

SUMMONS
(CITACION JUDICIAL)

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

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

C&M MOTORS, LLC., a limited liability corporation, d/b/a I-10 Toyota; I-10 AUTO MALL DEALERS ASSOCIATION and DOES 1-50, Inclusive,

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

STEVE CAZARES, an individual, in his representative capacity on behalf of the State of California and fellow Aggrieved Employees,

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): Riverside Superior Court

Riverside Historic Courthouse - 4050 Main Street, Riverside, CA 92501

CASE NUMBER:
(Número del Caso):

CVRI 2401830

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. T: (619) 599-8292 JCL Law Firm, APC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 4/2/24
(Fecha)

Clerk, by _____, Deputy
(Secretario) _____ (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



GC68150(g)

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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Attorneys for Plaintiff STEVE CAZAREZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

STEVE CAZARES, an individual, in his
representative capacity on behalf of the State of
California and fellow Aggrieved Employees,

Plaintiff,

v.

C&M MOTORS, LLC., a limited liability
corporation, d/b/a I-10 Toyota; I-10 AUTO
MALL DEALERS ASSOCIATION and DOES
1-50, Inclusive,

Defendants.

Case No: **CVRI 2401830**

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

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

1 PLAINTIFF STEVE CAZARES (“PLAINTIFF”), an individual, in his representative
2 capacity on behalf of the State of California and fellow AGGRIEVED EMPLOYEES, defined
3 *supra*, against C&M MOTORS, LLC., a limited liability corporation, d/b/a I-10 Toyota; and I-10
4 AUTO MALL DEALERS ASSOCIATION (“DEFENDANT” and/or “DEFENDANTS”), alleges
5 on information and belief, except for his own acts and knowledge which are based on personal
6 knowledge, the following:

7 **INTRODUCTION**

8 1. PLAINTIFF brings this representative action pursuant to the Private Attorneys
9 General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”) on behalf of the LWDA
10 and other current and former aggrieved employees of DEFENDANT for engaging in a pattern
11 and practice of wage and hour violations under the California Labor Code.

12 2. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT
13 decreased their employment-related costs by systematically violating California wage and hour
14 laws.

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

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

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

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

THE PARTIES

6. Defendant C&M MOTORS, LLC., d/b/a I-10 TOYOTA (“DEFENDANT C&M Motors”) is a limited liability corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

7. DEFENDANT I-10 AUTO MALL DEALERS ASSOCIATION (“DEFENDANT I-10 Auto Mall Dealers Association”) is a California nonprofit corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

8. Defendant C&M Motors, and Defendant Auto Mall Dealers Association were the joint employers of PLAINTIFF as evidenced by the documents issued to PLAINTIFF and by the company PLAINTIFF performed work for respectively and are therefore jointly responsible as employers for the conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”

9. DEFENDANTS own and operate a car dealership in Riverside, California, where PLAINTIFF worked.

10. PLAINTIFF was employed by DEFENDANTS in California from March of 2022 to August of 2023 as a non-exempt employee, paid on an hourly basis, on a piece-rate and/or commission basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

11. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to all individuals who are or previously were employed by Defendants in California and classified as

1 non-exempt employees (“AGGRIEVED EMPLOYEES”) during the time period of January 25,
2 2023, and the present (“PAGA Period”).

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

6 13. PLAINTIFF and all other AGGRIEVED EMPLOYEES are, and at all relevant
7 times were, employees of DEFENDANTS, within the meanings set forth in the California Labor
8 Code and the applicable Industrial Welfare Commission Wage Order.

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

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

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

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1 the AGGRIEVED EMPLOYEES against DEFENDANTS, the PAGA PERIOD should be
2 adjusted accordingly.

3 **A. Meal Period Violations**

4 20. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
5 were required to pay PLAINTIFF and 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, DEFENDANTS required PLAINTIFF and AGGRIEVED EMPLOYEES to work
9 without paying them for all the time they were under DEFENDANTS' control. Specifically,
10 DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to
11 be PLAINTIFF'S off-duty meal break. Indeed, there were many days where PLAINTIFF did not
12 even receive a partial lunch. As a result, the PLAINTIFF and other AGGRIEVED EMPLOYEES
13 forfeited minimum wage and overtime compensation by regularly working without their time
14 being accurately recorded and without compensation at the applicable minimum wage and
15 overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other
16 AGGRIEVED EMPLOYEES for all time worked is evidenced by DEFENDANTS' business
17 records.

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

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

6 **B. Rest Period Violations**

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

22 **C. Unreimbursed Business Expenses**

23 23. DEFENDANTS as a matter of corporate policy, practice, and procedure,
24 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
25 and the other AGGRIEVED EMPLOYEES for required business expenses incurred by the
26 PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of discharging their
27 duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers are
28 required to indemnify employees for all expenses incurred in the course and scope of their

1 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
2 employee for all necessary expenditures or losses incurred by the employee in direct consequence
3 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
4 even though unlawful, unless the employee, at the time of obeying the directions, believed them
5 to be unlawful."

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

19 **D. Wage Statement Violations**

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

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

9 27. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide
10 PLAINTIFF and the AGGRIEVED EMPLOYEES Members with wage statements that comply
11 with Cal. Lab. Code § 226.

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

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

17 29. During the PAGA PERIOD, from time-to-time DEFENDANTS failed and
18 continues to fail to accurately pay PLAINTIFF and AGGRIEVED EMPLOYEES for all hours
19 worked.

20 30. During the PAGA PERIOD, from time-to-time DEFENDANT required
21 PLAINTIFF and AGGRIEVED EMPLOYEES to perform pre-shift or post-shift work. This
22 resulted in PLAINTIFF and AGGRIEVED EMPLOYEES to have to work while off-the-clock.

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

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

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

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

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

5 35. 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 AGGRIEVED EMPLOYEES
8 typically worked over forty (40) hours in a workweek, and more than eight (8) hours per day,
9 DEFENDANTS' policies and practices also deprived them of overtime pay.

10 36. DEFENDANT knew or should have known that PLAINTIFF and AGGRIEVED
11 EMPLOYEES' off-the-clock work was compensable under the law.

12 37. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES forfeited wages due to
13 them for all hours worked at DEFENDANTS' direction, control, and benefit for the time spent
14 working while off-the-clock. DEFENDANTS' uniform policy and practice to not pay
15 PLAINTIFF and 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 38. 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 DEFENDANTS' uniform policy and practice not to pay the AGGRIEVED EMPLOYEES
26 Members at the correct rate for all overtime and double time worked, meal and rest period
27 premiums, and redeemed sick pay in accordance with applicable law is evidenced by
28 DEFENDANTS' business records.

1 39. 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 40. 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 41. From-time-to-time, when calculating the regular rate of pay, in those pay periods
12 where PLAINTIFF and other AGGRIEVED EMPLOYEES worked overtime, double time, paid
13 meal and rest period premium payments, and/or redeemed sick pay, and earned non-discretionary
14 bonus, DEFENDANTS failed to accurately include the non-discretionary bonus compensation as
15 part of the employees’ “regular rate of pay” and/or calculated all hours worked rather than just all
16 non-overtime hours worked. Management and supervisors described the incentive/bonus program
17 to potential and new employees as part of the compensation package. As a matter of law, the
18 incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must be
19 included in the “regular rate of pay.” The failure to do so has resulted in a systematic underpayment
20 of overtime and double time compensation, meal and rest period premiums, and redeemed sick pay
21 to PLAINTIFF and other AGGRIEVED EMPLOYEES by DEFENDANTS. Specifically,
22 California Labor Code Section 246 mandates that paid sick time for non-employees shall be
23 calculated in the same manner as the regular rate of pay for the workweek in which the non-exempt
24 employee uses paid sick time, whether or not the employee actually works overtime in that
25 workweek. DEFENDANTS’ conduct, as articulated herein, by failing to include the incentive
26 compensation as part of the “regular rate of pay” for purposes of sick pay compensation was in
27 violation of Cal. Lab. Code § 246 the underpayment of which is recoverable under Cal. Labor Code
28 Sections 201, 202, 203 and/or 204.

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

G. Sick Pay Violations

43. Cal. Labor Code Section 246 (a)(1) mandates that "An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section." Further, Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements. From time to time, DEFENDANTS failed to have a policy or practice in place that provided PLAINTIFF and AGGRIEVED EMPLOYEES with sick days and/or paid sick leave.

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

H. Violations for Untimely Payment of Wages

45. Pursuant to California Labor Code section 204, PLAINTIFF and the AGGRIEVED EMPLOYEES members were entitled to timely payment of wages during their employment. PLAINTIFF and the AGGRIEVED EMPLOYEES members, from time to time, did

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

3 46. Pursuant to Cal. Lab. Code § 201, “If an employer discharges an employee, the
4 wages earned and unpaid at the time of discharge are due and payable immediately.” Pursuant to
5 Cal. Lab. Code § 202, if an employee quits his or her employment, “his or her wages shall become
6 due and payable not later than 72 hours thereafter, unless the employee has given 72 hours
7 previous notice of his or her intention to quit, in which case the employee is entitled to his or her
8 wages at the time of quitting.” PLAINTIFF and the AGGRIEVED EMPLOYEES were, from time
9 to time, not timely provided the wages earned and unpaid at the time of their discharge and/or at
10 the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202.

11 47. As such, PLAINTIFF demands up to thirty days of pay as penalty for not timely
12 paying all wages due at time of termination for all AGGRIEVED EMPLOYEES whose
13 employment ended during the PAGA PERIOD.

14 **I. Unlawful Deductions**

15 48. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
16 and AGGRIEVED EMPLOYEES’ pay without explanations and without authorization to do so
17 or notice to PLAINTIFF and the AGGRIEVED EMPLOYEES Members. As a result,
18 DEFENDANTS violated Labor Code § 221.

19 **J. Unlawful Rounding Practices**

20 49. During the AGGRIEVED EMPLOYEES PERIOD, DEFENDANTS did not have
21 in place an immutable timekeeping system to accurately record and pay PLAINTIFF and other
22 AGGRIEVED EMPLOYEES for the actual time these employees worked each day, including
23 overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding policy and
24 practice that resulted in PLAINTIFF and AGGRIEVED EMPLOYEES being undercompensated
25 for all of their time worked. As a result, DEFENDANTS were able to and did in fact unlawfully,
26 and unilaterally round the time recorded in DEFENDANTS’ timekeeping system for PLAINTIFF
27 and AGGRIEVED EMPLOYEES in order to avoid paying these employees for all their time
28 worked, including the applicable overtime compensation for overtime worked. As a result,

1 PLAINTIFF and other AGGRIEVED EMPLOYEES, from time to time, forfeited compensation
2 for their time worked by working without their time being accurately recorded and without
3 compensation at the applicable overtime rates.

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

10 **K. Timekeeping Manipulation**

11 51. During the PAGA PERIOD, DEFENDANTS, from time-to-time, did not have an
12 immutable timekeeping system to accurately record and pay PLAINTIFF and AGGRIEVED
13 EMPLOYEES for the actual time PLAINTIFF and AGGRIEVED EMPLOYEES worked each
14 day, including regular time, overtime hours, sick pay, meal and rest breaks. As a result,
15 DEFENDANT was able to and did in fact, unlawfully, and unilaterally alter the time recorded in
16 DEFENDANT'S timekeeping system for PLAINTIFF and AGGRIEVED EMPLOYEES in order
17 to avoid paying these employees for all hours worked, applicable overtime compensation,
18 applicable sick pay, missed meal breaks and missed rest break.

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

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

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

6 55. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
7 off duty meal and rest breaks and were not fully relieved of duty for his rest and meal periods.
8 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
9 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
10 provide PLAINTIFF with a second off-duty meal period each workday in which they were
11 required by DEFENDANTS to work ten (10) hours of work. When DEFENDANTS provided
12 PLAINTIFF with a rest break, they required PLAINTIFF to remain on premises, on-duty and
13 on-call for the rest break. DEFENDANTS' policy caused PLAINTIFF to remain on-call and on-
14 duty during what was supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited
15 meal and rest breaks without additional compensation and in accordance with DEFENDANTS'
16 strict corporate policy and practice. Moreover, DEFENDANT also provided PLAINTIFF with
17 paystubs that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANTS also failed
18 to reimburse PLAINTIFF for required business expenses related to the use of her personal cell
19 phone, on behalf of and in furtherance of his employment with DEFENDANTS. To date,
20 DEFENDANTS have not fully paid PLAINTIFF the minimum, overtime and double time
21 compensation still owed to them or any penalty wages owed to them under Cal. Lab. Code § 203.
22 The amount in controversy for PLAINTIFF individually does not exceed the sum or value of
23 \$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 56. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
6 herein, the prior paragraphs of this Complaint.

7 57. 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 58. PLAINTIFF, and such persons that may be added from time to time who satisfy
18 the requirements and exhaust the administrative procedures under the Private Attorney General
19 Act, bring this Representative Action on behalf of the State of California with respect to all
20 individuals who are or previously were employed by Defendant in California and classified as
21 non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of January 25,
22 2023, and the present ("PAGA Period").

23 59. At all relevant times, for the reasons described herein, and others, PLAINTIFF and
24 the AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANTS within the
25 meaning of Labor Code Section 2699(c).

26 60. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE,
27 like PLAINTIFF, on behalf of herself and other current or former employees, to bring a civil
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1 action to recover civil penalties pursuant to the procedures specified in Labor Code Section
2 2699.3

3 61. PLAINTIFF complied with the procedures for bringing suit specified in Labor
4 Code Section 2699.3. By certified letter, return receipt requested, dated January 25, 2024,
5 PLAINTIFF gave written notice to the Labor and Workforce Development Agency (“LWDA”)
6 and to DEFENDANTS of the specific provisions of the Labor Code alleged to have been
7 violated, including the facts and theories to support the alleged violations. See **Exhibit #1**.

8 62. As of the date of this complaint, more than sixty-five (65) days after serving the
9 LWDA with notice of DEFENDANT’S violations, the LWDA has not provided any notice by
10 certified mail of its intent to investigate the DEFENDANT’S alleged violations as mandated by
11 Labor Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section
12 2699.3(a)(2)A, PLAINTIFF may commence and is authorized to pursue this cause of action.

13 63. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the
14 AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS’ violations of
15 Labor Code Section 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7,
16 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199,
17 2802 and 2804 in the following amounts:

18 a. For violation of Labor Code Sections 201, 202, 203, and 204, one hundred
19 dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period for the
20 initial violation and two hundred dollars (\$200) for AGGRIEVED
21 EMPLOYEE per pay period for each subsequent violation [penalty per Labor
22 Code Section 2699(f)(2)];

23 b. For violations of Labor Code Section 226(a), a civil penalty in the amount
24 of two hundred fifty dollars (\$250) for each AGGRIEVED EMPLOYEE for
25 any initial violation and one thousand dollars for each subsequent violation
26 [penalty per Labor Code Section 226.3];

27 c. For violations of Labor Code Sections 204, a civil penalty in the amount of
28 one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE for any initial

violation and two hundred dollars (\$200) for AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 210];

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

e. For violations of Labor Code Section 2269(a), a civil penalty in the amount of two hundred fifty dollars (\$250) per AGGRIEVED 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 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].

64. For all provisions of the Labor Code for which civil penalty is not specifically provided, Labor Code § 2699(f) imposes upon Defendant 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).

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65. 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).).

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as follows:

1. For reasonable attorney’s fees and costs of suit to the extent permitted by law, including pursuant to Labor Code § 2699, *et seq.*;
2. For civil penalties to the extent permitted by law pursuant to the Labor Code under the Private Attorneys General Act; and
3. For such other relief as the Court deems just and proper.

Dated: April 1, 2024

ZAKAY LAW GROUP, APLC
JCL LAW FIRM, APC

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