

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Stephanie Bowick

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11 *Attorneys for Plaintiff John L. Martin II*

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **LOS ANGELES COUNTY**

14 JOHN L. MARTIN II, individually, on behalf of
15 the State of California, and as a representative of
16 aggrieved employees,

17 Plaintiff,

18 v.

19 SARFARI CORPORATION, a California
20 corporation; and DOES 1–20, inclusive,

21 Defendants.

Case No. 23STCV02037

**REPRESENTATIVE-ACTION COMPLAINT
FOR CIVIL PENALTIES**

1. Civil Penalties, Cal. Lab. Code § 2698 *et seq.*

DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

2 1. Plaintiff John L. Martin II (“Plaintiff”), on behalf of himself and the State of California,
3 and as an “aggrieved employee” acting as a private attorney general under the California Labor Code
4 Private Attorneys General Act (“PAGA”), section 2698 *et seq.* of the Labor Code, brings this
5 representative action against his former employer, Defendant Safari Corporation (“Safari”), a California
6 corporation; and Does 1 through 20 (collectively, Safari and Does 1 through 20 are referred to as
7 “Defendants”).

8 2. In this action, Plaintiff contends that Defendants committed various Labor Code
9 violations. Plaintiff seeks to collect the civil penalties owing on account of those violations occurring
10 since November 23, 2021—one year before the date Plaintiff provided notice to the California Labor
11 and Workforce Development Agency (“LWDA”) of those violations.

12 **JURISDICTION**

13 3. **Subject-Matter Jurisdiction.** This is a civil action in which the amount in controversy,
14 exclusive of interest, exceeds \$25,000.00. The cause of action asserted in this action arises under the
15 laws of the State of California and is subject to adjudication in the courts of the State of California. This
16 Court therefore has original jurisdiction under article VI, section 10, of the California Constitution, and
17 under California Code of Civil Procedure section 410.10.

18 4. **Personal Jurisdiction.** This Court has personal jurisdiction over Defendants because, as
19 alleged below, Defendants have maintained an office, transacted business, or had an agent in the State of
20 California, constituting sufficient minimum contacts with California.

21 **PARTIES**

22 5. Safari Corporation owns and operates several franchised auto dealerships located in
23 California.

24 6. Plaintiff is, and at all times relevant to this action was, a resident of California who
25 worked for Defendants during the statutory period applicable to his PAGA cause of action. Plaintiff
26 worked for Defendants at their location in Hollywood, California, from approximately May 2022
27 through approximately August 2022. During his employment, Defendants employed Plaintiff as an auto
28 technician.

7. Plaintiff is informed and believes, and based thereon alleges, that Safari is a California corporation with its principal place of business in Los Angeles, California.

8. Plaintiff is unaware of the true names and capacities of the Defendants sued herein under the fictitious names “Doe 1” through “Doe 20.” Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted as the agent, servant, employee, joint venturer, or alter ego of the other Defendants, with the legal authority to act on the others’ behalves, and that the acts and omissions of each Defendant were in accordance with, and represent, the official practice and policy of all Defendants. Plaintiff is further informed and believes, and based thereon alleges, that each Defendant acted within the scope of such agency, or ratified each and every act or omission alleged herein. In addition, Plaintiff is informed and believes, and based thereon alleges, that each Defendant aided and abetted each and every act or omission alleged herein. Likewise, Plaintiff is informed and believes, and based thereon alleges, that each Defendant is, in some manner, intentionally, negligently, or otherwise responsible for each and every act or omission alleged herein. Plaintiff will seek leave of this Court to amend this Complaint once the names and capacities of Doe 1 through Doe 10 become known.

GENERAL ALLEGATIONS

9. ***Unpaid Overtime Compensation.*** Labor Code section 510 requires employers to pay an employee working more than eight hours in a day or forty hours in a workweek at a rate of one-and-a-half times the employee's regular rate of pay for all such hours. Cal. Lab. Code § 510(a). Section 510 further provides that employers are required to pay an employee working more than twelve hours in a day compensation at a rate of two times his or her regular rate for all such hours. *Id.* § 510(a). Generally speaking, an employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee; accordingly, if, for example, an employer pays an employee two or more different hourly rates, the employee's regular rate, and his or her overtime rate, are weighted averages of those different hourly rates. Non-discretionary bonuses are considered wages and, thus, must be included in the regular rate of pay for purposes of determining overtime rates of pay.

10. Defendants willfully failed to pay all overtime wages owed to Plaintiff and other non-exempt employees. During the relevant time period, Defendants failed to include earned non-discretionary bonuses as part of Plaintiff and other non-exempt employees' respective regular rates of

1 pay. Therefore, Plaintiff and other non-exempt employees were underpaid for overtime hours worked
2 during periods in which their respective bonuses were earned.

3 11. Defendants' failure to properly pay Plaintiff and other non-exempt employees the balance
4 of overtime compensation, as required by California law, violates the provisions of Labor Code section
5 510.

6 12. ***Unpaid Rest/Recovery Periods.*** Pursuant to Labor Code section 226.2, employees who
7 are compensated on a piece-rate basis during a pay period shall be paid for rest/recovery separate from
8 any piece-rate compensation. *Id.* § 226.2(a)(1). More specifically, such employees shall be separately
9 compensated for rest/recovery periods at a regular hourly rate that is no less than the higher of (1) the
10 average hourly rate determined by dividing the employee's total compensation for the workweek,
11 exclusive of any compensation for rest/recovery periods and any premium compensation for overtime,
12 by the total hours worked during the workweek, exclusive of rest/recovery periods; or (2) the applicable
13 minimum wage. *Id.* § 226.2(a)(3).

14 13. Throughout the relevant time period, Defendants regularly failed to pay Plaintiff and
15 other non-exempt employees all wages earned by failing to properly compensate them for rest/recovery
16 periods, in violation of Labor Code section 226.2.

17 14. ***Improper Wage Statements.*** Labor Code section 226 requires that employers provide
18 employees with accurate itemized wage statements listing, among other things, all gross and net wages
19 earned during the applicable pay period; the number of piece-rate units earned during the applicable pay
20 period, along with all piece rates in effect during that period; and all hourly rates in effect during the
21 applicable pay period, as well as the corresponding number of hours worked at each such hourly rate.
22 *Id.* § 226(a). In addition, Labor Code section 226.2 makes it clear that wage statements must separately
23 list the total hours of compensable rest/recovery periods, as well as the rate of compensation, and the
24 gross wages paid, for such periods. *Id.* § 226.2(a)(2).

25 15. During the relevant time period, Defendants knowingly and intentionally provided
26 Plaintiff and other non-exempt employees with uniform, incomplete, and inaccurate wage statements.
27 Specifically, to the extent that Defendants did not provide Plaintiff and other non-exempt employees
28 with proper overtime compensation (as discussed above) and rest/recovery-period pay (also as discussed

1 above), those employees' wage statements did not list their respective correct gross wages earned, net
2 wages earned, and all hourly rates in effect during the pay period. In any event, Defendants' wage
3 statements did not separately list employees' respective total hours of compensable rest/recovery
4 periods, the rates of compensation for such periods, or the gross wages paid for such for such periods.

5 16. ***Untimely Payment of Wages.*** Labor Code section 204 requires that all wages earned by
6 any person in any employment between the first and fifteenth days, inclusive, of any calendar month,
7 other than those wages due upon the termination of employment, are due and payable between the
8 sixteenth and twenty-sixth day of the month during which the labor was performed, and that all wages
9 earned by any person in any employment between the sixteenth and the last day, inclusive, of any
10 calendar month, other than those wages due upon the termination of employment, are due and payable
11 between the first and tenth day of the following month. *Id.* § 204(a). Labor Code section 204 also
12 requires that all wages earned for labor in excess of the normal work period shall be paid no later than
13 the payday for the next regular payroll period. *Id.* § 204(b). Notwithstanding these requirements,
14 section 204 also provides that its requirements are satisfied by the payment of wages for weekly,
15 biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the
16 close of the payroll period. Cal. Lab. Code § 204(d).

17 17. As set forth above, during the relevant time period, Defendants failed to pay Plaintiff and
18 other non-exempt employees all wages due, including overtime and rest/recovery-period compensation,
19 within any time period specified by Labor Code section 204.

20 18. Furthermore, Labor Code sections 201 and 202 provide that, if an employer discharges an
21 employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and
22 that, if an employee voluntarily leaves his or her employment, his or her wages are due and payable no
23 later than seventy-two hours thereafter, unless the employee has given seventy-two hours previous
24 notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the
25 time of quitting. See *id.* §§ 201(a), 202(a).

26 19. Based on the violations described above, Defendants willfully failed to pay Plaintiff and
27 other non-exempt employees who are no longer employed by Defendants all their earned wages,
28 including overtime and rest/recovery-period compensation, either at the time of discharge or within

seventy-two hours of their leaving Defendants' employ, in violation of Labor Code sections 201 and 202.

FIRST CAUSE OF ACTION

Civil Penalties

Cal. Lab. Code § 2698 et seq.

20. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set forth in this Complaint.

21. Based on the above-described violations, Plaintiff seeks penalties under PAGA. PAGA provides:

(a) Notwithstanding any provision of law, any provision of th[e Labor C]ode that provides for a civil penalty to be assessed and collected by the [LWDA] or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of the[e Labor C]ode, 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 [s]ection 2699.3.

....

(f) For all provisions of th[e Labor C]ode except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: . . . (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. . . .

(g)(1) . . . [A]n aggrieved employee may recover the civil penalty described in subdivision (f) in a civil action pursuant to the procedures specified in [s]ection 2699.3 filed on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs, including any filing fee paid pursuant to subparagraph (B) of paragraph (1) of subdivision (a) or

1 subparagraph (B) of paragraph (1) of subdivision (c) of [s]ection 2699.3. Nothing in this
2 part shall operate to limit an employee's right to pursue or recover other remedies
3 available under state or federal law, either separately or concurrently with an action taken
4 under this part.

5 *Id.* § 2699.

6 22. As alleged below, Plaintiff has complied with the procedures specified by Labor Code
7 section 2699.3. Section 2699.3 provides:

8 (a) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of
9 [s]ection 2699 alleging a violation of any provision listed in [s]ection 2699.5 shall
10 commence only after the following requirements have been met:

11 (1)(A) The aggrieved employee or representative shall give written notice
12 by online filing with the [LWDA] and by certified mail to the employee of the specific
13 provisions of the [e Labor C]ode alleged to have been violated, including the facts and
14 theories to support the alleged violation.

15 (B) A notice filed with the [LWDA] pursuant to subparagraph (A) and any
16 employer response to that notice shall be accompanied by a filing fee of seventy-five
17 dollars (\$75). . . .

18

19 (2)(A) The [LWDA] shall notify the employer and the aggrieved
20 employee or representative by certified mail that it does not intent to investigate the
21 alleged violation within 60 calendar days of the postmark date of the notice received
22 pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided within
23 65 calendar days of the postmark date of the notice given pursuant to paragraph (1), the
24 aggrieved employee may commence a civil action pursuant to [s]ection 2699.

25

26 (c) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of
27 [s]ection 2699 alleging a violation of any provision other than those listed in [s]ection
28 2699.5 . . . shall commence only after the following requirements have been met:

1 (1)(A) The aggrieved employee or representative shall give written notice
2 by online filing with the [LWDA] and by certified mail to the employer of the specific
3 provisions of this [C]ode alleged to have been violated, including the facts and theories to
4 support the alleged violation.

5 (B) A notice filed with the [LWDA] pursuant to subparagraph (A) and any
6 employer response to that notice shall be accompanied by a filing fee of seventy-five
7 dollars (\$75). . . .

8

9 (2)(A) The employer may cure the alleged violation within 33 calendar
10 days of the postmark date of the notice sent by the aggrieved employee or representative.
11 The employer shall give written notice within that period of time by certified mail to the
12 aggrieved employee or representative and by online filing with the agency if the alleged
13 violation is cured, including a description of actions taken, and no civil action pursuant to
14 [s]ection 2699 may commence. If the alleged violation is not cured within the 33-day
15 period, the employee may commence a civil action pursuant to [s]ection 2699.

16 *Id.* § 2699.3.

17 23. Sections 201, 202, 204, 226(a), and 510 are listed in section 2699.5 of PAGA, triggering
18 the procedure set forth in subdivision (a) of section 2699.3. Section 226.2 is not listed in section 2699.5,
19 triggering the procedure set forth in subdivision (c) of section 2699.3.

20 24. On approximately November 23, 2022, Plaintiff provided written notice by online filing
21 with the LWDA, and by certified mail to Safari, of the specific violations of the Labor Code detailed
22 above. The written notice to the LWDA was accompanied by the \$75.00 filing fee. A copy of the
23 written notice is attached hereto as **Exhibit 1**.

24 25. As of the signing of this Complaint, Plaintiff has not received any notice from the LWDA
25 about whether it intends to investigate the allegations set forth in Plaintiff's written notice. Also as of the
26 signing of this Complaint, Plaintiff has not received any notice from Defendants about any purported
27 cure. Since more than sixty-five days have passed since Plaintiff provided notice, he may commence a
28 civil action pursuant to collect civil penalties under PAGA.

1 **PRAYER FOR RELIEF**

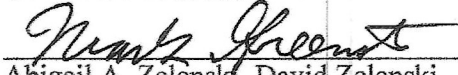
2 Plaintiff prays for the following relief:

3 1. With respect to the first cause of action, that the Court enter judgment in favor of
4 Plaintiff, on behalf of himself, the State of California, and all aggrieved employees, and against
5 Defendants, for civil penalties, attorney's fees, and costs in accordance with section 2699 of the Labor
6 Code, all in amounts according to proof at the time of trial:

7 2. That the Court award such other and further relief deemed just and proper.
8

9 Dated: January 30, 2023

ZELENSKI LAW, PC
GREENSTONE LAW APC

10 
11 Abigail A. Zelenski, David Zelenski
12 Mark S. Greenstone
13 Attorneys for Plaintiff

14 **DEMAND FOR JURY TRIAL**

15 Plaintiff requests a trial by jury as to all causes of action.

16
17 Dated: January 30, 2023

ZELENSKI LAW, PC
GREENSTONE LAW APC

18 
19 Abigail A. Zelenski, David Zelenski
20 Mark S. Greenstone
21 Attorneys for Plaintiff
22
23
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27
28

Exhibit 1



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November 23, 2022

California Labor and Workforce Development
Agency
Attn. PAGA Administrator

Via Online Filing

Don Tena
Attn. Safari Corporation, Registered Agent for
Service of Process
3225 Stevens Creek Boulevard
San Jose, California 95117

Via Certified Mail

Re: *Martin v. Safari Corporation*
Notice of Claims Under California Labor Code Private Attorneys General Act

To the California Labor and Workforce Development Agency and to Safari Corporation:

This office represents John L. Martin II (“Claimant”), a former employee of Safari Corporation (“Respondent”). Claimant contends that Respondent violated various provisions of the California Labor Code, and he seeks to prosecute a civil action under the Labor Code Private Attorneys General Act (“PAGA”), Labor Code section 2698 *et seq.*, to collect civil penalties based on these violations. The purpose of this letter is to comply with PAGA’s procedural requirements for bringing such an action.

Claimant seeks relief on behalf of himself, the State of California, and other persons who were employed by Respondent in California as non-exempt employees and were not provided proper compensation for overtime or for rest/recovery periods, not provided accurate wage statements, and/or not timely paid all outstanding wages when due (“Aggrieved Employees”). This letter is sent in compliance with the notice requirements of Labor Code section 2699.3.

Factual Background

Claimant was hired by Respondent as an auto technician in approximately May 2022. His employment ended in or around August 2022. Claimant and other Aggrieved Employees were paid non-discretionary bonuses, but Respondent failed to include those bonuses as part of Claimant and other Aggrieved Employees’ respective regular rates when determining overtime compensation. Accordingly, whenever these individuals worked overtime hours during a period in which they earned a bonus (as did Claimant), they were underpaid. In addition, Claimant and other Aggrieved Employees were compensated on a piece-rate basis but not paid proper compensation for their rest/recovery periods. Respondent also failed to timely pay all wages owing to Claimant and other Aggrieved Employees, since this outstanding compensation has yet to be paid to them. Finally, Respondent failed to provide accurate wage statements to Claimant and other Aggrieved Employees, as the wage statements issued to them variously failed to list their



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respective correct rates of pay, rest/recovery-period payments, rates of compensation for rest/recovery periods, gross wages, and net wages.

Violation of California Labor Code Section 510

California Labor Code section 510 requires that employers pay an employee who works more than eight hours in a day, or forty hours in a workweek, at a rate of one-and-a-half times the employee's regular rate of pay for all such hours. *See* Cal. Lab. Code § 510(a). Section 510 further provides that employers are required to pay an employee who works more than twelve hours in a day at a rate of two times his or her regular rate for all such hours. *See id.* Non-discretionary bonuses are considered wages and, thus, must be included in the regular rate of pay for purposes of determining overtime rates of pay.

Respondent willfully failed to pay all overtime wages owed to Claimant and other Aggrieved Employees. During the relevant time period, Respondent failed to include earned non-discretionary bonuses as part of Claimant and other Aggrieved Employees' respective regular rates of pay. Therefore, Claimant and other Aggrieved Employees were underpaid for overtime hours worked during periods in which their respective bonuses were earned. Respondent's failure to properly pay Claimant and other Aggrieved Employees violates the provisions of Labor Code section 510. As a result of these violations, Claimant and other Aggrieved Employees are entitled to recover civil penalties pursuant to PAGA.

Violation of California Labor Code Section 226.2

Pursuant to California Labor Code section 226.2, employees who are compensated on a piece-rate basis during a pay period shall be paid for rest/recovery separate from any piece-rate compensation. *See id.* § 226.2(a)(1). More specifically, such employees shall be separately compensated for rest/recovery periods at a regular hourly rate that is no less than the higher of (1) the average hourly rate determined by dividing the employee's total compensation for the workweek, exclusive of any compensation for rest/recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest/recovery periods; or (2) the applicable minimum wage. *See id.* § 226.2(a)(3).

Throughout the relevant time period, Respondent regularly failed to pay Claimant and other Aggrieved Employees all wages earned by failing to properly compensate them for rest/recovery periods, in violation of section 226.2. Based on the foregoing, Claimant and other Aggrieved Employees are entitled to recover civil penalties pursuant to PAGA.

Violation of California Labor Code Section 226

California Labor Code section 226 requires that employers provide employees with accurate itemized wage statements listing, among other things, all gross and net wages earned during the applicable pay period; the number of piece-rate units earned during the applicable pay period, along with all piece rates in effect during that period; and all hourly rates in effect during the applicable pay period, as well as the corresponding number of hours worked at each such hourly rate. *See id.* § 226(a). In addition, Labor Code section 226.2 makes it clear that wage



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statements must separately list the total hours of compensable rest/recovery periods, as well as the rate of compensation, and the gross wages paid, for such periods. *See id.* § 226.2(a)(2).

During the relevant time period, Respondent knowingly and intentionally provided Claimant and other Aggrieved Employees with uniform, incomplete, and inaccurate wage statements. Specifically, to the extent that Respondent did not provide Claimant and Aggrieved Employees with proper overtime compensation (as discussed above) and rest/recovery-period pay (also as discussed above), those employees' wage statements did not list their respective correct gross wages earned, net wages earned, and all hourly rates in effect during the pay period. In any event, Respondent's wage statements did not separately list employees' respective total hours of compensable rest/recovery periods, the rates of compensation for such periods, or the gross wages paid for such for such periods. Claimant and other Aggrieved Employees are therefore entitled to recover civil penalties pursuant to PAGA.

Violation of California Labor Code Section 204

California Labor Code section 204 provides that all wages earned by any person in any employment between the first and fifteenth days, inclusive, of any calendar month, other than those wages due upon the termination of employment, are due and payable between the sixteenth and twenty-sixth day of the month during which the labor was performed, and that all wages earned by any person in any employment between the sixteenth and the last day, inclusive, of any calendar month, other than those wages due upon the termination of employment, are due and payable between the first and tenth day of the following month. *See id.* § 204(a). Section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. *See id.* § 204(b). Notwithstanding these requirements, section 204 also provides that its requirements are satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period. *See id.*

As set forth above, during the relevant time period, Respondent failed to pay Claimant and other Aggrieved Employees all wages due, including overtime and rest/recovery-period compensation, within any time period specified by section 204. Claimant and Aggrieved Employees are therefore entitled to recover penalties pursuant to PAGA.

Violation of California Labor Code Sections 201 and 202

California Labor Code sections 201 and 202 provide that, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that, if an employee voluntarily leaves his or her employment, his or her wages are due and payable no later than seventy-two hours thereafter, unless the employee has given seventy-two hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. *See id.* §§ 201(a), 202(a).

Based on the violations described above, Respondent willfully failed to pay Claimant and other Aggrieved Employees who are no longer employed by Respondent all their earned wages, including overtime and rest/recovery-period compensation, either at the time of discharge or within



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seventy-two hours of their leaving Respondent's employ, in violation of Labor Code sections 201 and 202. Claimant and other Aggrieved Employees are therefore entitled to recover civil penalties pursuant to PAGA.

Attorney's Fees, Costs, Interest, and Penalties

PAGA provides for the recovery of attorney's fees and costs by any employee who prevails in a civil-penalty action. *See id.* § 2699(g)(1). Claimant has already incurred attorney's fees and costs, and he will continue to them because of Respondent's unlawful actions.

Based on the foregoing, Claimant wishes to bring a representative action under PAGA on behalf of himself and the State of California, as well as on behalf of all other Aggrieved Employees. Claimant requests that the Labor and Workforce Development Agency ("LWDA") investigate the above allegations and provide notice of its findings pursuant to PAGA's provisions. Alternatively, he requests that the LWDA inform him if it does not intend to investigate these violations so that he may proceed as a private attorney general.

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if, through discovery and/or expert review, Claimant becomes aware of additional claims, he reserves the right to revise these facts and/or add any new claims either by amending this letter or by adding applicable causes of action and additional PAGA representatives.

Concurrently with the online filing of this letter, Claimant will remit the \$75 filing fee to the LWDA. Please direct all future notices under PAGA to my office. Thank you.

Sincerely,

/s/ David Zelenski

ZELENSKI LAW
Abigail A. Zelenski
David Zelenski