

SUMMONS
(CITACION JUDICIAL)

SUM-100

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

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

03/22/2024 at 03:59:42 PM

Clerk of the Superior Court
By Sharon Allen Thurston, Deputy Clerk

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

WINCO HOLDINGS, INC, an Idaho Corporation; and DOES 1-50, Inclusive,

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

ANDREW CARO, an individual, in his representative capacity on behalf of himself, the State of California, as a private attorney general,

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

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

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): San Diego Superior Court of California
North County, 111 325 S. Melrose Drive, Vista, CA 92081

CASE NUMBER:
(Número del Caso):

37-2024-00013752-CU-OE-NC

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):
Shani O. Zakay, Esq., T: (619) 255-9047, Zakay Law Group, APLC, 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: _____ Clerk, by _____, Deputy
(Fecha) (Secretario) (Adjudante)

(For proof of service of this summons, use Proof of Service of Summons (form POS-0)
(Para probar le esta citación use el formulario Proof of Service of Summons) POS-0

03/25/2024

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

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

SUMMONS

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

ANDREW CARO, an individual, in his
representative capacity on behalf of himself, the
State of California, as a private attorney general,

Plaintiff,

v.

WINCO HOLDINGS, INC, an Idaho
Corporation; and DOES 1-50, Inclusive,

Defendants.

Case No:

REPRESENTATIVE ACTION
COMPLAINT FOR:

1) VIOLATIONS OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698 ET SEQ

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Sharon Allen Thurston, Deputy Clerk

37-2024-00013752-CU-OE-NC

1 PLAINTIFF ANDREW CARO (“PLAINTIFF”), an individual, in his representative
2 capacity on behalf of himself, the State of California, and fellow current and former
3 AGGRIEVED EMPLOYEES, defined *supra*, against WINCO HOLDINGS, INC., an Idaho
4 corporation (“DEFENDANT”), alleges on information and belief, except for his own acts and
5 knowledge which are based on personal knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against WINCO HOLDINGS, INC., an Idaho
8 corporation (“DEFENDANT” and/or “DEFENDANTS”) seeking only to recover PAGA civil
9 penalties for himself, and on behalf of all current and former aggrieved employees that worked
10 for DEFENDANT. PLAINTIFF does **not seek to recover anything other than penalties as**
11 **permitted by California Labor Code § 2699**. To the extent that statutory violations are
12 mentioned for wage violations, PLAINTIFF does not seek underlying general and/or special
13 damages for those violations in this action, but simply the civil penalties permitted by California
14 Labor Code § 2699. Notwithstanding, PLAINTIFF is not abandoning his right to pursue his
15 individual claims for, *inter alia*, DEFENDANT’s alleged wage violations, and/or general or
16 special damages arising from those violations, and he fully intends to, at a future date, pursue
17 claims for those individual claims and damages.

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

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

25 4. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT
26 decreased their employment-related costs by systematically violating California wage and hour
27 laws.

28 5. DEFENDANT’S systematic pattern of wage and hour and IWC Wage Order
violations toward PLAINTIFF and other aggrieved employees in California include, *inter alia*:

- a. Failure to provide compliant meal and rest periods;
- b. Failure to allow employees to take duty-free meal and rest periods;
- c. Failure to pay all minimum, sick pay, regular and overtime wages;
- d. Failure to correctly calculate the regular rate of pay;
- e. Failure to pay within seven (7) days of the close of payroll;
- f. Failure to pay for all hours worked;
- g. Failure to maintain true and accurate records;
- h. Failure to provide suitable seating;
- i. Failure to reimburse for business expenses;
- j. Failure to provide accurate itemized wage statements; and
- k. Failure to timely pay wages due during, and upon termination of employment.

6. PLAINTIFF brings this representative action against DEFENDANT on behalf of himself and all other aggrieved employees of DEFENDANT in California seeking all civil penalties and unpaid wages permitted pursuant to California Labor Code § 2699, *et seq.*

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

THE PARTIES

8. DEFENDANT operates a supermarket chain with locations throughout California, including in San Diego, California.

9. PLAINTIFF was employed by DEFENDANTS in California as a non-exempt employee entitled to minimum wages, overtime pay and meal and rest periods from October of 2022 to March of 2023.

10. PLAINTIFF brings this action in his representative capacity on behalf of the State of California and on behalf of all non-exempt employees who were not Union Members who worked for Defendant in California between January 22, 2023 and the present (“PAGA Period”).

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

1 12. PLAINTIFF and all other AGGRIEVED EMPLOYEES are, and at all relevant
2 times were, employees of DEFENDANT, within the meanings set forth in the California Labor
3 Code and the applicable Industrial Welfare Commission Wage Order.

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

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

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

22 **JURISDICTION AND VENUE**

23 16. This Court has jurisdiction over this Action pursuant to California Code of Civil
24 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
25 Court has jurisdiction over PLAINTIFF’S claims for civil penalties under the Private Attorney
26 General Act of 2004, California Labor Code §2698, *et seq.*

27 17. Venue is proper in this Court pursuant to California Code of Civil Procedure,
28 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS, resides

1 in this County, and DEFENDANTS (i) currently maintain and at all relevant times maintained
2 offices and facilities in this County and/or conduct substantial business in this County, and (ii)
3 committed the wrongful conduct herein alleged in this County against PLAINTIFF and
4 AGGRIEVED EMPLOYEES.

5 **THE CONDUCT**

6 18. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
7 required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked,
8 meaning the time during which an employee is subject to the control of an employer, including
9 all the time the employee is suffered or permitted to work. From time to time, DEFENDANT
10 required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them for all the
11 time they were under DEFENDANT control. Specifically, from time to time, PLAINTIFF
12 performed work before and after the beginning of his shift, as well as during what was supposed
13 to be his duty-free meal breaks, spending time under the DEFENDANT control for which he was
14 not compensated. As a result, the PLAINTIFF and AGGRIEVED EMPLOYEES forfeited
15 minimum wage and overtime compensation by regularly working without their time being
16 accurately recorded and without compensation at the applicable minimum wage and overtime
17 rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and AGGRIEVED
18 EMPLOYEES for all time worked is evidenced by DEFENDANTS' business records.

19 **A. Meal Period Violations**

20 19. As a result of their rigorous work schedules, PLAINTIFF and AGGRIEVED
21 EMPLOYEES were also from time to time unable to take off duty meal breaks and were not fully
22 relieved of duty for meal periods. Specifically, PLAINTIFF and AGGRIEVED EMPLOYEES
23 were from time to time interrupted during their off-duty meal breaks to complete tasks for
24 DEFENDANTS. PLAINTIFF and AGGRIEVED EMPLOYEES were required to perform work
25 as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an
26 off-duty meal break. Further, DEFENDANTS failed to provide PLAINTIFF and AGGRIEVED
27 EMPLOYEES with a second off-duty meal period each workday in which these employees were
28 required by DEFENDANTS to work ten (10) hours of work. DEFENDANTS' policy caused

1 PLAINTIFF and AGGRIEVED EMPLOYEES to work off-the-clock during what was supposed
2 to be their off-duty meal periods. PLAINTIFF and AGGRIEVED EMPLOYEES therefore
3 forfeited meal breaks without additional compensation and in accordance with DEFENDANTS'
4 strict corporate policy and practice.

5 **B. Rest Period Violations**

6 20. During the PAGA PERIOD, from time to time, PLAINTIFF and AGGRIEVED
7 EMPLOYEES were also required to work in excess of four (4) hours without being provided ten
8 (10) minute rest periods. Further, these employees were denied their first rest periods of at least
9 ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second
10 rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8)
11 hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked
12 of ten (10) hours or more. When they did have an opportunity to take their rest breaks,
13 PLAINTIFF and the AGGRIEVED EMPLOYEES were often interrupted and required by
14 DEFENDANTS to work during their rest breaks. When they did have an opportunity to take their
15 rest breaks, PLAINTIFF and the AGGRIEVED EMPLOYEES were required to remain on-duty,
16 on-call, and subject to DEFENDANTS' control in accordance with DEFENDANTS' policy.
17 Additionally, DEFENDANTS required PLAINTIFF and the AGGRIEVED EMPLOYEES to ask
18 for permission before they were allowed to leave the premises for their rest breaks, further
19 evidencing DEFENDANTS' control in accordance with DEFENDANTS' policy. PLAINTIFF
20 and AGGRIEVED EMPLOYEES were also not provided with one-hour wages in lieu thereof.
21 DEFENDANTS' policy caused PLAINTIFF and AGGRIEVED EMPLOYEES to remain on-call
22 and on-duty during what was supposed to be their off-duty rest periods. As a result of their
23 rigorous work schedules, PLAINTIFF and AGGRIEVED EMPLOYEES were periodically
24 denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

25 **C. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

26 21. Under California law, every employer shall pay to each employee, on the
27 established payday for the period involved, not less than the applicable minimum wage for all
28 hours worked in the payroll period, whether the remuneration is measured by time, piece,

1 commission, or otherwise. Hours worked is defined in the applicable Wage Order as “the time
2 during which an employee is subject to the control of an employer and includes all the time the
3 employee is suffered or permitted to work, whether or not required to do so.” PLAINTIFF and
4 AGGRIEVED EMPLOYEES were from time to time required to perform work for
5 DEFENDANTS before and after their scheduled shifts, as well as during their off-duty meal
6 break, including, but not limited to, time spent undergoing remote training. DEFENDANTS failed
7 to compensate PLAINTIFF and AGGRIEVED EMPLOYEES for any of the time spent under
8 DEFENDANTS’ control while working off-the-clock. As such, DEFENDANTS failed to pay
9 PLAINTIFF and AGGRIEVED EMPLOYEES the applicable minimum wage for all hours
10 worked in a payroll period.

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

20 23. From time to time, when PLAINTIFF and AGGRIEVED EMPLOYEES worked
21 during what was supposed to be their meal breaks or otherwise off the clock, DEFENDANTS
22 also failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with complete and accurate
23 wage statements which failed to show, among other things, the correct time worked, including,
24 work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any
25 workweek, and the gross wages paid for those periods during the pay period, and the correct
26 penalty payments or missed meal and rest periods in violation of California Labor Code Sections
27 226 and 226.2.

D. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and Redeemed Sick Pay

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

25. State law provides that employees must be paid overtime at one-and-one-half times their "regular rate of pay." PLAINTIFF and the AGGRIEVED EMPLOYEES were compensated at an hourly rate plus incentive pay that was tied to specific elements of an employee's performance.

26. The second component of PLAINTIFF's and the AGGRIEVED EMPLOYEES' compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFF and AGGRIEVED EMPLOYEES incentive wages based on their performance for DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly basis with bonus compensation when the employees met the various performance goals set by DEFENDANTS.

27. However, from-time-to-time, when calculating the regular rate of pay, in those pay periods where PLAINTIFF and the AGGRIEVED EMPLOYEES worked overtime, double time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked rather than just all non-overtime hours worked. Management and supervisors described the incentive/bonus program to potential and new employees as part of the compensation package.

1 As a matter of law, the incentive compensation received by PLAINTIFF and the AGGRIEVED
2 EMPLOYEES must be included in the “regular rate of pay.” The failure to do so has resulted in
3 a systematic underpayment of overtime and double time compensation, meal and rest period
4 premiums, and redeemed sick pay to PLAINTIFF and the AGGRIEVED EMPLOYEES by
5 DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time
6 for non-employees shall be calculated in the same manner as the regular rate of pay for the
7 workweek in which the non-exempt employee uses paid sick time, whether or not the employee
8 actually works overtime in that workweek. DEFENDANTS’ conduct, as articulated herein, by
9 failing to include the incentive compensation as part of the “regular rate of pay” for purposes of
10 sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is
11 recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

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

23 **E. Wage Statement Violations**

24 29. California Labor Code Section 226 requires an employer to furnish its employees
25 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked,
26 (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net
27 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name
28 of the employee and only the last four digits of the employee’s social security number or an

1 employee identification number other than a social security number, (8) the name and address of
2 the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay
3 period and the corresponding number of hours worked at each hourly rate by the employee.

4 30. From time to time during the PAGA PERIOD, when PLAINTIFF and the
5 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurately for missed
6 meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed
7 to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with complete and accurate wage
8 statements which failed to show, among other things, all deductions, the total hours worked and
9 all applicable hourly rates in effect during the pay period, and the corresponding amount of time
10 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
11 periods.

12 31. In addition to the foregoing, DEFENDANT, from time to time, failed to provide
13 PLAINTIFF and the AGGRIEVED EMPLOYEES with wage statements that comply with Cal.
14 Lab. Code § 226.

15 32. As a result, DEFENDANT issued PLAINTIFF and the AGGRIEVED
16 EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANT's
17 violations are knowing and intentional, were not isolated due to an unintentional payroll error due
18 to clerical or inadvertent mistake.

19 **F. Suitable Seating Violations**

20 33. PLAINTIFF further alleges that the station counters in DEFENDANT's stores
21 provide ample space at work stations to allow for the presence and use of a stool or seat by
22 DEFENDANT's employees' during the performance of their work duties. DEFENDANT's
23 employees' working at DEFENDANTS' facilities spend a very substantial portion, and, in many
24 workdays, the vast majority of their working time with DEFENDANT's customers. The nature
25 of the position can reasonably be accomplished while using a seat/stool.

26 34. In violation of the applicable sections of the California Labor Code and the
27 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
28 DEFENDANT as a matter of company policy, practice and procedure, intentionally, knowingly

1 and systematically failed to provide PLAINTIFF and the other AGGRIEVED EMPLOYEES
2 suitable seating when the nature of these employees' work reasonably permitted sitting.

3 35. DEFENDANT knew or should have known that PLAINTIFF and other
4 AGGRIEVED EMPLOYEES were entitled to suitable seating and/or were entitled to sit when it
5 did not interfere with the performance of their duties, and that DEFENDANT did not provide
6 suitable seating and/or did not allow them to sit when it did not interfere with the performance of
7 their duties. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
8 EMPLOYEES, DEFENDANT violated California Labor Code Section 1198 and Wage Order 4-
9 2001, Section 14 by failing to provide suitable seats.

10 **G. Unlawful Rounding Practices**

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

23 37. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
24 rounding policy and practice resulted in PLAINTIFF and AGGRIEVED EMPLOYEES' time
25 being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding
26 policy and practice caused PLAINTIFF and AGGRIEVED EMPLOYEES to perform work as
27 ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-
28 duty meal break.

H. Timekeeping Manipulation

38. During the PAGA PERIOD, DEFENDANTS, from time-to-time, did not have an immutable timekeeping system to accurately record and pay PLAINTIFF and the AGGRIEVED EMPLOYEES for the actual time PLAINTIFF and the 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 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.

39. As a result, PLAINTIFF and the 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.

40. 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 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.

41. As a result, PLAINTIFF and 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.

I. Violations for Untimely Payment of Wages

42. Pursuant to California Labor Code section 204, PLAINTIFF and the AGGRIEVED EMPLOYEES were entitled to timely payment of wages during their employment. PLAINTIFF and the AGGRIEVED EMPLOYEES, from time to time, did not receive payment

1 of all wages, including, but not limited to, overtime wages, minimum wages, meal period
2 premium wages, and rest period premium wages within permissible time period.

3 **J. Unreimbursed Business Expenses**

4 43. DEFENDANT as a matter of corporate policy, practice, and procedure,
5 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
6 and the AGGRIEVED EMPLOYEES for required business expenses incurred by the PLAINTIFF
7 and AGGRIEVED EMPLOYEES in direct consequence of discharging their duties on behalf of
8 DEFENDANT. Under California Labor Code Section 2802, employers are required to indemnify
9 employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code
10 § 2802 expressly states that "an employer shall indemnify his or her employee for all necessary
11 expenditures or losses incurred by the employee in direct consequence of the discharge of his or
12 her duties, or of his or her obedience to the directions of the employer, even though unlawful,
13 unless the employee, at the time of obeying the directions, believed them to be unlawful."

14 44. In the course of their employment, DEFENDANT required PLAINTIFF and
15 AGGRIEVED EMPLOYEES to use their personal cell phones as a result of and in furtherance of
16 their job duties, including but not limited to performing work-related tasks. However,
17 DEFENDANT unlawfully failed to reimburse PLAINTIFF and AGGRIEVED EMPLOYEES for
18 the use of their personal cell phones. As a result, in the course of their employment with
19 DEFENDANT, the PLAINTIFF and AGGRIEVED EMPLOYEES incurred unreimbursed
20 business expenses that included, but were not limited to, costs related to the use of their personal
21 cell phones.

22 **K. Unlawful Deductions**

23 45. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
24 and the AGGRIEVED EMPLOYEES' pay without explanations and without authorization to do
25 so or notice to PLAINTIFF and the AGGRIEVED EMPLOYEES. As a result, DEFENDANTS
26 violated Labor Code § 221.

27 **L. Sick Pay Violations**

28 46. Cal. Labor Code Section 246 (a)(1) mandates that "An employee who, on or after

1 July 1, 2015, works in California for the same employer for 30 or more days within a year from
2 the commencement of employment is entitled to paid sick days as specified in this section.”
3 Further, Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements.
4 From time to time, DEFENDANT failed to have a policy or practice in place that provided
5 PLAINTIFF and the AGGRIEVED EMPLOYEES with sick days and/or paid sick leave.

6 47. California Labor Code Section 246(i) requires an employer to furnish its
7 employees with written wage statements setting forth the amount of paid sick leave available.
8 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish
9 PLAINTIFF and the AGGRIEVED EMPLOYEES with wage statements setting forth the
10 amount of paid sick leave available.

11 48. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
12 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
13 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
14 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
15 provide PLAINTIFF with a second off-duty meal period each workday in which DEFENDANT
16 required him to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF with a
17 rest break, they required PLAINTIFF to remain on premises, on-duty, and on-call for the rest
18 break. DEFENDANT policy caused PLAINTIFF to remain on premises, on-call, and on-duty
19 during what was supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal
20 and rest breaks without additional compensation and in accordance with DEFENDANT’S strict
21 corporate policy and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs
22 that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANT failed to reimburse
23 PLAINTIFF for required business expenses related to the use of his personal cell phone in
24 violation of Cal. Lab. Code § 2802. To date, DEFENDANT has not fully paid PLAINTIFF the
25 minimum, overtime and double time compensation still owed to him or any penalty wages owed
26 to him under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually does
27 not exceed the sum or value of \$75,000.

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1 **FIRST CAUSE OF ACTION**

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

3 **(Cal. Lab. Code §§2698 et seq.)**

4 **(Alleged by PLAINTIFF against all Defendants)**

5 49. PLAINTIFF and the AGGRIEVED EMPLOYEES reallege and incorporate by
6 this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

17 51. PLAINTIFF brings this Representative Action on behalf of the State of California
18 with respect to himself and all other current and former AGGRIEVED EMPLOYEES employed
19 by DEFENDANTS during the PAGA PERIOD.

20 52. At all relevant times, for the reasons described herein, and others, PLAINTIFF and
21 the AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANTS within the
22 meaning of Labor Code Section 2699(c).

23 53. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE,
24 like PLAINTIFF, on behalf of himself and other current or former employees, to bring a civil
25 action to recover civil penalties pursuant to the procedures specified in Labor Code Section
26 2699.3.

27 54. PLAINTIFF complied with the procedures for bringing suit specified in Labor
28 Code Section 2699.3. By certified letter, return receipt requested, dated January 22, 2024,
PLAINTIFF gave written notice to the Labor and Workforce Development Agency ("LWDA")

1 and to DEENDANTS of the specific provisions of the Labor Code alleged to have been violated,
2 including the facts and theories to support the alleged violations.

3 55. As of the date of this Complaint, more than sixty-five (65) days after serving the
4 LWDA with notice and amended notice of DEFENDANT'S violations, the LWDA has not
5 provided any notice by certified mail of its intent to investigate the DEFENDANT'S alleged
6 violations as mandated by Labor Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor
7 Code Section 2699.3(a)(2)A, PLAINTIFF may commence and is authorized to pursue this cause
8 of action.

9 56. PLAINTIFF, and such persons that may be added from time to time who satisfy
10 the requirements and exhaust the administrative procedures under the Private Attorney General
11 Act, bring this Representative Action on behalf of the State of California with respect to himself
12 and all non-exempt employees who were not Union Members who worked for Defendant in
13 California (the "AGGRIEVED EMPLOYEES") during the time period of January 22, 2023, until
14 the present ("PAGA PERIOD").

15 57. The policies, acts and practices heretofore described were and are an unlawful
16 business act or practice because DEFENDANTS (a) failed to pay AGGRIEVED EMPLOYEES
17 minimum wages and overtime wages, (b) failed to provide AGGRIEVED EMPLOYEES legally
18 required meal and rest breaks, (c) failed to pay AGGRIEVED EMPLOYEES at the correct
19 regular rate of pay, (d) failed to pay AGGRIEVED EMPLOYEES for all time worked, and (e)
20 failed to timely pay wages, all in violation of the applicable Labor Code sections listed in Labor
21 Code §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5,
22 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197,
23 1197.1, 1197.14, 1198, 1199, 2802, 2804, and California Code of Regulations, Title 8, Section
24 1 1070(14) (Failure to Provide Seating) violates the applicable Industrial Welfare Commission
25 Wage Order(s), and thereby gives rise to statutory penalties as a result of such conduct.
26 PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code Private
27 Attorney General Act of 2004 as the representative of the State of California for the illegal
28 conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

58. 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

1 (\$100) for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two
2 hundred dollars (\$200) for each AGGRIEVED EMPLOYEE per pay period for each subsequent
3 violation. PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to an award of
4 reasonable attorney's fees and costs in connection with their claims for civil penalties pursuant
5 to Labor Code Section 2699(g)(1).

6 59. To the extent that any of the conduct and violations alleged herein did not affect
7 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
8 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30
9 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.
10 5th 745, 751 ["PAGA allows an "aggrieved employee"—a person affected by at least one Labor
11 Code violation committed by an employer—to pursue penalties for all the Labor Code violations
12 committed by that employer."], Emphasis added, reh'g denied (June 13, 2018).)

13 **PRAYER FOR RELIEF**

14 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as follows:

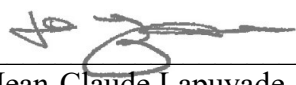
15 1. For reasonable attorney's fees and costs of suit to the extent permitted by law,
16 including pursuant to Labor Code § 2699, *et seq.*;

17 2. For civil penalties to the extent permitted by law pursuant to the Labor Code under
18 the Private Attorneys General Act; and

19 For such other relief as the Court deems just and proper.

20 DATED: March 22, 2024

JCL LAW FIRM, APC

21 By: 
22 _____

23 Jean-Claude Lapuyade
24 Attorney for PLAINTIFF
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27
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