

SUMMONS
(CITACION JUDICIAL)

SUM-100

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

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

John Summers dba Mammoth Lakes Pack Outfit and Does 1-25, inclusive

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

State of California ex rel. Kirk Benvenuto, as Private Attorney General

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): Mammoth Lakes Courthouse

100 Thompsons Way P.O. Box 1037, Mammoth Lakes, CA 93546

CASE NUMBER:
(Número del Caso):

22UCM89

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):

Ruben Escobedo 6907 El Camino Real, Suite A, Atascadero, CA 93422 (805) 335-2476

DATE: 11/7/22
(Fecha) Lester Perpall Clerk, by KAY RICHMOND, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

FILED

NOV 07 2022

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MONO
BY: KAY RICHMOND

RUBEN ESCOBEDO (SBN 277866)
WORKWORLD LAW CORP.
A Professional Corporation
6907 El Camino Real, Suite A
Atascadero, CA 93422
Telephone: (805) 335-2476
Facsimile: (805) 892-6213
Email: support@workworldlaw.com

Attorney for KIRK BENVENUTO,
as Private Attorney General

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MONO

STATE OF CALIFORNIA ex rel.
KIRK BENVENUTO, as Private Attorney
General,

Plaintiff,

v.

JOHN SUMMERS dba MAMMOTH
LAKES PACK OUTFIT and DOES 1-25,
inclusive,

Defendants.

Case No. 22UCM89
Assigned for All Purposes to:

**COMPLAINT FOR CIVIL PENALTIES
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004**

Trial Date: None

Complaint filed:

COMES NOW Plaintiff STATE OF CALIFORNIA ex rel. KIRK BENVENUTO as
Private Attorney General ("Plaintiff"), who asserts claims against JOHN SUMMERS dba
MAMMOTH LAKES PACK OUTFIT, and DOES 1-25, inclusive (collectively "Defendants" or
"Employer") as follows:

INTRODUCTION

1. Plaintiff brings this action under the Labor Code Private Attorneys General Act of
2004 ("PAGA"), Labor Code sections 2698, *et seq.*, on behalf of himself, approximately more
than 25 similarly situated current and former aggrieved employees employed by Defendant
throughout California between August 30, 2021, and the resolution of the forthcoming action

1 (“Statutory Period”), and the People of the State of California (hereinafter collectively
2 “Employees”) against Defendant.

3 2. PAGA, specifically Section 2699, subdivision (a) of the California Labor Code,
4 permits an aggrieved employee to recover civil penalties set forth within the California Labor
5 Code for violations of the California Labor Code. In addition, Section 2699(f) establishes civil
6 penalties for violations of California Labor Code provisions that do not contain their own civil
7 penalties. Employees bring this civil action to recover civil penalties for the violations identified
8 below, including civil penalties pursuant to Section 2699, subdivision (f) as well as those civil
9 penalties specifically set forth within the text of the California Labor Code. Those civil penalties
10 are sought for violations committed against Employees of Employers.

11 3. Plaintiff has filed an exhaustion letter with the California Labor and Workforce
12 Development Agency (“LWDA”) providing notice of his intent to bring a private attorneys
13 general action for recovery of penalties under the PAGA. The LWDA has not investigated within
14 the time set forth by statute and Plaintiff is now authorized to bring the present action.

15 **JURISDICTION AND VENUE**

16 4. This Court has jurisdiction over this action pursuant to the California Constitution,
17 Article VI, §10.

18 5. Venue is proper in this Court because this action arises from work performed in
19 Mono County.

20 **PARTIES**

21 6. For all times relevant herein, KIRK BENVENUTO was an adult individual
22 residing in the State of California. Mr. Benvenuto is not suing in his individual capacity; he is
23 proceeding herein solely under the PAGA, on behalf of the State of California for all aggrieved
24 employees, including himself and other aggrieved employees.

25 7. For all times relevant herein, Plaintiff is informed and believes, and on that basis
26 alleges, that Defendant JOHN SUMMERS dba MAMMOTH LAKES PACK OUTFIT was and is
27 an individual residing in Inyo County and doing business in Mono County.

1 8. Whenever in this Complaint reference is made to any act, deed, or conduct of
2 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or
3 through one or more of its agents, employees, or representatives, who was actively engaged in the
4 management, direction, control, or transaction of the business and affairs of Defendants.

5 9. Plaintiff is ignorant of the true names and capacities, whether individual, corporate,
6 associate, or otherwise, of the defendants sued herein as Does 1 through 25, inclusive, and
7 therefore sues said defendants (the "Doe Defendants") by such fictitious names. Plaintiff will
8 amend this Complaint to insert the true names and capacities of the Doe Defendants at such time
9 as the identities of the Doe Defendants are ascertained.

10 10. Plaintiff is informed and believes, and based thereon alleges, that the Doe
11 Defendants are the partners, agents, or principals and co-conspirators of Defendants, and of each
12 other; that Defendants and the Doe Defendants performed the acts and conduct herein alleged
13 directly, aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and
14 accepted the benefits of such acts and conduct, and therefore each of the Doe Defendants is liable
15 to the extent of the liability of Defendants as alleged herein.

16 11. Plaintiff is further informed and believe, and thereon allege, that at all times herein
17 material, each Defendant was completely dominated and controlled by its co-Defendant(s) and
18 each was the alter ego of the other. Whenever and wherever reference is made in this Complaint to
19 any conduct by Defendants, or any of them, such allegations and references shall also be deemed
20 to mean the conduct of each of the Defendants, acting individually, jointly, and severally.
21 Whenever and wherever reference is made to individuals who are not named as defendants in this
22 Complaint, but were employees and/or agents of Defendants, such individuals at all relevant times
23 acted on behalf of Defendants named in this Complaint within the scope of their respective
24 employment or agency with Defendants.

25 **FACTS COMMON TO ALL CLAIMS**

26 12. Mr. Benvenuto worked for Defendant during the Summer of 2021. After doing the
27 math, Mr. Benvenuto came to the conclusion that he was not being paid minimum wage.

13. Defendant did not keep track of hours for Mr. Benvenuto or other Employees. Although Employees regularly worked between 8 and 12 hours per day, Defendant violated overtime laws by paying only a flat rate for each workday. Based on the long hours, which stretched the daily pay thin, Employees also were also regularly not compensated at an hourly rate of at least minimum wage.

14. Additionally, although Defendant provided meal periods to Employees, they were not off-duty meal periods and not otherwise provided in a timely, compliant manner. Nor did Defendant provide 10-minute paid rest periods to Employees.

15. Defendant's wage statements were also inaccurate because they did not accurately state Employees' wages, hours, and applicable rates as required by Labor Code § 226.

16. Finally, Defendant failed to pay all wages due to Employees at the time of their separation from employment.

FIRST COUNT

Failure to Pay Minimum Wages and Overtime

(By Plaintiff against All Defendants)

17. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

18. Section 1197 provides that “[t]he minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” “[O]n and after January 1, 2016, the minimum wage for all industries shall be not less than ten dollars (\$10) per hour.” Cal. Lab. Code, § 1182.12, subd. (a). “[T]he minimum wage for all industries shall not be less than the amounts set forth in this subdivision (1) For any employer who employs 26 or more employees, the minimum wage shall be as follows: (A) From January 1, 2017, to December 31, 2017, inclusive,—ten dollars and fifty cents (\$10.50) per hour. (B) From January 1, 2018, to December 31, 2018, inclusive,—eleven dollars (\$11) per hour. (C) From January 1, 2019, to December 31, 2019, inclusive,—twelve dollars (\$12) per hour. (D) From January 1, 2020, to December 31, 2020, inclusive,—thirteen dollars (\$13) per hour. (E) From January 1, 2021, to

1 December 31, 2021, inclusive,—fourteen dollars (\$14) per hour. (F) From January 1, 2022, and
2 until adjusted by subdivision (c)—fifteen dollars (\$15) per hour.” Cal. Lab. Code, § 1182.12,
3 subd. (b).

4 19. Employees incorporate the preceding sections herein. Throughout the Statutory
5 Period, Employer failed to pay Employees including Mr. Benvenuto at least minimum wage for all
6 time worked. Employer generally paid Employees a flat sum per pay period without paying
7 overtime, although the Employer knew or had reason to know that Employees regularly worked
8 overtime hours (regularly 12 or more hours daily). Dividing the daily pay by the number of hours
9 worked, Employees regularly earned less than the applicable minimum wage rate. Consequently,
10 Employer violated the foregoing minimum wage laws. Moreover, Employer also violated various
11 overtime laws. *See* Lab. Code, § 510, subd. (a); Lab. Code, § 1198. Employer is guilty of
12 violating the foregoing minimum wage and overtime statutes, and is subject to civil penalties.

13 20. Defendants are subject to all civil penalties and other remedies under the PAGA.

14 **SECOND COUNT**

15 **Failure to Provide Compliant Meal Periods; Failure to Pay Premium Wages**

16 **(By Plaintiff against All Defendants)**

17 21. Plaintiff incorporates by reference and realleges each and every allegation
18 contained above, as though fully set forth herein.

19 22. Pursuant to California Labor Code § 512, no employer shall employ an employee
20 for a work period of more than five hours without providing a meal break of not less than thirty
21 minutes in which the employee is relieved of all of his or her duties. An employer may not employ
22 an employee for a work period of more than ten hours per day without providing the employee
23 with a second meal period of not less than thirty minutes, except that if the total hours worked is
24 no more than twelve hours, the second meal period may be waived by mutual consent of the
25 employer and the employee only if the first meal period was not waived.

26 23. Pursuant to the IWC Wage Orders applicable to Employees, in order for an “on
27 duty” meal period to be permissible, the nature of the work of the employee must prevent an
28 employee from being relieved of all duties relating to his or her work for the employer and the

1 employee must consent in writing to the “on duty” meal period. Employees did not consent in
2 writing to an “on duty” meal period. Further, the nature of the work of Employees was not such
3 that they are prevented from being relieved of all duties. Employees must be free to leave the
4 premises during meal-and-rest breaks; otherwise, the time is considered “on duty” and must be
5 paid accordingly.

6 24. Employees incorporate the preceding sections herein. Throughout the Statutory
7 Period, Defendant failed to provide Employees with compliant off-duty meal breaks. Rather than
8 providing off-duty meal breaks, Defendant provided Employees with on-duty meal breaks in
9 violation of California law. Defendant required Employees to remain available to work during
10 breaks, as-needed. Defendant failed to honor the law requiring Defendant to provide Employees
11 the full 30-minute period off-duty. Further, Defendant routinely provided meal breaks late, after
12 five hours of work. Defendant also failed to pay Employees premium wages owed in violation of
13 Labor Code § 226.7. As a result, Defendant is subject to additional civil penalties.

14 25. Defendants are subject to all civil penalties and other remedies under the PAGA.

15 **THIRD COUNT**

16 **Failure to Provide Compliant Rest Periods; Failure to Pay Premium Wages**

17 **(By Plaintiff against All Defendants)**

18 26. Plaintiff incorporates by reference and realleges each and every allegation
19 contained above, as though fully set forth herein.

20 27. Pursuant to the applicable Industrial Welfare Commission Wage Order, employers
21 must provide non-exempt employees a ten (10) minute duty-free rest period for every four (4)
22 hours worked or major fraction thereof. Duty-free rest periods must be paid. As with meal
23 periods, as stated by the California Department of Industrial Relations, employers cannot require
24 that employees stay on the work premises during rest periods. An employer who fails to provide a
25 duty-free rest period must pay the employee an additional one (1) hour of regular pay for each day
26 in which a duty-free rest period is not provided. Cal. Lab. Code, § 226.7, subd. (c).

27 28. Employees incorporate the preceding sections herein. Throughout the Statutory
28 Period, Defendant failed to provide Employees with compliant off-duty rest periods. Only a meal

1 period (albeit a noncompliant meal period) was provided to Employees by Defendant. To the
2 extent any additional breaks were allowed, Defendant provided Employees with on-duty rest
3 breaks, rather than providing a full 10 minutes of off-duty time at the prescribed intervals, in
4 violation of California law. As a result, Defendant is subject to additional civil penalties.

5 29. Defendants are subject to all civil penalties and other remedies under the PAGA.

6 **FOURTH COUNT**

7 **Noncompliant Wage Statements**

8 **(By Plaintiff against All Defendants)**

9 30. Plaintiff incorporates by reference and realleges each and every allegation
10 contained above, as though fully set forth herein.

11 31. California Labor Code §226(a) sets forth reporting requirements for employers
12 when they pay wages: “An employer, semimonthly or at the time of each payment of wages, shall
13 furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying
14 the employee’s wages, or separately if wages are paid by personal check or cash, an accurate
15 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
16 employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any
17 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that
18 all deductions made on written orders of the employee may be aggregated and shown as one item,
19 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
20 name of the employee and only the last four digits of his or her social security number or an
21 employee identification number other than a social security number, (8) the name and address of
22 the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in
23 subdivision (b) of Section 1682, the name and address of the legal entity that secured the services
24 of the employer, and (9) all applicable hourly rates in effect during the pay period and the
25 corresponding number of hours worked at each hourly rate by the employee....”

26 32. Employees incorporate the preceding sections herein. Throughout the Statutory
27 Period, and on Employer’s final payment of wages to Employees at or near the time of their
28 discharge or resignation, Defendants failed, and continue to fail, to furnish Employees, complete

1 and accurate wage statements upon each payment of wages in violation of California Labor Code
2 §226(a). Employer is subject to civil penalties as provided by law. Defendant failed to furnish
3 Employees with accurate itemized statements at the time of each payment of wages showing the
4 correct gross wages earned, correct total hours worked, correct net wages earned, and the
5 corresponding correct number of hours worked at each applicable hourly rate. Rather than
6 providing statements of actual time worked and a correct payment of wages based thereon,
7 Defendant failed to capture and pay Employees for all time, and also failed to capture and pay
8 premium pay for missed meal and rest periods.

9 33. Defendant regularly failed to list Employees' hours worked on their wage
10 statements, for example:

<u>Earnings and Hours</u>	<u>Qty</u>	<u>Rate</u>	<u>Current</u>
<u>Salary</u>	-		945.56

13 34. Consequently, Defendant failed to provide Employees accurate itemized wages
14 statements as required by Section 226.

15 35. Throughout the Statutory Period, Defendant also issued wage statements to
16 Employees that lacked the address of the employer. Instead of indicating Defendant's address,
17 Defendant's wage statements direct Employees to a Mammoth Lakes, CA post office. This does
18 not comply with California law.

19 36. Moreover, to comply with Section 226(a)(9), wage statements must list an accurate
20 overtime rate applicable to any overtime work performed. *See McKenzie v. Fed. Express Corp.*
21 (C.D.Cal. 2011) 765 F.Supp.2d 1222, 1231. Defendant failed to do so throughout the Statutory
22 Period.

23 37. Defendants are subject to all civil penalties and other remedies under the PAGA.

24 **FIFTH COUNT**

25 **Failure to Timely Pay All Wages**

26 **(By Plaintiff against All Defendants)**

27 38. Plaintiff incorporates by reference and realleges each and every allegation
28 contained above, as though fully set forth herein.

39. Generally, “[a]ll wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.” Cal. Lab. Code, § 204, subd. (a).

40. Employees incorporate the preceding sections herein. Rather than timely paying Employees all wages due within the periods set forth above, throughout the Statutory Period, Defendant failed to timely pay Employees for all wages earned as required by law.

41. Defendants are subject to all civil penalties and other remedies under the PAGA.

SIXTH COUNT

Failure to Comply with Recordkeeping Requirements

(By Plaintiff against All Defendants)

42. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

43. Pursuant to Labor Code section 1174, employers are mandated to “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years.”

44. Pursuant to Sections 1198 and the applicable IWC Wage Order, Defendant was also required to keep accurate records of Employees' hours worked, and to make those records available for inspection upon Employees' request. The applicable IWC Wage Order provides that "An employee's records shall be available for inspection by the employee upon reasonable request."

45. Employees incorporate the preceding sections herein. Throughout the Statutory Period, Defendant failed to keep accurate records showing the hours worked daily by Employees. Moreover, Defendant failed to ensure that all Employees' time records were available for inspection upon reasonable request, as evidenced by Mr. Benvenuto's request for all of his time records, which were not provided in Mr. Benvenuto's files produced.

46. Defendant is subject to additional civil penalties for its failure to keep accurate records of Employees' hours worked.

SEVENTH COUNT

Failure to Pay All Wages Due at Separation

(By Plaintiff against All Defendants)

47. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

48. “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Cal. Lab. Code, § 201, subd. (a). “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to him or her, or who refuses to receive the payment when fully tendered to him or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment.” Cal. Lab. Code, § 203, subd. (a).

49. Employees incorporate the preceding sections herein. Throughout the Statutory Period, Defendant failed to pay Employees all wages earned. These wages were owed and due to Employees at the time of their termination or within 72 hours of their resignation. Defendant did not provide full payment of these wages to Employees at these times. Defendant's failure to timely pay these wages at the prescribed times, and failure to pay Employees' continued wages for

1 the 30-day period thereafter, constitute a violation of Sections 201, 202, and 203, for which
2 Defendant is subject to additional civil penalties.

3 **PRAYER**

4 WHEREFORE, Plaintiff and Employees pray for judgment against Defendants, as follows:

5 1. For civil penalties pursuant to Labor Code sections 2698, *et seq.* in an amount to
6 be ascertained at trial exceeding \$25,000.

7 2. For reasonable costs and attorneys' fees; and

8 3. For such other and further relief as the Court deems proper.

9
10 DATED: November 4, 2022

WORKWORLD LAW CORP.
A Professional Corporation

11
12
13 By: 

RUBEN ESCOBEDO

Attorneys for KIRK BENVENUTO
as Private Attorney General