

# SUMMONS

(CITACION JUDICIAL)

SUM-100

**NOTICE TO DEFENDANT:****(AVISO AL DEMANDADO):**

GANO EXCEL (U.S.A.) INC., a Washington corporation; and DOES 1 through 50, inclusive,

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

DIANA HIDALGO ROJAS, individually, and on behalf of all other aggrieved employees,

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

**FILED**

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

JUN 02 2023

BY Ragine M-Mamudu  
DEPUTY

Ragine M-Mamudu

By Fax

**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](http://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](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://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](http://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](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://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):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO  
247 WEST 3RD STREET  
SAN BERNARDINO, CALIFORNIA 92415

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):

SCOTT ERNEST WHEELER (SBN 187998)  
250 WEST FIRST STREET, SUITE 216  
CLAREMONT, CALIFORNIA 91711

LAW OFFICE OF SCOTT ERNEST WHEELER  
TELEPHONE: (909) 621-4988  
FACSIMILE: (909) 621-4622

Ragine M-Mamudu

DATE:

(Fecha)

JUN 02 2023

Clerk, by

(Secretario)

, Deputy

(Adjunto)

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

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

(SEAL)

**NOTICE TO THE PERSON SERVED: You are served**

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 416.20 (defunct corporation)  
☐ CCP 416.40 (association or partnership)  
☐ other (specify):

- ☐ CCP 416.60 (minor)  
☐ CCP 416.70 (conservatee)  
☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

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CM-010

|                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                  |                                                                                                                                                                                            |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address)<br><b>SCOTT ERNEST WHEELER (SBN 187998)</b><br><b>LAW OFFICE OF SCOTT ERNEST WHEELER</b><br><b>250 WEST FIRST STREET, SUITE 216</b><br><b>CLAREMONT, CALIFORNIA 91711</b><br>TELEPHONE NO.: (909) 621-4988 FAX NO. (Optional): (909) 621-4622<br>E-MAIL ADDRESS: <b>SEW@SCOTTWHEELERLAWOFFICE.COM</b><br>ATTORNEY FOR (Name): <b>PLAINTIFF, DIANA HIDALGO ROJAS</b> |                                                                                                                                                                                                  | FOR COURT USE ONLY<br><br><b>FILED</b><br>SUPERIOR COURT OF CALIFORNIA<br>COUNTY OF SAN BERNARDINO<br><br><b>JUN 01 2023</b><br><br>BY: <i>Régine M. Mamudu</i><br>Régine M-Mamudu, Deputy |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>SAN BERNARDINO</b><br>STREET ADDRESS: <b>247 WEST 3RD STREET</b><br>MAILING ADDRESS:<br>CITY AND ZIP CODE: <b>SAN BERNARDINO, CALIFORNIA 92415</b><br>BRANCH NAME: <b>SAN BERNARDINO - CIVIL DIVISION</b>                                                                                                                                                                                         |                                                                                                                                                                                                  |                                                                                                                                                                                            |
| CASE NAME: <b>DIANA HIDALGO ROJAS V. GANO EXCEL (U.S.A.) INC.</b>                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                  |                                                                                                                                                                                            |
| <b>CIVIL CASE COVER SHEET</b><br><input checked="" type="checkbox"/> <b>Unlimited</b><br>(Amount demanded exceeds \$25,000)<br><input type="checkbox"/> <b>Limited</b><br>(Amount demanded is \$25,000 or less)                                                                                                                                                                                                                              | <b>Complex Case Designation</b><br><input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b><br>Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402) |                                                                                                                                                                                            |
|                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                  | CASE NUMBER: <b>CIV SB 23 12557</b><br>JUDGE:<br>DEPT.:                                                                                                                                    |

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

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

**Auto Tort**

- ☐ Auto (22)  
☐ Uninsured motorist (46)

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

- ☐ Asbestos (04)  
☐ Product liability (24)  
☐ Medical malpractice (45)  
☐ Other PI/PD/WD (23)

**Non-PI/PD/WD (Other) Tort**

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

**Employment**

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

**Contract**

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

**Real Property**

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

**Unlawful Detainer**

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

**Judicial Review**

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

**Provisionally Complex Civil Litigation**

(Cal. Rules of Court, rules 3.400-3.403)

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

**Enforcement of Judgment**

- ☐ Enforcement of judgment (20)

**Miscellaneous Civil Complaint**

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

**Miscellaneous Civil Petition**

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

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

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

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive4. Number of causes of action (specify): **ONE CAUSE OF PAGA ACTION**5. This case ☐ is ☒ is not a class action suit.

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

Date: **6/1/23**

Scott Ernest Wheeler

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

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

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## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

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

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

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

## CASE TYPES AND EXAMPLES

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                             |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Auto Tort</b><br>Auto (22)—Personal Injury/Property Damage/Wrongful Death<br>Uninsured Motorist (46) <i>(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)</i>                                                                                                                                                                                                                                                                                                                                                                                          | <b>Contract</b><br>Breach of Contract/Warranty (06)<br>Breach of Rental/Lease<br>Contract <i>(not unlawful detainer or wrongful eviction)</i><br>Contract/Warranty Breach—Seller Plaintiff <i>(not fraud or negligence)</i><br>Negligent Breach of Contract/Warranty<br>Other Breach of Contract/Warranty<br>Collections (e.g., money owed, open book accounts) (09)<br>Collection Case—Seller Plaintiff<br>Other Promissory Note/Collections Case<br>Insurance Coverage <i>(not provisionally complex)</i> (18)<br>Auto Subrogation<br>Other Coverage<br>Other Contract (37)<br>Contractual Fraud<br>Other Contract Dispute | <b>Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)</b><br>Antitrust/Trade Regulation (03)<br>Construction Defect (10)<br>Claims Involving Mass Tort (40)<br>Securities Litigation (28)<br>Environmental/Toxic Tort (30)<br>Insurance Coverage Claims <i>(arising from provisionally complex case type listed above)</i> (41) |
| <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b><br>Asbestos (04)<br>Asbestos Property Damage<br>Asbestos Personal Injury/Wrongful Death<br>Product Liability <i>(not asbestos or toxic/environmental)</i> (24)<br>Medical Malpractice (45)<br>Medical Malpractice—Physicians & Surgeons<br>Other Professional Health Care Malpractice<br>Other PI/PD/WD (23)<br>Premises Liability (e.g., slip and fall)<br>Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)<br>Intentional Infliction of Emotional Distress<br>Negligent Infliction of Emotional Distress<br>Other PI/PD/WD | <b>Real Property</b><br>Eminent Domain/Inverse Condemnation (14)<br>Wrongful Eviction (33)<br>Other Real Property (e.g., quiet title) (26)<br>Writ of Possession of Real Property<br>Mortgage Foreclosure<br>Quiet Title<br>Other Real Property <i>(not eminent domain, landlord/tenant, or foreclosure)</i>                                                                                                                                                                                                                                                                                                                 | <b>Enforcement of Judgment</b><br>Enforcement of Judgment (20)<br>Abstract of Judgment (Out of County)<br>Confession of Judgment <i>(non-domestic relations)</i><br>Sister State Judgment<br>Administrative Agency Award <i>(not unpaid taxes)</i><br>Petition/Certification of Entry of Judgment on Unpaid Taxes<br>Other Enforcement of Judgment Case     |
| <b>Non-PI/PD/WD (Other) Tort</b><br>Business Tort/Unfair Business Practice (07)<br>Civil Rights (e.g., discrimination, false arrest) <i>(not civil harassment)</i> (08)<br>Defamation (e.g., slander, libel) (13)<br>Fraud (16)<br>Intellectual Property (19)<br>Professional Negligence (25)<br>Legal Malpractice<br>Other Professional Malpractice <i>(not medical or legal)</i><br>Other Non-PI/PD/WD Tort (35)                                                                                                                                                                                                 | <b>Unlawful Detainer</b><br>Commercial (31)<br>Residential (32)<br>Drugs (38) <i>(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)</i>                                                                                                                                                                                                                                                                                                                                                                                                                                   | <b>Miscellaneous Civil Complaint</b><br>RICO (27)<br>Other Complaint <i>(not specified above)</i> (42)<br>Declaratory Relief Only<br>Injunctive Relief Only <i>(non-harassment)</i><br>Mechanics Lien<br>Other Commercial Complaint Case <i>(non-tort/non-complex)</i><br>Other Civil Complaint <i>(non-tort/non-complex)</i>                               |
| <b>Employment</b><br>Wrongful Termination (36)<br>Other Employment (15)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <b>Judicial Review</b><br>Asset Forfeiture (05)<br>Petition Re: Arbitration Award (11)<br>Writ of Mandate (02)<br>Writ—Administrative Mandamus<br>Writ—Mandamus on Limited Court Case Matter<br>Writ—Other Limited Court Case Review<br>Other Judicial Review (39)<br>Review of Health Officer Order<br>Notice of Appeal—Labor<br>Commissioner Appeals                                                                                                                                                                                                                                                                       | <b>Miscellaneous Civil Petition</b><br>Partnership and Corporate Governance (21)<br>Other Petition <i>(not specified above)</i> (43)<br>Civil Harassment<br>Workplace Violence<br>Elder/Dependent Adult Abuse<br>Election Contest<br>Petition for Name Change<br>Petition for Relief from Late Claim<br>Other Civil Petition                                |

**LAW OFFICE OF SCOTT ERNEST WHEELER**

Scott Ernest Wheeler (SBN 187998)

Justin A. Wheeler (SBN 342226)

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*Attorneys for Plaintiff and all other  
aggrieved employees***FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO

JUN 01 2023

BY: Rafael M. Mamudu  
Rafael M. Mamudu, Deputy

By Fax

**SUPERIOR COURT OF THE STATE OF CALIFORNIA****FOR THE COUNTY OF SAN BERNARDINO**DIANA HIDALGO ROJAS, individually, and  
on behalf of all other aggrieved employees,

Plaintiff,

v.

GANO EXCEL (U.S.A.) INC., a Washington  
corporation; and DOES 1 through 50,  
inclusive,

Defendants.

CASE NO.:

**CIV SB 2312557****COMPLAINT FOR VIOLATION OF THE  
PRIVATE ATTORNEYS GENERAL ACT  
OF 2004 ("PAGA")**[California Labor Code § 2698 *et seq.*]

1 This is a representative action brought by Diana Hidalgo Rojas ("Plaintiff"), on behalf of herself  
2 and all other aggrieved employees and the State of California, relating to systemic violations of  
3 California wage and hour laws by her employer Gano Excel (U.S.A.) Inc., (hereinafter referred to as  
4 "Gano Excel" or "Defendant"). Plaintiff makes the following allegations on information and belief,  
5 except as to allegations pertaining to Plaintiff individually, which are based on her personal knowledge.

### 6 **INTRODUCTION**

7 1. Gano Excel, is a private, for-profit business which operates food and beverage  
8 manufacturing facilities throughout the state of California.

9 2. In an effort to conserve labor costs, and thereby maximize profits, Defendant has  
10 implemented policies and practices that have resulted in systematic violations of California's wage and  
11 hour laws.

12 3. For example, Defendant has implemented unlawful policies with respect to meal and  
13 rest breaks. Defendant requires its non-exempt employees, who are informed that the needs of the  
14 businesses take top priority, to work through meal and rest breaks, to take untimely meal periods and  
15 to remain on call during such breaks. As a result, Plaintiff and other aggrieved employees have been  
16 denied the ability to take the meal and rest breaks that they were and are legally entitled to take.

17 4. Moreover, Defendant has uniformly failed to pay Plaintiff and other aggrieved  
18 employees proper overtime wages due the fact that it has willfully turn a blind eye to off-the-clock  
19 work that Plaintiff and other non-exempt employees perform as a direct consequence of Defendant's  
20 understaffing and imposition of an unreasonable workload.

### 21 **JURISDICTION AND VENUE**

22 5. The Superior Court of the State of California has jurisdiction in this matter because  
23 Plaintiff is a citizen of the State of California, and Defendant is licensed to do business under the laws  
24 of the State of California. No federal question is at issue because Plaintiff's claims are based solely on  
25 California law.

26 6. Venue is proper in this judicial district and the County of San Bernardino because  
27 Plaintiff performed work for Defendant in the county of San Bernardino. Many other aggrieved  
28

employees also worked for Defendant in the State of California and in San Bernardino County.

7. The State of California, San Bernardino County, has jurisdiction in this matter because the individual claims are under the seventy-five thousand dollar (\$75,000.00) individual jurisdictional threshold and the five million dollar (\$5,000,000.00) aggregate jurisdictional threshold for federal court diversity jurisdiction. Further, there is no federal question at issue as the issues herein are based solely on the California Labor Code, Industrial Welfare Commission Wage Orders, Code of Civil Procedure and Rules of Court. Thus, the State of California, San Bernardino County Superior Court maintains the appropriate jurisdiction to hear this matter.

## THE PARTIES

8. During the statute of limitations period, Plaintiff was employed by Defendant as a Customer Service Consultant, an hourly, non-exempt position, at its location in Chino, California.

9. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and at all times relevant hereto was, a corporation organized and existing under the laws of the State of Washington.

10. The true names and capacities of DOES 1 through 50, inclusive, are unknown to Plaintiff at this time, and Plaintiff therefore sues such defendants under fictitious names. Plaintiff is informed and believes, and thereon alleges, that each defendant designated as a DOE is in some manner highly responsible for the occurrences alleged herein, and that Plaintiff and other aggrieved employees' injuries and damages, as alleged herein, were proximately caused by the conduct of such DOE defendants. Plaintiff will seek leave of the Court to amend this Complaint to allege the true names and capacities of such DOE defendants when ascertained.

## PAGA REPRESENTATIVE ACTION ALLEGATIONS

11. On March 17, 2023, Plaintiff gave written notice by certified mail pursuant to California Labor Code § 2699.3, to the California Labor and Workforce Development Agency (“LWDA”) and Gano Excel, of the specific provisions of the California Labor Code and IWC Wage Order alleged to have been violated, including the facts and theories to support the alleged violations. Plaintiff has not received any response from the LWDA. As Plaintiff has waited more than sixty-five (65) days from the March 17, 2023, postmark date of her written notice before filing this action, Plaintiff has complied

1 with all of the requirements set forth in California Labor Code § 2699.3 to commence a representative  
2 action under the California Private Attorneys General Act of 2004 ("PAGA").

3 12. Pursuant to the PAGA, California Labor Code §§ 2698-2699.5, Plaintiff brings this  
4 action on behalf of the State of California, and all other aggrieved employees (e.g., current and former  
5 non-exempt employees of Defendant) who performed work for Defendant in the State of California at  
6 any time within the period beginning one (1) year prior to the March 17, 2023 notice Plaintiff provided  
7 to the LWDA and, and ending at the time this action proceeds to final judgment ("statute of limitations  
8 period").

### 9 **FACTUAL ALLEGATIONS**

#### 10 **Failure to Provide Required Meal Periods**

##### 11 **[Cal. Lab. Code §§ 226.7, 512, 558; § 11 of the Applicable IWC Wage Order]**

12 13. During the statute of limitations period, as part of Defendant's illegal policies and  
13 practices to minimize labor costs and maximize corporate profits, Defendant has required, permitted or  
14 otherwise suffered Plaintiff and aggrieved employees to perform work during their meal periods, to  
15 completely skip their meal periods, to take late and short meal periods, and Defendant has otherwise  
16 failed to provide the required meal periods to Plaintiff and aggrieved employees as required under  
17 California Labor Code §§ 226.7, 512 and § 11 of the applicable IWC Order.

18 14. Defendant has implemented several practices that have caused Plaintiff and aggrieved  
19 employees to systematically miss and otherwise take non-compliant meal periods. Defendant  
20 systematically understaffs its work sites such that non-exempt employees are given so much work to  
21 complete that they regularly miss or otherwise take non-compliant meal periods. As a direct  
22 consequence of this understaffing, Plaintiff and aggrieved employees have so much work to complete  
23 within their scheduled shifts that they are forced to skip their meal periods altogether, to take them after  
24 working longer than five (5) hours, to perform work during their meal periods, or return to work after  
25 taking less than a thirty (30) minute meal period. Moreover, Plaintiff and other aggrieved employees  
26 need to secure permission before taking a meal period, which is often denied by supervisors. Defendant  
27 also did not properly notify their non-exempt employees of their rights under California law to take  
28

1 timely, uninterrupted meal periods (including the right to second meal periods during shifts of longer  
2 than ten (10) hours), and thus, aggrieved employees like Plaintiff were left in the dark as to when or  
3 for how long they could take their meal periods.

4 15. There are also frequent occasions when Plaintiff and aggrieved employees need to  
5 perform other duties immediately before the time during which they are legally entitled to take a meal  
6 period. Pursuant to Defendant's policies, Plaintiff and aggrieved employees cannot simply drop their  
7 job duties or stop working in order to take a meal period. Consequently, Plaintiff and aggrieved  
8 employees regularly miss meal periods, take late meal periods, return early from meal periods, and  
9 even clock out for meal periods but continue working. Plaintiff is informed and believes Defendant  
10 failed to maintain records of meal periods allegedly taken by Plaintiff and the other aggrieved  
11 employees.

12 16. Despite the foregoing, Defendant has implemented a policy and practice of actively  
13 discouraging the issuance of meal period premium payments, and in the process, Defendant has  
14 violated California Labor Code §§ 226.7 and § 11 of the applicable IWC Wage Order, by failing to  
15 compensate Plaintiff and aggrieved employees who were not authorized and permitted to take a  
16 complete, timely, uninterrupted meal period, one additional hour of compensation at the proper regular  
17 rate of pay (taking into consideration nondiscretionary commission and bonus payments) for each  
18 workday that such a meal period was not authorized or permitted.

19 **Failure to Provide Required Rest Breaks**

20 **[Cal. Lab. Code §§ 226.7, 512; § 12 of the Applicable IWC Wage Order]**

21 17. During the statute of limitations period, as part of Defendant's illegal policies and  
22 practices to minimize labor costs and maximize corporate profits, Defendant has failed to authorize  
23 and permit Plaintiff and other aggrieved employees to take rest breaks as required under California  
24 Labor Code §§ 226.7 and 512, and § 12 of the applicable IWC Wage Order.

25 18. The same or similar policies and practices that deprive Plaintiff and other aggrieved  
26 employees from taking their meal periods, as alleged herein, similarly deprive them of their ability to  
27 take their first and second and third rest breaks. As alleged herein, Defendant understaffs work areas,  
28

1 which creates so much work for Plaintiff and other aggrieved employees that they are frequently unable  
2 to take rest breaks.

3 19. Defendant also does not provide adequate training regarding its legal obligations with  
4 respect to the provision of rest breaks, does not implement a schedule regarding rest breaks for non-  
5 exempt employees, and often interrupts staff who try to take rest periods. In short, Defendant  
6 essentially has a non-existent rest break policy, as there is no guidance or specification as to when  
7 Plaintiff and other aggrieved employees are authorized and permitted to take rest breaks during their  
8 shifts.

9 20. Defendant also violated California Labor Code § 226.7, and § 12 of the applicable IWC  
10 Order, by failing to pay Plaintiff and other aggrieved employees who were not provided with a rest  
11 break, in accordance with the applicable wage order, one additional hour of compensation at the proper  
12 regular rate of pay (taking into consideration nondiscretionary bonus and commission payments) for  
13 each workday that a rest break was not provided.

14 **Failure to Pay Overtime Wages**

15 **[Cal. Lab. Code §§ 510, 1194, 1198; § 3 of the Applicable IWC Wage Order]**

16 21. Pursuant to California Labor Code §§ 510, 1194, and § 3 of the applicable IWC Order,  
17 Defendant is required to compensate Plaintiff and other aggrieved employees for all overtime, which  
18 is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of  
19 eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh  
20 consecutive workday, with double time for all hours worked in excess of twelve (12) hours in any  
21 workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work  
22 in any workweek.

23 22. During the statute of limitations period, Defendant failed to compensate Plaintiff and  
24 other aggrieved employees for all overtime hours worked as required under the foregoing provisions  
25 of the California Labor Code and IWC Wage Order by, among other methods: failing to pay overtime  
26 at one and one-half (1 ½) or double the regular rate of pay as provided by California Labor Code §§  
27 510, 1194 and § 3 of the applicable IWC Order, requiring, permitting or suffering Plaintiff and other  
28

1 aggrieved employees to work off-the-clock, and to work through meal and rest breaks, but not  
2 compensating them for this time, improperly calculating the regular rate of pay based on bonuses,  
3 commissions, and other remuneration, and other methods to be discovered. Moreover, when Plaintiff  
4 and the other aggrieved employees are paid on a production basis and work more than eight (8) hours  
5 in a day and/or over forty (40) hours in a workweek, they are not paid overtime wages.

6       23. In a short-sighted attempt to maximize profits, Defendant has understaffed its facilities.  
7 Not only has this practice resulted in widespread missed meal and rest breaks, but it has also caused  
8 Plaintiff and other aggrieved employees to perform work while off-the-clock. Defendant has actual or  
9 constructive knowledge of this off-the-clock work and subtly condones it. Plaintiff and other aggrieved  
10 employees routinely arrive to work early to check so that they are prepared and ready to begin  
11 performing their duties promptly at the start of their shifts, as they must be pursuant to the requirements  
12 of Defendant. Defendant knows that Plaintiff and other aggrieved employees perform this work off-  
13 the-clock.

14       24. Defendant has knowingly and willfully refused to perform its obligations to  
15 compensate Plaintiff and other aggrieved employees for all wages earned and all hours worked in  
16 violation of California Labor Code §§ 510, 1194 and 1198, and § 3 of the applicable IWC Order.

17                               **Failure to Pay Minimum Wages**

18                               **[Cal. Lab. Code §§ 1194, 1197; § 4 of the IWC Wage Orders]**

19       25. Pursuant to Cal. Lab. Code §§ 1194, 1197, and § 4 of the applicable IWC Wage Order,  
20 payment to an employee of less than the applicable minimum wage for all hours worked in a payroll  
21 period is unlawful.

22       26. During the statute of limitations period, the hourly rates for Plaintiff and other aggrieved  
23 employees were precisely at California minimum wage. Based on this common practice, Defendant  
24 failed to pay Plaintiff and other aggrieved employees minimum wages for all hours worked by  
25 requiring, permitting or suffering Plaintiff and other aggrieved employees to work off the clock, such  
26 as requiring them to work through meal and rest breaks but not compensating them for this time, and  
27 failing to include this time in all hours worked, and other methods to be discovered.

1           27. Defendant's conduct described herein violates Cal. Lab. Code §§ 1194, 1197, and § 4  
2 of the applicable IWC Wage Order. As a proximate result of the aforementioned violations, Plaintiff  
3 and other aggrieved employees have been damaged in an amount according to proof at trial. Therefore,  
4 pursuant to California Labor Code §§ 200, 203, 226, 1194, 1197.1, and any other applicable law,  
5 Plaintiff and other aggrieved employees are entitled to recover the unpaid balance of wages owed to  
6 them by Defendant, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

7                           **Failure to Timely Pay Wages During Employment**

8                                           **[Cal. Lab. Code § 204]**

9           28. Pursuant to California Labor Code § 204, for all labor performed between the 1st and  
10 15th days of any calendar month, Defendant is required to pay its nonexempt employees between the  
11 16th and 26th day of the month during which the labor was performed. California Labor Code § 204  
12 also provides that for all labor performed between the 16th and 26th days of any calendar month,  
13 Defendant is required to pay its non-exempt employees between the 1st and 10th day of the following  
14 calendar month. In addition, California Labor Code § 204 provides that all wages earned for labor in  
15 excess of the normal work period shall be paid no later than the payday of the next regular payroll  
16 period.

17           29. During the statute of limitations period, Defendant has knowingly and willfully failed  
18 to timely pay Plaintiff and other aggrieved employees all the wages for labor performed by the next  
19 regular payroll period as required by California Labor Code § 204, including but not limited to,  
20 compensation for missed meal and rest breaks, proper overtime wages due to an unlawful calculation  
21 of the regular rate of pay, and for work performed off-the-clock.

22                           **Failure to Pay All Wages Due to Discharged and Quitting Employees**

23                                           **[Cal. Lab. Code §§ 201 - 203]**

24           30. Pursuant to California Labor Code §§ 201, 202 and 203, Defendant is required to pay  
25 all earned and unpaid wages to an employee who is discharged. California Labor Code § 201 mandates  
26 that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of  
27 discharge are due and payable immediately.

1           31.     Furthermore, pursuant to California Labor Code § 202, Defendant is required to pay all  
2 accrued wages due to an employee no later than 72 hours after the employee quits his or her  
3 employment, unless the employee provided 72 hours previous notice of his or her intention to quit, in  
4 which case the employee is entitled to his or her wages at the time of quitting.

5           32.     California Labor Code § 203 provides that if an employer willfully fails to pay, in  
6 accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who  
7 quits, the employer is liable for waiting time penalties in the form of continued compensation to the  
8 employee at the same rate for up to 30 workdays.

9           33.     During the statute of limitations period, Defendant has willfully failed to pay accrued  
10 wages and other compensation to Plaintiff and other aggrieved employees in accordance with  
11 California Labor Code §§ 201 and 202. Defendant also willfully failed and continues to fail to pay  
12 accrued wages and other compensation to Plaintiff and other aggrieved employees in accordance with  
13 California Labor Code §§ 201 and 202.

14                   **Failure to Furnish Accurate Itemized Wage Statements**

15                   **[Cal. Lab. Code §§ 226(a); 248.2, § 7 of the Applicable IWC Wage Order]**

16           34.     During the statute of limitations period, Defendant has routinely failed to provide  
17 Plaintiff and other aggrieved employees with timely and accurate itemized wage statements.  
18 Defendant's pay stubs have violated California Labor Code § 226. Defendant's wage statements are  
19 non-compliant with Labor Code §226 since Defendant was and is not providing Plaintiff and other  
20 aggrieved employees with proper meal periods and rest breaks and intentionally fails to include in their  
21 wage statements one (1) additional hour of compensation at their highest regular rates of pay taking  
22 into consideration incentive, nondiscretionary bonus and commission payments for each non-compliant  
23 meal period or rest break. Further, Defendant failed to pay proper overtime wages by failing to pay the  
24 highest regular rate of pay based upon nondiscretionary bonus and/or commission payments to Plaintiff  
25 and other aggrieved employees, and its wage statements therefore fail to reflect the correct hourly rates  
26 worked by Plaintiff and other aggrieved employees and wages earned by failing to pay the regular rate  
27 of pay.

35. In order to conceal its wage theft, Defendant knowingly and intentionally failed to provide Plaintiff and other aggrieved employees with timely and accurate itemized wage statements in accordance with Labor Code § 226(a) and § 7 of the applicable IWC Order.

36. Plaintiff and other aggrieved employees suffered injury as a result of the failure of Defendant to provide timely and accurate itemized wage statements because it prevented them from discovering the scope and extent of Defendant's violations of California wage and hour laws, prevented them from being able to accurately determine the gross wages earned, the total hours worked, all deductions made, the net wages earned, all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate and the balance and available amount of supplemental COVID-19 sick pay.

### **Failure to Maintain Required Records**

**[Cal. Lab. Code §§ 226(a), 248.2, 1174(d), 2810.5; § 7 of the Applicable IWC Wage Order]**

37. During the statute of limitations period, as part of Defendant's illegal payroll policies and practices to deprive Plaintiff and other aggrieved employees of all wages earned and due, Defendant knowingly and intentionally failed to maintain records as required under California Labor Code §§ 226(a) and 1174(d) and § 7 of the applicable IWC Order, including but not limited to the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods; time records showing when each employee begins and ends each work period; the balance and available amount of sick leave and accurate itemized statements. Defendant had knowledge that it was not providing its non-exempt employees with proper meal and rest periods, but knowingly failed to include in the wage statements one (1) extra hour of compensation for each missed meal and rest period. Defendant also illegally and inaccurately recorded the time in which Plaintiff and other aggrieved employees worked. Defendant has also failed to maintain accurate, itemized wage statements, as alleged above.

### **Failure To Provide Mandatory Sick Leave**

**[Cal. Lab. Code § 246]**

38. Pursuant to California Labor Code §246, any employee who works in the State of

1 California and who works more than “30 or more days within a year ... is entitled to be paid sick days  
2 ...” Labor Code §246(i) requires an employer to provide an employee with “written notice” that sets  
3 for the “amount of sick leave available” on the employee’s wage statement pursuant to Labor Code  
4 §226 or “..., in a separate writing provided on the designated pay date with the employee’s payment  
5 of wages.”

6 39. Defendant failed to comply with Labor Code Section §246 by not providing Plaintiff  
7 and the other aggrieved employees with sick pay. Defendant also failed to comply with Labor Code  
8 §246(i) by not providing Plaintiff and the other aggrieved employees with their available sick leave  
9 and balance of sick leave. As such, Defendant has violated California Labor Code § 246.

10 **Failure to Pay COVID-19 Supplemental Sick Leave**

11 **[Cal. Lab. Code §§ 246, 248.1, 248.2, 248.6]**

12 40. During the Statute of Limitations Period, Plaintiff is informed and believes from January  
13 1, 2021, through the present, Defendant employed 26 or more aggrieved employees.

14 41. Defendant failed to provide 80 hours of COVID-19 Supplemental Paid Sick leave and  
15 compensate aggrieved employees at their regular rate of pay for supplemental sick leave, i.e., their  
16 highest regular rate of pay, taking into consideration non-discretionary bonuses, etc., in violation of  
17 California Labor Code § 248.1(b)(3)(A) and §248.6. Defendant also failed to provide COVID-19  
18 Supplemental Sick Leave to aggrieved employees in addition to regular sick leave, in violation of  
19 California Labor Code § 248.1(b)(2)(D). Defendant also failed to accurately reflect any offset and/or  
20 the current amount of COVID-19 Supplemental Sick Leave available to aggrieved employees on their  
21 wage statements, in violation of California Labor Code §§ 248.1(b)(2)(D), 248.2, 248.6 and for the  
22 reasons provided herein.

23 **Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties**

24 **[Cal. Lab. Code § 2802]**

25 42. California Labor Code § 2802(a) requires an employer to indemnify an employee for all  
26 necessary expenditures or losses incurred by the employee in direct consequence of the discharge of  
27 his or her duties, or of his or her obedience to the directions of the employer.

1           43.     During the Statute of Limitations Period, Defendant has failed to reimburse aggrieved  
2 employees for the usage of their personal cellular phones, uniform maintenance, safety equipment, and  
3 personal protective equipment during the COVID-19 pandemic, including face masks and disposable  
4 gloves and other supplies. Defendant did not reimburse Plaintiff and other aggrieved employees for  
5 the costs of the expenditures relating to their cellular phones, uniform maintenance, safety equipment,  
6 face masks, and other supplies.

7                           **Failure to Provide Suitable Resting Facilities**

8                           **[§ 13(B) of the Applicable IWC Wage Order]**

9           44.     Pursuant to § 13(B) of the applicable IWC Wage Order provides: "Suitable resting  
10 facilities shall be provided in an area separate from the toilet rooms and shall be available to  
11 employees during work hours."

12           45.     During the statute of limitations period, Defendant has routinely failed to provide  
13 suitable resting facilities for aggrieved employees to rest and take their meal and rest periods during  
14 working hours. Plaintiff and the other aggrieved employees are required to take their meal periods  
15 and rest periods, to the extent any are provided, on the floor or while standing since resting facilities  
16 were not available to Plaintiff and the other aggrieved employees.

17                           **Failure to Provide Suitable Seating**

18                           **[§ 14 of the Applicable IWC Wage Order]**

19           46.     Pursuant to § 14 of the applicable IWC Wage Order provides:

20                    “(A) All working employees shall be provided with suitable seats when the nature  
21 of the work reasonably permits the use of seats.

22                    (B) When employees are not engaged in the active duties of their employment and  
23 the nature of the work requires standing, an adequate number of suitable seats shall be  
24 placed in reasonable proximity to the work area and employees shall be permitted to use  
such seats when it does not interfere with the performance of their duties.”

25           47.     Defendant failed to provide suitable seating by not providing any seats or stools at areas  
26 operated by Plaintiff and other aggrieved employees. The nature of the work reasonably permits the  
27 use of seats. To the extent that the use of seats could interfere with their work duties, at all times herein  
28 it is and has been reasonable for Defendant to place seats in reasonable proximity to the work areas

1 used by Plaintiff and other aggrieved employees when doing so would not interfere with their job  
2 duties.

3 **FIRST CAUSE OF ACTION**

4 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

5 **[Cal. Lab. Code § 2698 *et seq.*]**

6 **(On Behalf of Plaintiff and the Aggrieved Employees Against Defendant)**

7 48. Plaintiff incorporates herein by specific reference, as though fully set forth, the  
8 allegations in paragraphs 1 through 47 above.

9 49. Plaintiff is an "aggrieved employee" within the meaning of California Labor Code §  
10 2699(c), and a proper representative to bring a civil action on behalf of herself and other aggrieved  
11 employees pursuant to the procedures specified in California Labor Code § 2699.3, because Plaintiff  
12 was employed by Defendant and one or more of the alleged California Labor Code violations was  
13 committed against Plaintiff during the statute of limitations period.

14 50. Plaintiff seeks to recover civil penalties through a representative action permitted by  
15 PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969. Thus, class  
16 certification is not required. F

17 51. Pursuant to California Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil  
18 penalties from Defendant in a representative action for the violations set forth above, including but not  
19 limited to, violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 1174,  
20 1194 and for the violations of the applicable IWC Wage Order alleged above.

21 52. Pursuant to California Labor Code § 2699(a), Plaintiff seeks to recover civil penalties  
22 against Defendant for violations of California Labor Code provisions for which a civil penalty is  
23 specifically provided, including but not limited to, the following:

- 24 a. Pursuant to California Labor Code § 210, for violations of California Labor  
25 Code § 204, Defendant is subject to a civil penalty in the amount of one  
26 hundred dollars (\$100) for the initial violation for each failure to pay each  
27 employee, and two hundred dollars (\$200) per employee for violations in  
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subsequent pay periods.

b. Pursuant to California Labor Code § 226.3, for violations of California Labor Code § 226(a), Defendant is subject to a civil penalty in the amount of two hundred and fifty dollars (\$250) per aggrieved employee for the initial pay period where a violation occurs and one thousand dollars (\$1,000) per aggrieved employee for violations in subsequent pay periods.

c. Pursuant to California Labor Code § 1174.5, for violations of California Labor Code § 1174(d), Defendant is subject to a civil penalty of five hundred dollars (\$500).

53. California Labor Code § 2699(f) provides that for all California Labor Code violations for which a civil penalty is not specifically provided, the following civil penalties are established: 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.

54. Plaintiff seeks to recover such civil penalties under California Labor Code § 2699(f) for Defendant's violations of California Labor Code provisions for which a civil penalty is not specifically provided, including but not limited to, California Labor Code §§ 201, 202, 203, 204, 226.7, 1197, 1024.5, and for the violations of the applicable IWC Wage Order alleged above.

55. All civil penalties sought and recovered under this action will be allocated as follows: seventy-five (75) percent to the State of California and twenty-five (25) percent to Plaintiff and aggrieved employees.

56. Plaintiff additionally seeks reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1) and California Code of Civil Procedure § 1021.5.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of all other aggrieved employees, prays for relief against Defendant, as follows:

1. For civil penalties according to proof;
2. For reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g),

1 California Code of Civil Procedure § 1021.5, and/or any other applicable provisions providing for  
2 attorneys' fees and costs; and

3 3. For such further relief that the Court may deem just and proper.  
4

5 DATED: June 1, 2023

THE LAW OFFICE OF SCOTT ERNEST WHEELER

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8 SCOTT E. WHEELER  
9 JUSTIN A. WHEELER

10 *Attorneys for Plaintiff*  
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1 Superior Court of California  
2 County of San Bernardino  
3 247 W. Third Street, Dept. S-26  
4 San Bernardino, CA 92415-0210

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

JUN 07 2023

BY Alfie Cervantes  
ALFIE CERVANTES, DEPUTY

8 SUPERIOR COURT OF CALIFORNIA  
9 COUNTY OF SAN BERNARDINO, SAN BERNARDINO DISTRICT

11 DIANA ROJAS

13 vs.

15 GANO EXCEL (USA) INC.

Case No.: CIVSB 2312557

INITIAL CASE MANAGEMENT  
CONFERENCE ORDER

21 This case is assigned for all purposes to Judge David Cohn in the Complex  
22 Litigation Program, Department S-26, located at the San Bernardino Justice Center, 247  
23 West Third Street, San Bernardino, California, 92415-0210. Telephone numbers for  
24 Department S-26 are (909) 521-3519 (Judicial Assistant) and (909) 708-8866 (Court  
25 Attendant).  
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**SERVICE OF THIS ORDER**

Plaintiffs' counsel is ordered to serve this Order on counsel for each defendant or, if counsel is not known, on each defendant within five days of the date of this Order. If the complaint has not been served as the date of this Order, counsel for plaintiff is to serve the summons and complaint along with this Order within ten days of the date of this Order. Failure to serve this order may result in the imposition of monetary sanctions.

**THE INITIAL CASE MANAGEMENT CONFERENCE**

An initial Case Management Conference (CMC) is scheduled for AUG 21 2023 at 8:30 a.m. Counsel may attend the initial CMC either in person or remotely, via CourtCall. Contact CourtCall at (888) 882-6878 ([www.CourtCall.com](http://www.CourtCall.com)) to schedule your appearance. Audio or video appearances are available. CourtCall may be used for all CMCs, motions, and other hearings. In person attendance is not required at the initial CMC or at subsequent conferences or motions unless specifically ordered by the court.

Counsel for all parties are ordered to attend the initial CMC. If there are defendants who have not yet made a general or special appearance, those parties who are presently before the court may jointly request a continuance of the initial CMC to allow additional time for such non-appearing defendants to make their general or special appearances. Such a request should be made by submitting a Stipulation and Proposed Order to the Court, filed directly in Department S-26 (not in the clerk's office), no later than five court days before the scheduled hearing.

**RESPONSIVE PLEADINGS**

Unless otherwise agreed by the parties, responsive pleadings are due as provided by statute. There is no stay on the pleadings or motions pending the initial

1 CMC. If, however, counsel agree to stay formal proceedings to facilitate settlement  
2 discussions or for other reasons, each defendant is directed to file either a Notice of  
3 General Appearance or a Notice of Special Appearance (if counsel intends to challenge  
4 personal jurisdiction). The notices are for purposes of identification of counsel and  
5 preparation of a service list. The filing of a Notice of General Appearance is without  
6 prejudice to any substantive or procedural challenges to the complaint (including subject  
7 matter jurisdiction), without prejudice to any denial or affirmative defense, and without  
8 prejudice to the filing of any cross-complaint. The filing of a Notice of Special  
9 Appearance is without prejudice to any challenge to the court's exercise of personal  
10 jurisdiction.  
11  
12

### 13 DISCOVERY

14 Unless all counsel agree otherwise, discovery is stayed pending the initial CMC.  
15 If the parties agree to conduct discovery in advance of the initial CMC, commencement  
16 and scope of discovery are governed by statute and prior court approval is not required.  
17

### 18 AGENDA FOR THE INITIAL CASE MANAGEMENT CONFERENCE

19 Counsel for all parties are ordered to meet and confer in person no *later* than  
20 fourteen days before the initial CMC to discuss the subjects listed below. Counsel  
21 must be fully prepared to discuss the following "subjects for consideration" listed in  
22 California Rules of Court, rule 3.750, subdivision (b):  
23

- 24 (1) Whether all parties named in the complaint or cross-complaint  
have been served, have appeared, or have been dismissed;
- 25 (2) Whether any additional parties may be added or the pleadings  
26 may be amended;
- 27 (3) The deadline for the filing of any remaining pleadings and  
service of any additional parties;
- 28 (4) Whether severance, consolidation, or coordination with other  
actions is desirable;

- (5) The schedule for discovery proceedings to avoid duplication and whether discovery should be stayed until all parties have been brought into the case;
- (6) The schedule for settlement conferences or alternative dispute resolution;
- (7) Whether to appoint liaison or lead counsel;
- (8) The date for the filing of any dispositive motions;
- (9) The creation of preliminary and updated lists of the persons to be deposed and the subjects to be addressed in each deposition;
- (10) The exchange of documents and whether to establish an electronic document depository;
- (11) Whether a special master should be appointed and the purposes for such appointment;
- (12) Whether to establish a case-based Web site and other means to provide a current master list of addresses and telephone numbers of counsel; and
- (13) The schedule for further conferences.

Counsel must also be fully prepared to address the following matters to the extent they are not embraced by the subjects listed in rule 3.750, subdivision (b):

1. Any issues of recusal or disqualification;
2. Any potentially dispositive or important threshold issues of law or fact that, if considered by the court, may simplify or further resolution of the case;
3. Appropriate mechanisms for Alternative Dispute Resolution;
4. A plan for the preservation of evidence and a uniform system for the identification of documents to be used throughout the course of this litigation, including discovery and trial;
5. A discovery plan for the disclosure and production of documents and other discovery, including whether the parties elect to make automatic disclosures, patterned on Federal Rule of Civil Procedure 26(a) or otherwise;

6. Whether it is advisable to conduct discovery in phases so that information needed to conduct meaningful ADR is obtained early in the case;
7. Any issues involving the protection of evidence and confidentiality;
8. The handling of any potential publicity issues;
9. Any other issues counsel deem appropriate to address with the court.

### **THE JOINT REPORT**

Counsel are ordered to meet and confer, in person or by telephone or video conference, and to prepare a joint report for the initial CMC, to be filed in advance of the conference date. Separate reports from each party are not allowed. Judicial council form CMC statements are not allowed.

The joint report must be filed in the regular course in the Clerk's office in advance of the hearing, but to assure that the report is timely received in the department, a courtesy copy of the report should be emailed to [jointcmcreports@sb-court.org](mailto:jointcmcreports@sb-court.org). This is a dedicated email address only for courtesy copies of joint reports. It is not a substitute for filing documents, and any unauthorized documents sent to the dedicated email address will be discarded without review. All counsel must be cc'd on the email to avoid *ex parte* communications.

The joint report must include the following:

1. Whether the case should or should not be treated as complex;
2. Whether additional parties are likely to be added and a proposed date by which all parties must be served;
3. A service list (the service list should identify all primary and secondary counsel, firm names, addresses, telephone numbers, email addresses, and fax numbers for all counsel.)

- 1 4. Whether the court should issue an order requiring electronic service. Counsel  
2 should advise the court regarding any preferred web-based electronic service  
3 provider;
- 4 5. Whether any issues of jurisdiction or venue exist that might affect this court's  
5 ability to proceed with this case.
- 6 6. Whether there are applicable arbitration agreements, and the parties' views on  
7 their enforceability;
- 8 7. A list of all related litigation pending in this or other courts (state and federal), a  
9 brief description of any such litigation, including the name of the judge assigned  
10 to the case, and a statement whether any additional related litigation is  
11 anticipated;
- 12 8. A description of the major factual and legal issues in the case. The parties  
13 should address any contracts, statutes, or regulations on which claims or  
14 defenses are based, or which will require interpretation in adjudicating the claims  
15 and defenses;
- 16 9. The parties' tentative views on an ADR mechanism and how such mechanism  
17 might be integrated into the course of the litigation;
- 18 10. A discovery plan, including the time needed to conduct discovery and whether  
19 discovery should be conducted in phases or limited (and, if so, the order of  
20 phasing or types of limitations). With respect to the discovery of electronically  
21 stored information (ESI ), the plan should include:  
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23 a. Identification of the Information Management Systems used by the parties;
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- b. The location and custodians of information that is likely to be subject to production (including the identification of network and email servers and hard-drives maintained by custodians);
- c. The types of ESI that will be requested and produced, e.g. data files, emails, etc.;
- d. The format in which ESI will be produced;
- e. Appropriate search criteria for focused requests.
- f. A statement whether the parties will allow their respective IT consultants or employees to participate directly in the meet and confer process.

11. Whether the parties will stipulate that discovery stays or other stays entered by the court for case management purposes will be excluded in determining the statutory period for bringing the case to trial under Code of Civil Procedure Section 583.310 (the Five Year Rule).

12. Recommended dates and times for the following:

- a. The next CMC (absent special circumstances, the court typically schedules the next CMC approximately six to eight months out);
- b. A schedule for any contemplated ADR;
- c. A filing deadline (and proposed briefing schedule) for any anticipated non-discovery motions.
- d. With respect to class actions, the parties' tentative views on an appropriate deadline for a class certification motion to be filed.

To the extent the parties are unable to agree on any matter to be addressed in the Joint Report, the positions of each party or of various parties should be set forth separately. The parties are encouraged to propose, either jointly or separately, any

1 approaches to case management that they believe will promote the fair and efficient  
2 handling of this case.

3 Any stipulations to continue conferences or other hearings throughout this  
4 litigation must be filed with the court directly in Department S-26 (not in the Clerk's  
5 office), no later than five court days before the conference or hearing date. Stipulations  
6 filed only in the Clerk's office or submitted late to the Department likely cannot be  
7 accommodated.  
8

9 **NO OFFICIAL COURT REPORTER PROVIDED BY THE COURT**

10 Due to the state-wide shortage of court reporters, the Court no longer provides  
11 an official Court Reporter to transcribe proceedings in this Department. Parties who  
12 wish to have an official record of the proceedings in addition to a minute order must  
13 retain a private Certified Shorthand Reporter for the hearing and must submit a  
14 "Stipulation and Order to Use Certified Shorthand Reporter" to the court in the form  
15 appended to this Case Management Order. If counsel are appearing for the hearing  
16 remotely, the Stipulation can be emailed to the Judicial Assistant for Department S-26 at  
17 [jmorales@sb-court.org](mailto:jmorales@sb-court.org). The Court will sign the Order appointing the Certified  
18 Shorthand Reporter as the official Court Reporter Pro Tempore. Parties who do not  
19 retain a Certified Shorthand Reporter to be designated as an official Court Reporter Pro  
20 Tempore are deemed to have waived an official Court Reporter for the proceeding.  
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24 **JOINT REPORTS FOR SUBSEQUENT CONFERENCES**

25 Counsel must submit a joint report for each conference after the initial CMC. The  
26 report should address how the case has moved forward since the last conference, what  
27 needs to be accomplished in the future, and how the court can assist the parties move  
28 the case towards resolution. As with the initial report, subsequent joint reports must be

1 filed in the regular course in the Clerk's office in advance of the hearing, but to assure  
2 that the reports are timely received in the department, courtesy copies should be  
3 emailed to jointcmcreports@sb-court.org. This is a dedicated email address only for  
4 courtesy copies of joint reports. It is not a substitute for filing documents, and any  
5 unauthorized documents sent to the dedicated email address will be discarded without  
6 review. All counsel must be cc'd on the email to avoid *ex parte* communications.  
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### 8 **INFORMAL DISCOVERY CONFERENCES**

9 Motions concerning discovery cannot be filed without first requesting an informal  
10 discovery conference (IDC) with the court. Making a request for an IDC automatically  
11 stays the deadline for filing any such motion. IDCs are conducted by remote video  
12 conference, using Zoom. If counsel's computer (or other device) does not have  
13 camera capability, an audio-only option is available. Video appearance at the IDC,  
14 however, is encouraged. In-person attendance at the IDC is permissible only if all  
15 counsel are appearing in person. The Court will provide a link to join the remote  
16 conference at the appointed time. Please provide Department S-26's Judicial Assistant  
17 ((909) 521-3519) or Court Attendant ((909) 708-8866) with an e-mail address. No  
18 briefing is allowed for the IDC, but counsel (either jointly or separately) should lodge  
19 (not file) a one page statement of the issues in dispute in Department S-26 no later than  
20 the day before the IDC. Any unauthorized briefing beyond the joint one page statement  
21 of the issues will be disregarded by the Court. All IDCs are off the record.  
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25 If all counsel agree, remote conferences are not limited to discovery issues;  
26 counsel may address other matters with the court, with the understanding that the  
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1 conferences are off the record and that the court will make no orders absent agreement  
2 among the parties.

3  
4 Dated: 6/7, 2023.

5  
6 DAVID COHN

7 David Cohn,  
8 Judge of the Superior Court  
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# **GUIDELINES FOR THE COMPLEX LITIGATION PROGRAM**

## **SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF SAN BERNARDINO**

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### **THE SAN BERNARDINO COUNTY COMPLEX LITIGATION PROGRAM**

The Complex Litigation Department for the Superior Court of the State of California, County of San Bernardino, is located at the San Bernardino Justice Center, 247 West Third Street, San Bernardino, CA 92415-0210.

These guidelines govern only cases designated (including provisional designated) as complex under California Rules of Court, Civil Rules, rules 3.400 - 3.403.

### **DEFINITION OF COMPLEX LITIGATION**

As defined by California Rules of Court, rule 3.400(a), a complex case is one that requires exceptional judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs reasonable, and promote effective decision making by the court, the parties, and counsel.

Complex cases typically have one or more of the following features:

- A large number of separately represented parties.
- Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve.
- A substantial amount of documentary evidence.
- A large number of witnesses.
- Coordination with related actions pending in one or more courts in other counties or states or in a federal court.
- Substantial post-judgment judicial supervision.

Complex cases may include, but are not necessarily limited to, the following types of cases:

- Antitrust and trade regulation claims.

### **C. Other Cases Assigned to the Complex Litigation Department**

Whether or not the parties designate the case as complex or provisionally complex, the following cases will be initially assigned to the Complex Litigation Department:

- All Construction Defect Cases.
- All Class Actions.
- All Cases Involving the Labor Code Private Attorney General Act of 2004 (PAGA) Claims.<sup>1</sup>
- Judicial Council Coordinated Proceedings (JCCP) if assigned by the Chair of the Judicial Council to a judge sitting in the Complex Litigation Department.

### **REFERRAL TO THE COMPLEX LITIGATION DEPARTMENT BY OTHER DEPARTMENTS**

A judge who is assigned to a case may, but is not required to, refer the case to the Complex Litigation Department to be considered for treatment as a complex case if (1) the case was previously designated by a party as complex or provisionally complex, or (2) the referring judge deems the case to involve issues of considerable legal, evidentiary, or logistical complexity, such that the case would be best served by assignment to the Complex Litigation Department. Such a referral is not a re-assignment, but is a referral for consideration.

In any case referred by another judge to the Complex Litigation Department, the Complex Litigation Department will schedule an Initial Case Management Conference, generally within thirty days, and will provide notice to all parties along with a copy of these guidelines. If the case is determined by the Complex Litigation Department to be appropriate for treatment as a complex case, the case will be re-assigned to the Complex Litigation Department at that time. If the case is determined by the Complex Litigation Department not to be complex, it will be returned to the referring judge.

### **RESPONSIVE PLEADINGS AND MOTIONS**

Unless otherwise agreed by the parties, responsive pleadings are due as provided by statute. There is no stay on the pleadings or motions pending the initial CMC. If, however, counsel agree to stay formal proceedings to facilitate settlement discussions or for other reasons, each defendant is directed to file either a Notice of General Appearance or a Notice of Special Appearance (if counsel intends to challenge personal jurisdiction). The notices are for purposes of identification of counsel and preparation of a service list. The filing of a Notice of General Appearance is without prejudice to any substantive or procedural challenges to the complaint (including subject matter jurisdiction), without prejudice to any denial or affirmative defense, and without prejudice to the filing of any cross-complaint. The filing of a Notice of Special Appearance is without prejudice to any challenge to the court's exercise of personal jurisdiction.

For cases referred by other departments in which defendant has already made a general or special appearance, no further Notice of General Appearance or Notice of Special Appearance is required.

<sup>1</sup> The Civil Case cover Sheet (Judicial Council Form CM-100) may not reflect the presence of a PAGA claim. PAGA claims erroneously assigned to non-complex departments are subject to re-assignment to the Complex Litigation Department by the assigned judge.

complex, the court will issue further management-related orders at that time. If the court determines the case is not complex, the case may be retained by the judge, but not treated as a complex case, or it may be reassigned to a different department; if the case was referred by another judge and the case is found to be inappropriate for treatment as a complex case, the case will be returned to the referring judge.

At the Initial Case Management Conference, the court and counsel will address the subjects listed in California Rules of Court, rule 3.750(b), and all issues presented by the Joint Statement.

Once a case is deemed complex, the function of the Initial Case Management Conference and all subsequent Case Management Conferences is to facilitate discovery, motion practice, and trial preparation, and to discuss appropriate mechanisms for settlement negotiations.

Lead counsel should attend the Initial Case Management Conference. Counsel with secondary responsibility for the case may attend in lieu of lead counsel, but only if such counsel is fully informed about the case and has full authority to proceed on all issues to be addressed at the conference. "Special Appearance" counsel (lawyers who are not the attorneys of record) are not allowed.

### **REMOTE APPEARANCES AT CASE MANAGEMENT CONFERENCES**

Counsel may attend the initial CMC either in person or remotely, via CourtCall. Contact CourtCall at (888) 882-6878 ([www.CourtCall.com](http://www.CourtCall.com)) to schedule an appearance. Audio or video appearances are available. CourtCall may be used for all CMCs, motions, and other hearings. In-person attendance is not required at the initial CMC or at subsequent conferences or motions unless specifically ordered by the court.

### **CASE MANAGEMENT ORDERS**

The court may issue formal, written case management orders. Typically, complex construction defect cases will proceed pursuant to such an order, usually pursuant to stipulation of the parties. Other cases involving numerous parties or unusual logistical complexity may be appropriate for such a written order as well. The need for a written case management order will be discussed at the Initial Case Management Conference or at later times as the need arises. The parties will prepare such orders as directed by the court.

### **ADDITIONAL CASE MANAGEMENT CONFERENCES**

After the Initial Case Management Conference, the court will schedule additional case management conferences as necessary and appropriate on a case-by-case basis. Typically, the case management conferences are scheduled at six month intervals, though the specific circumstances of the case will determine the frequency of conferences.

As with the Initial Case Management Conference, lead counsel should attend all case management conferences. Counsel with secondary responsibility for the case may attend in lieu of lead counsel, but only if such counsel is fully informed about the case and has full authority to proceed on all issues to be addressed. "Special Appearance" counsel (lawyers who are not the attorneys of record) are not allowed.

## **ELECTRONIC SERVICE AND DOCUMENT DEPOSITORY**

The parties in cases involving numerous parties or large quantities of documents are encouraged to agree to electronic service for all pleadings, motions, and other materials filed with the court as well as all discovery requests, discovery responses, and correspondence. Nevertheless, parties must still submit "hard" copies to the court of any pleadings, motions, or other materials that are to be filed.

## **INFORMAL DISCOVERY CONFERENCES**

The court is available for informal discovery conferences (IDCs) at the request of counsel. IDCs are off-the-record. Such conferences may address the scope of allowable discovery, the order of discovery, issues of privilege, and other discovery issues that may arise. Counsel may contact the assigned department to schedule an IDC. Non-discovery issues can also be addressed informally if all counsel agree.

Before filing any discovery motion, the moving party is required to "meet and confer" with counsel as required by statute. If the "meet and confer" exchange fails to resolve all issues, the moving party is **required** to request an informal conference with the court before filing any discovery-related motion. Making a request for an informal discovery conference automatically stays the deadline for filing a motion.

IDCs are conducted by remote video conference, using Zoom. If counsel's computer (or other device) does not have camera capability, an audio-only option is available. Video appearance at the IDC, however, is encouraged. The Court will provide a link to join the conference at the appointed time. Please provide the Judicial Assistant for the assigned judge with email addresses. No briefing is required for the IDC, but counsel (either jointly or separately) should lodge (not file) a one page statement of the issues in dispute in the assigned department no later than the day before the IDC.

## **CONFIDENTIAL DOCUMENT AND PROTECTIVE ORDERS**

Proposed protective orders dealing with confidential documents should state expressly that nothing in the order excuses compliance with California Rules of Court, rules 2.550 and 2.551. Proposed protective orders that are not compliant with the requirements of the Rules of Court will be rejected.

## **THE PRETRIAL CONFERENCE**

The court will usually schedule a pre-trial conference, generally thirty to sixty days in advance of the trial. Counsel and the court will discuss the following matters, which counsel should be fully informed to address:

- Whether trial will be by jury or by the court.
- Anticipated motions *in limine* or the need for other pre-trial rulings.
- The anticipated length of trial.
- The order of proof and scheduling of witnesses, including realistic time estimates for each witness for both direct and cross-examination.