

SUMMONS (CITACION JUDICIAL)

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

HEALTHRIGHT 360, a California Corporation; HEALTHRIGHT 360 FOUNDATION, a California Corporation; and DOES 1-50, Inclusive,

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

JAMAAL RAMIREZ, an individual, in his representative capacity on behalf of himself, the State of California, and fellow current and former Aggrieved Employees,

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

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.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

San Francisco Superior Court - Civic Center Courthouse
400 McAllister Street
San Francisco, CA 94102

CASE NUMBER:
(Número del Caso):

CGC-23-607274

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):

Jean-Claude Lapuyade, Esq. SBN:248676 Tel: (619) 599-8292 Fax: (858) 599-8291

JCL Law Firm, APC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE:

(Fecha) **06/28/2023**

Clerk, by _____, Deputy
(Secretario) **MARK UDAN** (Adjunto)

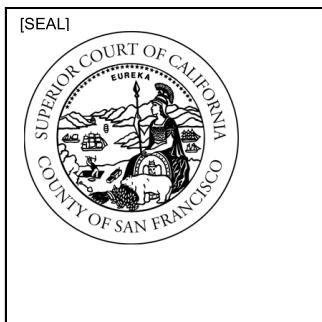
(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

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

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)	☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation)	☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership)	☐ CCP 416.90 (authorized person)
☐ other (specify):	
4. ☐ by personal delivery on (date):



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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
06/26/2023
Clerk of the Court
BY: MARK UDAN
Deputy Clerk

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CGC-23-607274

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

JAMAAL RAMIREZ, an individual, in his
representative capacity on behalf of himself, the
State of California, and fellow current and
former Aggrieved Employees,

Plaintiffs,

v.

HEALTHRIGHT 360, a California
Corporation; HEALTHRIGHT 360
FOUNDATION, a California Corporation; and
DOES 1-50, Inclusive,

Defendants.

Case No:

REPRESENTATIVE ACTION
COMPLAINT FOR:

- 1) VIOLATIONS OF THE PRIVATE
ATTORNEY GENERAL ACT AT
LABOR CODE SECTIONS 2698 ET
SEQ.

PLAINTIFF JAMAAL RAMIREZ ("PLAINTIFF"), an individual, in his representative
capacity on behalf of himself, the State of California, and fellow current and former AGGRIEVED
EMPLOYEES, defined *supra*, against DEFENDANTS HEALTHRIGHT 360 and
HEALTHRIGHT 360 FOUNDATION ("DEFENDANTS"), allege on information and belief,

1 except for their own acts and knowledge which are based on personal knowledge, the following:

2 **INTRODUCTION**

3 1. PLAINTIFF JAMAAL RAMIREZ was employed by DEFENDANTS in California
4 from June of 2020 to February of 2023 as a non-exempt employee, paid on an hourly basis, and
5 entitled to the legally required meal and rest periods and payment of minimum and overtime wages
6 due for all time worked

7 2. PLAINTIFF brings this representative action pursuant to the Private Attorneys
8 General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”), in his representative
9 capacity on behalf of the State of California and on behalf of all individuals who are or previously
10 were employed by DEFENDANTS in California and classified as non-exempt employees who
11 suffered one or more Labor Code violations enumerated in Labor Code §§ 2698 *et seq.* (hereinafter
12 “AGGRIEVED EMPLOYEES”) and who worked for DEFENDANTS between April 19, 2022
13 and the present (“PAGA PERIOD”).

14 3. PLAINTIFF brings this representative action against DEFENDANTS for engaging
15 in a pattern and practice of wage and hour violations under the California Labor Code.

16 4. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor
17 Code § 2699(c) because he was employed by DEFENDANTS and suffered one or more of the
18 alleged Labor Code violations committed by DEFENDANTS.

19 5. PLAINTIFF and all other AGGRIEVED EMPLOYEES are, and at all relevant
20 times were, employees of DEFENDANTS, within the meanings set forth in the California Labor
21 Code and the applicable Industrial Welfare Commission Wage Order.

22 6. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
23 decreased their employment-related costs by systematically violating California wage and hour
24 laws.

25 7. Defendant HEALTHRIGHT 360 (“Defendant HealthRight 360”) is a California
26 corporation that at all relevant times mentioned herein conducted and continues to conduct
27 substantial and regular business throughout California.

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1 8. Defendant HEALTHRIGHT 360 FOUNDATION (“Defendant HealthRight 360
2 Foundation”) is a California corporation that at all relevant times mentioned herein conducted and
3 continues to conduct substantial and regular business throughout California.

4 9. Defendant HealthRight 360 and Defendant HealthRight 360 Foundation were the
5 joint employers of PLAINTIFF as evidenced by the documents issued to PLAINTIFF and by the
6 company PLAINTIFF performed work for respectively and are therefore jointly responsible as
7 employers for the conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”

8 10. DEFENDANTS own, operate, and/or manage healthcare facilities, providing
9 various healthcare services to patients, such as primary medical, mental health, substance use
10 disorder treatment, and re-entry services, throughout the state of California, including in the county
11 of San Francisco, where PLAINTIFF worked.

12 11. DEFENDANTS’ systematic pattern of wage and hour and IWC Wage Order
13 violations toward PLAINTIFF and other aggrieved employees in California include, *inter alia*:

- 14 a. Failure to provide compliant meal and rest periods;
- 15 b. Failure to allow employees to take duty-free meal and rest periods;
- 16 c. Failure to pay all minimum, sick pay, regular and overtime wages;
- 17 d. Failure to correctly calculate the regular rate of pay;
- 18 e. Failure to pay within seven (7) days of the close of payroll;
- 19 f. Failure to pay for all hours worked;
- 20 g. Failure to maintain true and accurate records;
- 21 h. Failure to reimburse for required business expenses;
- 22 i. Failure to provide accurate itemized wage statements; and
- 23 j. Failure to timely pay wages due during, and upon termination of employment.
- 24 k. Failure to adhere to labor code §245 et seq.

25 12. PLAINTIFF brings this representative action against DEFENDANTS on behalf of
26 himself and all other AGGRIEVED EMPLOYEES of DEFENDANTS in California seeking all
27 civil penalties and unpaid wages permitted pursuant to California Labor Code § 2699, *et seq.*

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13. PLAINTIFF reserves the right to name additional representatives throughout the State of California.

14. Each of the fictitiously named DEFENDANTS participated in the acts alleged in this Complaint. The true names and capacities of the DEFENDANTS named as DOES 1 THROUGH 50, inclusive, are presently unknown to PLAINTIFF. PLAINTIFF will amend this Complaint, setting forth the true names and capacities of these fictitiously named Defendants when their true names are ascertained. PLAINTIFF is informed and believes, and on that basis alleges, that each of the fictitious Defendants have participated in the acts alleged in this Complaint.

15. DEFENDANTS, including DOES 1 THROUGH 50 (hereinafter collectively “DEFENDANTS”), were PLAINTIFF’S employers or persons acting on behalf of PLAINTIFF’S employer, within the meaning of California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

16. DEFENDANTS were PLAINTIFF'S employer or persons acting on behalf of PLAINTIFF'S employer either individually or as an officer, agent, or employee of another person, within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties for each underpaid employee.

JOINT EMPLOYER

17. The Private Attorney General Act (“PAGA”), permits an aggrieved employee to enforce any provision of the California Labor Code that provides for a civil penalty. (*Lab. Code* § 2699(a).)

18. Section 558 of the California Labor Code provides that “any employer *or other person* acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commissions shall be subject to a civil penalty...” (*Lab. Code* § 558(a).);

1 19. Section 1197.1 of the Labor Code provides that “[a]ny employer or other person
2 acting either individually or as an officer, agent, or employee of another person, who pays or
3 causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
4 local law, or by an order of the commission shall be subject to a civil penalty...” (*Lab. Code* §
5 1197.1(a).)

6 20. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have
7 held that a corporate employer’s owners, officers and directors, are subject to civil penalties for
8 the employer’s failure to pay appropriate wages to its employees, and, since liability under either
9 558 or 1197.1 does not depend on a finding of an alter ego, no alter ego allegations or findings
10 are necessary. *Atempa v. Pedrazzani*, (2018) 27 Cal.App.5th 809; see generally *Ochoa-*
11 *Hernandez v. Cjaders Food, Inc.* (2009 WL 1404694); *Thurman v. Bayshore Management, Inc.*
12 (2017) 203 Cal.App.4th 1112, 1145-1146.

13 21. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS,
14 and each of them, are subject to civil penalties for their failure to pay PLAINTIFF and the
15 AGGRIEVED EMPLOYEES the appropriate wages as complained of herein and proximately
16 caused the complaints, injuries, and damages alleged herein.

17 22. At all relevant times, each DEFENDANT, whether named or fictitious, was the
18 agent, employee or other person acting on behalf of each other DEFENDANT, and, in
19 participating in the acts alleged in this Complaint, acted within the scope of such agency or
20 employment and ratified the acts of the other.

21 23. Each DEFENDANT, whether named or fictitious, exercised control over
22 PLAINTIFF’S wages, working hours, and/or working conditions.

23 24. Each DEFENDANT, whether named or fictitious, acted in all respects pertinent to
24 this action as the agent of the other DEFENDANTS, carried out a joint scheme, business plan or
25 policy, and the acts of each DEFENDANT are legally attributable to the other DEFENDANT.

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1 PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked, is evidenced by
2 DEFENDANTS' business records.

3 **A. Meal Period Violations**

4 28. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
5 required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked,
6 meaning the time during which an employee is subject to the control of an employer, including
7 all the time the employee is suffered or permitted to work. From time to time during the PAGA
8 PERIOD (April 19, 2022 to present), DEFENDANTS required PLAINTIFF and the
9 AGGRIEVED EMPLOYEES to work without paying them for all the time they were under
10 DEFENDANTS' control. Specifically, DEFENDANTS required PLAINTIFF to work while
11 clocked out during what was supposed to be PLAINTIFF'S off-duty meal break. Indeed, there
12 were many days where PLAINTIFF did not even receive a partial lunch. As a result, the
13 PLAINTIFF and other AGGREIVED EMPLOYEES forfeited minimum wage and overtime
14 compensation by regularly working without their time being accurately recorded and without
15 compensation at the applicable minimum wage and overtime rates. DEFENDANTS' uniform
16 policy and practice not to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all time
17 worked is evidenced by DEFENDANTS' business records.

18 29. From time to time during the PAGA PERIOD, as a result of their rigorous work
19 schedules and DEFENDANTS' inadequate staffing practices, PLAINTIFF and the AGGRIEVED
20 EMPLOYEES are from time to time unable to take thirty (30) minute off duty meal breaks and
21 were not fully relieved of duty for their meal periods. PLAINTIFF and the AGGRIEVED
22 EMPLOYEES are required to perform work as ordered by DEFENDANTS for more than five (5)
23 hours during some shifts without receiving a meal break. Further, DEFENDANTS failed to
24 provide PLAINTIFF and the AGGRIEVED EMPLOYEES with a second off-duty meal period
25 for some workdays in which these employees are required by DEFENDANTS to work ten (10)
26 hours of work. The nature of the work performed by PLAINTIFF and the AGGRIEVED
27 EMPLOYEES does not qualify for the limited and narrowly construed "on-duty" meal period
28 exception. When they were provided with meal periods, PLAINTIFF and the AGGRIEVED

1 EMPLOYEES were, from time to time, required to remain on premises, on duty and on call.
2 DEFENDANTS' failure to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with
3 legally required meal breaks is evidenced by DEFENDANTS' business records. PLAINTIFF and
4 the AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional
5 compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

6 **B. Rest Period Violations**

7 30. From time to time during the PAGA PERIOD, PLAINTIFF and the AGGRIEVED
8 EMPLOYEES were also required to work in excess of four (4) hours without being provided ten
9 (10) minute rest periods as a result of their rigorous work requirements and DEFENDANTS'
10 inadequate staffing. Further, for the same reasons, these employees were denied their first rest
11 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours
12 from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked
13 of between six (6) and eight (8) hours from time to time, and a first, second and third rest period
14 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
15 When they were provided with rest breaks, PLAINTIFF and the AGGRIEVED EMPLOYEES
16 were, from time to time, required to remain on premises, on duty and/or on call. PLAINTIFF and
17 the AGGRIEVED EMPLOYEES were also not provided with one-hour wages *in lieu* thereof. As
18 a result of their rigorous work schedules and DEFENDANTS' inadequate staffing, PLAINTIFF
19 and the AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods by
20 DEFENDANTS and DEFENDANTS' managers.

21 **C. Unreimbursed Business Expenses**

22 31. DEFENDANTS as a matter of corporate policy, practice, and procedure,
23 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
24 and the AGGRIEVED EMPLOYEES for required business expenses incurred by the PLAINTIFF
25 and other AGGRIEVED EMPLOYEES in direct consequence of discharging their duties on
26 behalf of DEFENDANTS. Under California Labor Code Section 2802, employers are required to
27 indemnify employees for all expenses incurred in the course and scope of their employment. Cal.
28 Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee for all

1 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
2 of his or her duties, or of his or her obedience to the directions of the employer, even though
3 unlawful, unless the employee, at the time of obeying the directions, believed them to be
4 unlawful."

5 32. In the course of their employment, DEFENDANTS required PLAINTIFF and
6 other AGGRIEVED EMPLOYEES to incur personal expenses for the use of their personal cell
7 phones and personal vehicles as a result of and in furtherance of their job duties. Specifically,
8 PLAINTIFF and other AGGRIEVED EMPLOYEES were required to use their own cell phones
9 in order to contact their supervisors and to clock in and out of work. Further, PLAINTIFF and
10 other AGGRIEVED EMPLOYEES were required to use their own personal vehicles for work-
11 related tasks. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and other
12 AGGRIEVED EMPLOYEES for the personal expenses incurred for the use of their personal cell
13 phones and personal vehicles. As a result, in the course of their employment with
14 DEFENDANTS, the PLAINTIFF and other AGGRIEVED EMPLOYEES incurred unreimbursed
15 business expenses that included, but were not limited to, costs related to the use of their personal
16 cell phones and personal vehicles, all on behalf of and for the benefit of DEFENDANTS.

17 **D. Wage Statement Violations**

18 33. California Labor Code Section 226 required an employer to furnish its employees
19 and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours
20 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,
21 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
22 name of the employee and only the last four digits of the employee's social security number or an
23 employee identification number other than a social security number, (8) the name and address of
24 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay
25 period and the corresponding number of hours worked at each hourly rate by the employee.

26 34. From time to time during the PAGA PERIOD, when PLAINTIFF and other
27 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurately for missed
28 meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed

1 to provide PLAINTIFF and other AGGRIEVED EMPLOYEES with complete and accurate wage
2 statements which failed to show, among other things, all deductions, the total hours worked and
3 all applicable hourly rates in effect during the pay period, and the corresponding amount of time
4 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
5 periods.

6 35. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide
7 PLAINTIFF and the AGGRIEVED EMPLOYEES with wage statements that comply with Cal.
8 Lab. Code § 226.

9 36. As a result, DEFENDANTS issued PLAINTIFF and other AGGRIEVED
10 EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS'
11 violations are knowing and intentional, were not isolated due to an unintentional payroll error due
12 to clerical or inadvertent mistake.

13 **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

14 37. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
15 continues to fail to accurately pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all
16 hours worked.

17 38. During the CLASS PERIOD, from time-to-time DEFENDANTS required
18 PLAINTIFF and other AGGRIEVED EMPLOYEES to perform pre-shift or post-shift working,
19 including but not limited to, drafting reports regarding DEFENDANTS' clients and/or patients.
20 This resulted in PLAINTIFF and other AGGRIEVED EMPLOYEES to have to work while off-
21 the-clock.

22 39. DEFENDANTS directed and directly benefited from the undercompensated off-
23 the-clock work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

24 40. DEFENDANTS controlled the work schedules, duties, and protocols, applications,
25 assignments, and employment conditions of PLAINTIFF and the other AGGRIEVED
26 EMPLOYEES.

27 41. DEFENDANTS was able to track the amount of time PLAINTIFF and the other
28 AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document,

1 track, or pay PLAINTIFF and the other AGGRIEVED EMPLOYEES all wages earned and owed
2 for all the work they performed.

3 42. PLAINTIFF and the other AGGRIEVED EMPLOYEES were non-exempt
4 employees, subject to the requirements of the California Labor Code.

5 43. DEFENDANTS' policies and practices deprived PLAINTIFF and the other
6 AGGRIEVED EMPLOYEES of all minimum regular, overtime, and double time wages owed for
7 the off-the-clock work activities. Because PLAINTIFF and the other AGGRIEVED
8 EMPLOYEES typically worked over forty (40) hours in a workweek, and more than eight (8)
9 hours per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

10 44. DEFENDANTS knew or should have known that PLAINTIFF and the other
11 AGGRIEVED EMPLOYEES off-the-clock work was compensable under the law.

12 45. As a result, PLAINTIFF and the AGGRIEVED EMPLOYEES forfeited wages
13 due to them for all hours worked at DEFENDANTS' direction, control, and benefit for the time
14 spent working while off-the-clock. DEFENDANTS' uniform policy and practice to not pay
15 PLAINTIFF and the AGGRIEVED EMPLOYEES wages for all hours worked in accordance with
16 applicable law is evidenced by DEFENDANTS' business records.

17 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**
18 **and Redeemed Sick Pay**

19 46. From time to time during the PAGA PERIOD, DEFENDANTS failed and
20 continues to fail to accurately calculate and pay PLAINTIFF and the other AGGRIEVED
21 EMPLOYEES for their overtime and double time hours worked, meal and rest period premiums,
22 and redeemed sick pay. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES
23 forfeited wages due to them for working overtime without compensation at the correct overtime
24 and double time rates, meal and rest period premiums, and redeemed sick pay rates.
25 DEFENDANT's uniform policy and practice not to pay the AGGRIEVED EMPLOYEES at the
26 correct rate for all overtime and double time worked, meal and rest period premiums, and
27 redeemed sick pay in accordance with applicable law is evidenced by DEFENDANTS' business
28 records.

1 47. State law provides that employees must be paid overtime at one-and-one-half times
2 their “regular rate of pay.” PLAINTIFF and other AGGRIEVED EMPLOYEES were
3 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
4 employee’s performance.

5 48. The second component of PLAINTIFF’s and other AGGRIEVED EMPLOYEES’
6 compensation was DEFENDANTS’ non-discretionary incentive program that paid PLAINTIFF
7 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
8 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
9 basis with bonus compensation when the employees met the various performance goals set by
10 DEFENDANTS.

11 49. However, from-time-to-time, when calculating the regular rate of pay, in those pay
12 periods where PLAINTIFF and other AGGRIEVED EMPLOYEES worked overtime, double
13 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-
14 discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus
15 compensation as part of the employees’ “regular rate of pay” and/or calculated all hours worked
16 rather than just all non-overtime hours worked. Management and supervisors described the
17 incentive/bonus program to potential and new employees as part of the compensation package.
18 As a matter of law, the incentive compensation received by PLAINTIFF and other AGGRIEVED
19 EMPLOYEES must be included in the “regular rate of pay.” The failure to do so has resulted in
20 a systematic underpayment of overtime and double time compensation, meal and rest period
21 premiums, and redeemed sick pay to PLAINTIFF and other AGGRIEVED EMPLOYEES by
22 DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time
23 for non-employees shall be calculated in the same manner as the regular rate of pay for the
24 workweek in which the non-exempt employee uses paid sick time, whether or not the employee
25 actually works overtime in that workweek. DEFENDANTS’ conduct, as articulated herein, by
26 failing to include the incentive compensation as part of the “regular rate of pay” for purposes of
27 sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is
28 recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

1 50. In violation of the applicable sections of the California Labor Code and the
2 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
3 matter of company policy, practice, and procedure, intentionally and knowingly failed to
4 compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES at the correct rate of pay for
5 all overtime and double time worked, meal and rest period premiums, and sick pay. This uniform
6 policy and practice of DEFENDANT is intended to purposefully avoid the payment of the correct
7 overtime and double time compensation, meal and rest period premiums, and sick pay as required
8 by California law which allowed DEFENDANT to illegally profit and gain an unfair advantage
9 over competitors who complied with the law. To the extent equitable tolling operates to toll
10 claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD should
11 be adjusted accordingly.

12 **G. Unlawful Rounding Practices**

13 51. During the PAGA PERIOD, DEFENDANTS did not have in place an immutable
14 timekeeping system to accurately record and pay PLAINTIFF and other AGGRIEVED
15 EMPLOYEES for the actual time these employees worked each day, including overtime hours.
16 Specifically, DEFENDANTS had in place an unlawful rounding policy and practice that resulted
17 in PLAINTIFF and AGGRIEVED EMPLOYEES being undercompensated for all of their time
18 worked. As a result, DEFENDANTS were able to and did in fact unlawfully, and unilaterally
19 round the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and the
20 AGGRIEVED EMPLOYEES in order to avoid paying these employees for all their time worked,
21 including the applicable overtime compensation for overtime worked. As a result, PLAINTIFF
22 and other AGGRIEVED EMPLOYEES, from time to time, forfeited compensation for their time
23 worked by working without their time being accurately recorded and without compensation at the
24 applicable overtime rates.

25 52. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
26 rounding policy and practice resulted in PLAINTIFF and AGGRIEVED EMPLOYEES' time
27 being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding
28 policy and practice caused PLAINTIFF and AGGRIEVED EMPLOYEES to perform work as

ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty meal break.

H. Timekeeping Manipulation

53. During the PAGA PERIOD, DEFENDANTS, from time-to-time, did not have an immutable timekeeping system to accurately record and pay PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual time PLAINTIFF and other AGGRIEVED EMPLOYEES worked each day, including regular time, overtime hours, sick pay, meal and rest breaks. As a result, DEFENDANTS were able to and did in fact, unlawfully, and unilaterally alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and other AGGRIEVED EMPLOYEES in order to avoid paying these employees for all hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and missed rest break.

54. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES, from time-to-time, forfeited time worked by working without their time being accurately recorded and without compensation at the applicable pay rates.

55. The mutability of the timekeeping system also allowed DEFENDANTS to alter employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS' timekeeping system so as to create the appearance that PLAINTIFF and other AGGRIEVED EMPLOYEES clocked out for thirty (30) minute meal break when in fact the employees were not at all times provided an off-duty meal break. This practice is a direct result of DEFENDANTS' uniform policy and practice of denying employees uninterrupted thirty (30) minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

56. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit for the time the timekeeping system was inoperable. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and the AGGRIEVED EMPLOYEES wages for all hours worked in accordance with applicable law is evidenced by DEFENDANTS' business records.

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1 **I. Violations for Untimely Payment of Wages**

2 57. Pursuant to California Labor Code section 204, PLAINTIFF and the
3 AGGRIEVED EMPLOYEES were entitled to timely payment of wages during their employment.
4 PLAINTIFF and the AGGRIEVED EMPLOYEES, from time to time, did not receive payment
5 of all wages, including, but not limited to, overtime wages, minimum wages, meal period
6 premium wages, and rest period premium wages within permissible time period.

7 **J. Unlawful Deductions**

8 58. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
9 and AGGRIEVED EMPLOYEES' pay without explanations and without authorization to do so
10 or notice to PLAINTIFF and the AGGRIEVED EMPLOYEES. As a result, DEFENDANTS
11 violated Labor Code § 221.

12 **K. Violations for Failure to Pay Vacation and/or Paid Time Off (PTO) Wages**

13 59. Upon PLAINTIFF'S and AGGRIEVED EMPLOYEES' separation of
14 employment, they had not used all of their vested vacation and/or paid time off (PTO) and thus
15 their unused, vested vacation and/or PTO was required to have been paid at their final rate upon
16 separation of employment. DEFENDANTS, however failed to pay the vested vacation and/or
17 PTO time, and when it did, it paid it at the wrong rate. Further, DEFENDANTS failed to allow
18 PLAINTIFF and AGGRIEVED EMPLOYEES to accrue vacation and/or PTO, from time to time,
19 in accordance with DEFENDANTS' accrual policy. As a result of the foregoing, DEFENDANTS
20 violated Labor Code §227.3.

21 60. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
22 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
23 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
24 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
25 provide PLAINTIFF with a second off-duty meal period each workday in which he was required
26 by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF
27 with a rest break, they required PLAINTIFF to remain on premises, on-duty and on-call for the
28 rest break. DEFENDANT policy caused PLAINTIFF to remain on premises, on-call and on-duty

1 during what was supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal
2 and rest breaks without additional compensation and in accordance with DEFENDANTS' strict
3 corporate policy and practice. Moreover, DEFENDANTS also provided PLAINTIFF with
4 paystubs that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANTS failed to
5 reimburse PLAINTIFF for the use of his personal vehicle in violation of Cal. Lab. Code § 2802.
6 To date, DEFENDANTS have not fully paid PLAINTIFF the minimum, overtime and double
7 time compensation still owed to him or any penalty wages owed to him under Cal. Lab. Code §
8 203. The amount in controversy for PLAINTIFF individually does not exceed the sum or value
9 of \$75,000.

10 **FIRST CAUSE OF ACTION**

11 **For Civil Penalties Pursuant to Private Attorneys General Act ("PAGA")**

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

13 **(By PLAINTIFF and AGGRIEVED EMPLOYEES and Against All DEFENDANTS)**

14 61. PLAINTIFF and the AGGRIEVED EMPLOYEES reallege and incorporate by this
15 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

16 62. PAGA is a mechanism by which the State of California itself can enforce state
17 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
18 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
19 fundamentally a law enforcement action designed to protect the public and not to benefit private
20 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means
21 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting
22 PAGA, the California Legislature specified that "it was ... in the public interest to allow
23 aggrieved employees, acting as private attorneys general to recover civil penalties for Labor
24 Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be subject to
25 arbitration.

26 63. PLAINTIFF brings this Representative Action on behalf of the State of California
27 with respect to himself and all other current and former AGGRIEVED EMPLOYEES employed
28 by DEFENDANTS during the PAGA PERIOD.

1 64. At all relevant times, for the reasons described herein, and others, PLAINTIFF and
2 the AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANTS within the
3 meaning of Labor Code Section 2699(c).

4 65. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE,
5 like PLAINTIFF, on behalf of himself and other current or former employees, to bring a civil
6 action to recover civil penalties pursuant to the procedures specified in Labor Code Section
7 2699.3

8 66. PLAINTIFF complied with the procedures for bringing suit specified in Labor
9 Code Section 2699.3. By certified letter, return receipt requested, dated December 16, 2022,
10 PLAINTIFF gave written notice to the Labor and Workforce Development Agency (“LWDA”)
11 and to DEENDANTS of the specific provisions of the Labor Code alleged to have been violated,
12 including the facts and theories to support the alleged violations.

13 67. As of the date of this complaint, more than sixty-five (65) days after serving the
14 LWDA with notice and amended notice of DEFENDANTS’ violations, the LWDA has not
15 provided any notice by certified mail of its intent to investigate the DEFENDANTS’ alleged
16 violations as mandated by Labor Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor
17 Code Section 2699.3(a)(2)A, PLAINTIFF may commence and is authorized to pursue this cause
18 of action.

19 68. To the extent that it applies, PLAINTIFF invokes the tolling permitted pursuant to
20 the California State Judicial Counsel amended Rule of Court, Emergency Rule Number 9, tolled
21 the statute of limitation and statutes of repose from April 6, 2020 to either (a) August 3, 2020 for
22 statutes of limitation and repose for civil causes of action that are 180 days or less, of (b) October
23 1, 2020 for statutes of limitation and repose for civil causes of action that exceed 180 days.

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1 69. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the
2 AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of
3 Labor Code Section 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7,
4 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14 1198, 1198.5, 1199, 2802, and
5 2804 in the following amounts:

6 a. For violation of Labor Code Sections 201, 202, 203, and 204,
7 one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per
8 pay period for the initial violation and two hundred dollars (\$200) for
9 AGGIEVED EMPLOYEE per pay period for each subsequent
10 violation [penalty per Labor Code Section 2699(f)(2)];

11 b. For violations of Labor Code Section 226(a), a civil penalty
12 in the amount of two hundred fifty dollars (\$250) for each
13 AGGRIEVED EMOPLOYEE for any initial violation and one
14 thousand dollars for each subsequent violation [penalty per Labor
15 Code Section 226.3];

16 c. For violations of Labor Code Sections 204, a civil penalty in
17 the amount of one hundred dollars (\$100) for each AGGRIEVED
18 EMPLOYEE for any initial violation and two hundred dollars (\$200)
19 for AGGIEVED EMPLOYEE for each subsequent violation [penalty
20 per Labor Code Section 210];

21 d. For violations of Labor Code Sections 226.7, 510 and 512, a
22 civil penalty in the amount of fifty dollars (\$50) for each underpaid
23 AGGRIEVED EMPLOYEE for the initial violation and hundred
24 dollars (\$100) for each underpaid AGGIEVED EMPLOYEE for each
25 subsequent violation [penalty per Labor Code Section 558];

26 e. For violations of Labor Code Section 2269(a), a civil penalty
27 in the amount of two hundred fifty dollars (\$250) per AGGRIEVED
28 EMPLOYEE per violation in an initial citation and one thousand

dollars (\$1,000) per AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 226.3];

f. For violations of Labor Code Section 1174(d), a civil penalty in the amount of five hundred (\$500) dollars for per AGGRIEVED EMPLOYEE [penalty per Labor Code Section 1174.5].

g. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198, 1198.5, and 1199, a civil penalty in the amount of one hundred dollars (\$100) per AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars fifty (\$250) per AGGRIEVED EMPLOYEE per pay period for each subsequent violation [penalty per Labor Code Section].

70. For all provisions of the Labor Code for which civil penalty is not specifically provided, Labor Code § 2699(f) imposes upon DEFENDANTS a penalty of 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. PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in connection with their claims for civil penalties pursuant to Labor Code Section 2699(g)(1).

71. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 ["PAGA allows an "aggrieved employee"—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer."], Emphasis added, reh'g denied (June 13, 2018).)

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