28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor Code §558(a)(3).