

SUMMONS

(CITACION JUDICIAL)

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

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

JBERRY HOLDINGS, INC., a California corporation; VALLEY INVENTORY SERVICE, INC., a California corporation; and DOES 1-50, Inclusive,

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

ARVELL SABIRWHITSON, an individual, on behalf of himself, and on behalf of all persons similarly situated,

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): Solano Superior Court of California
Old Solano Courthouse, 580 Texas Street, Fairfield, CA 94533

CASE NUMBER:
(Número del Caso):

CU24-01840

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: 03/11/2024
(Fecha)

Clerk, by E. De Rogatus, 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]



NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):
- ☐ 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):
- ☐ by personal delivery on (date):

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County of Solano
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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SOLANO

ARVELL SABIRWHITSON, an individual, on
behalf of himself, and on behalf of all persons
similarly situated,

Plaintiffs,

v.

JBERRY HOLDINGS, INC., a California
corporation; VALLEY INVENTORY
SERVICE, INC., a California corporation; and
DOES 1-50, Inclusive,

Defendants.

Case No: CU24-01840

REPRESENTATIVE ACTION
COMPLAINT FOR:

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

1 PLAINTIFF ARVELL SABIRWHITSON (“PLAINTIFF”), an individual, in his
2 representative capacity on behalf of himself, the State of California, and fellow current and former
3 AGGRIEVED EMPLOYEES, defined *infra*, against JBPERRY HOLDINGS, INC. and VALLEY
4 INVENTORY SERVICE, INC. (hereinafter collectively referred to as “DEFENDANTS” and/or
5 “DEFENDANT”), alleges on information and belief, except for his own acts and knowledge which
6 are based on personal knowledge, the following:

7 **INTRODUCTION**

8 1. PLAINTIFF brings this action against DEFENDANTS seeking only to recover
9 PAGA civil penalties for himself, and on behalf of all current and former aggrieved employees
10 that worked for DEFENDANTS. PLAINTIFF does **not seek to recover anything other than**
11 **penalties as permitted by California Labor Code § 2699**. To the extent that statutory violations
12 are 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.

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

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

22 4. 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 5. DEFENDANTS’ systematic pattern of wage and hour and IWC Wage Order
26 violations toward PLAINTIFF and other aggrieved employees in California include, *inter alia*:

- 27 a. Failure to provide compliant meal and rest periods;
- 28 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 reimburse for business expenses;
- i. Failure to provide accurate itemized wage statements; and
- j. Failure to timely pay wages due during, and upon termination of employment.

6. PLAINTIFF brings this representative action against DEFENDANTS on behalf of himself 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.*

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

THE PARTIES

8. Defendant JBPERRY HOLDINGS, INC. (“Defendant JBPerry Holdings”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

9. Defendant VALLEY INVENTORY SERVICE, INC. (“Defendant Valley Inventory”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

10. Defendant JBPerry Holdings and Defendant Valley Inventory 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.”

11. DEFENDANTS provide inventory services, including item level and financial auditing, throughout the state of California, including the county of Solano, where PLAINTIFF worked.

12. PLAINTIFF has been employed by DEFENDANTS in California since 2017 to the present as a non-exempt employee, paid on an hourly basis and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

1 13. PLAINTIFF brings this action in his representative capacity on behalf of the State
2 of California and on behalf of all non-exempt employees who are or previously were employed
3 by Defendant JBPerry Holdings and/or Defendant Valley Inventory in California between January
4 4, 2023 and the present (“PAGA PERIOD”).

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

8 15. PLAINTIFF and all other AGRIEVED EMPLOYEES are, and at all relevant times
9 were, employees of DEFENDANTS, within the meanings set forth in the California Labor Code
10 and the applicable Industrial Welfare Commission Wage Order.

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

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

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

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1 the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against
2 DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

3 **A. Meal Period Violations**

4 22. 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, DEFENDANT required PLAINTIFF and The AGGRIEVED EMPLOYEES to work
9 without paying them for all the time they were under DEFENDANT's control. Specifically,
10 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be
11 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 the 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. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and the
16 AGGRIEVED EMPLOYEES for all time worked is evidenced by DEFENDANT's business
17 records.

18 23. From time to time during the PAGA PERIOD, as a result of their rigorous work
19 schedules and DEFENDANT's 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 DEFENDANT for more than five (5)
23 hours during some shifts without receiving a meal break. Further, DEFENDANT fails to provide
24 PLAINTIFF and The AGGRIEVED EMPLOYEES with a second off-duty meal period for some
25 workdays in which these employees are required by DEFENDANT to work ten (10) hours of
26 work. The nature of the work performed by PLAINTIFF and the AGGRIEVED EMPLOYEES
27 does not qualify for the limited and narrowly construed "on-duty" meal period exception. When
28 they were provided with meal periods, PLAINTIFF and the AGGRIEVED EMPLOYEES were,

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

6 **B. Rest Period Violations**

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

22 **C. Unreimbursed Business Expenses**

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

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

5 26. In the course of their employment, DEFENDANT required PLAINTIFF and
6 AGGRIEVED EMPLOYEES to use their personal cell phones, personal vehicles, and
7 maintenance of uniforms as a result of and in furtherance of their job duties, including but not
8 limited to performing work-related tasks. However, DEFENDANT unlawfully failed to reimburse
9 PLAINTIFF and AGGRIEVED EMPLOYEES for the use of their personal cell phones, personal
10 vehicles, and maintenance of uniforms. As a result, in the course of their employment with
11 DEFENDANT, the PLAINTIFF and AGGRIEVED EMPLOYEES incurred unreimbursed
12 business expenses that included, but were not limited to, costs related to the use of their personal
13 cell phones, personal vehicles, and maintenance of uniforms.

14 **D. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

15 27. During the PAGA PERIOD, from time-to-time DEFENDANT failed and
16 continues to fail to accurately pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all hours
17 worked.

18 28. During the PAGA PERIOD, from time-to-time DEFENDANT required
19 PLAINTIFF and the AGGRIEVED EMPLOYEES to perform pre-shift or post-shift work,
20 including but not limited to, time spent undergoing off-the-clock COVID-19 health screenings
21 and traveling to and from work sites. This resulted in PLAINTIFF and the AGGRIEVED
22 EMPLOYEES having to work while off-the-clock.

23 29. DEFENDANT directed and directly benefited from the undercompensated off-the-
24 clock work performed by PLAINTIFF and the AGGRIEVED EMPLOYEES.

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

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

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

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

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

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

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

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

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

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

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

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

1 40. 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 AGGRIEVED EMPLOYEES at the correct rate of pay for all
5 overtime and double time worked, meal and rest period premiums, and sick pay. This uniform
6 policy and practice of DEFENDANTS is intended to purposefully avoid the payment of the
7 correct overtime and double time compensation, meal and rest period premiums, and sick pay as
8 required by California law which allowed DEFENDANTS to illegally profit and gain an unfair
9 advantage over competitors who complied with the law. To the extent equitable tolling operates
10 to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANTS, the PAGA PERIOD
11 should be adjusted accordingly.

12 **F. Wage Statement Violations**

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

21 42. From time to time during the PAGA PERIOD, when PLAINTIFF and the
22 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurately for missed
23 meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed
24 to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with complete and accurate wage
25 statements which failed to show, among other things, all deductions, the total hours worked and
26 all applicable hourly rates in effect during the pay period, and the corresponding amount of time
27 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
28 periods.

1 43. In addition to the foregoing, DEFENDANT, from time to time, failed to provide
2 PLAINTIFF and the AGGRIEVED EMPLOYEES Members with wage statements that comply
3 with Cal. Lab. Code § 226.

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

8 **G. Unlawful Rounding Practices**

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

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

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H. Timekeeping Manipulation

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

48. As a result, PLAINTIFF and other members of 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.

49. 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 members of 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.

50. 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 members of 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

51. Pursuant to California Labor Code section 204, PLAINTIFF and the AGGRIEVED EMPLOYEES were entitled to timely payment of wages during their employment.

1 PLAINTIFF and the AGGRIEVED EMPLOYEES, from time to time, did not receive payment
2 of all wages, including, but not limited to, overtime wages, minimum wages, meal period
3 premium wages, and rest period premium wages within permissible time period.

4 **J. Unlawful Deductions**

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

9 **K. Sick Pay Violations**

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

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

21 55. 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 DEFENDANT 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 DEFENDANT
26 required him to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF with a
27 rest break, they required PLAINTIFF to remain on premises, on-duty, and on-call for the rest
28 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 DEFENDANT'S strict
3 corporate policy and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs
4 that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANT failed to reimburse
5 PLAINTIFF for required business expenses related to the use of his personal cell phone, personal
6 vehicles, and maintenance of uniforms in violation of Cal. Lab. Code § 2802. To date,
7 DEFENDANT has not fully paid PLAINTIFF the minimum, overtime and double time
8 compensation still owed to him or any penalty wages owed to him under Cal. Lab. Code § 203.
9 The amount in controversy for PLAINTIFF individually does not exceed the sum or value of
10 \$75,000.

11 **FIRST CAUSE OF ACTION**

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

13 **(Cal. Lab. Code §§2698 et seq.)**

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

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

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

26 58. 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 59. 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 60. 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 61. PLAINTIFF complied with the procedures for bringing suit specified in Labor
9 Code Section 2699.3. By certified letter, return receipt requested, dated January 4, 2024,
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 62. 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 63. PLAINTIFF, and such persons that may be added from time to time who satisfy
20 the requirements and exhaust the administrative procedures under the Private Attorney General
21 Act, brings this action in his representative capacity on behalf of the State of California and on
22 behalf of all non-exempt employees who are or previously were employed by Defendant JBPerry
23 Holdings and/or Defendant Valley Inventory in California (the "AGGRIEVED EMPLOYEES")
24 between January 4, 2023 and the present ("PAGA PERIOD").

25 64. The policies, acts and practices heretofore described were and are an unlawful
26 business act or practice because DEFENDANTS (a) failed to pay AGGRIEVED EMPLOYEES
27 minimum wages and overtime wages, (b) failed to provide AGGRIEVED EMPLOYEES legally
28 required meal and rest breaks, (c) failed to pay AGGRIEVED EMPLOYEES at the correct
regular rate of pay, (d) failed to pay AGGRIEVED EMPLOYEES for all time worked, and (e)
failed to timely pay wages, all in violation of the applicable Labor Code sections listed in Labor

1 Code §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5,
2 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197,
3 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare
4 Commission Wage Order(s), and thereby gives rise to statutory penalties as a result of such
5 conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code
6 Private Attorney General Act of 2004 as the representative of the State of California for the
7 illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

8 65. For all provisions of the Labor Code for which civil penalty is not specifically
9 provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred dollars
10 (\$100) for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two
11 hundred dollars (\$200) for each AGGRIEVED EMPLOYEE per pay period for each subsequent
12 violation. PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to an award of
13 reasonable attorney's fees and costs in connection with their claims for civil penalties pursuant
14 to Labor Code Section 2699(g)(1).

15 66. To the extent that any of the conduct and violations alleged herein did not affect
16 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
17 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30
18 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.
19 5th 745, 751 ["PAGA allows an "aggrieved employee"—a person affected by at least one Labor
20 Code violation committed by an employer—to pursue penalties for all the Labor Code violations
21 committed by that employer."], Emphasis added, reh'g denied (June 13, 2018).)

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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

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

JCL LAW FIRM, APC

By: 
Jean-Claude Lapuyade
Attorney for PLAINTIFF