

SUMMONS

(CITACION JUDICIAL)

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

E-FILED
8/18/2023 11:50 AM
Clerk of Court
Superior Court of CA,
County of Santa Clara
23CV421258
Reviewed By: P. Newton
Envelope: 12790891

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

TOWNSHIP BUILDING SERVICES, INC., a California corporation; (Additional Parties Attachment form is attached)

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

SOPHINA BLESSED PHILIPINA, an individual, on behalf of herself and on behalf of the State of California other 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): Santa Clara Superior Court

Downtown Superior Court - 191 N. First Street, San Jose, CA 95113

CASE NUMBER:
(Número del Caso):

23CV421258

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:

(Fecha) 8/18/2023 11:50 AM Clerk of Court

Clerk, by

(Secretario)

P. Newton

, Deputy

(Adjunto)

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

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

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

- ☐ 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):

SHORT TITLE: Philipina v. Township Building Services, Inc., et al.	CASE NUMBER:
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INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

☐ Plaintiff
 ☒ Defendant
 ☐ Cross-Complainant
 ☐ Cross-Defendant

TOWNSHIP RETAIL SERVICES, INCORPORATED, a California corporation; TOWNSHIP ENGINEERING, INC., a California corporation; and DOES 1-50, Inclusive,

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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

23CV421258

SOPHINA BLESSED PHILIPINA, an
individual, on behalf of herself and on behalf of
the State of California other Aggrieved
Employees,

Plaintiff,

v.

TOWNSHIP BUILDING SERVICES, INC., a
California corporation; TOWNSHIP RETAIL
SERVICES, INCORPORATED, a California
corporation; TOWNSHIP ENGINEERING,
INC., a California 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

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1 PLAINTIFF SOPHINA BLESSED PHILIPINA (“PLAINTIFF”), an individual, in her
2 representative capacity and on behalf of herself, the State of California, and fellow current and
3 former AGGRIEVED EMPLOYEES, defined *supra*, against TOWNSHIP BUILDING
4 SERVICES, INC., a California corporation, TOWNSHIP RETAIL SERVICES,
5 INCORPORATED, a California corporation, and/or TOWNSHIP ENGINEERING, INC., a
6 California corporation; (“DEFENDANT” and/or “DEFENDANTS”), alleges on information and
7 belief, except for her own acts and knowledge which are based on personal knowledge, the
8 following:

9 **INTRODUCTION**

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

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

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

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

1. Violation of Labor Code section 1102.5

4. PLAINTIFF brings this individual and representative action against DEFENDANTS on behalf of herself 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 TOWNSHIP BUILDING SERVICES, INC. (“Defendant Township Building Services”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

7. Defendant TOWNSHIP RETAIL SERVICES, INCORPORATED (“Defendant Township Retail Services”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

8. Defendant TOWNSHIP HOSPITALITY, INC. (“Defendant Township Hospitality”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

9. Defendant TOWNSHIP ENGINEERING, INC. (“Defendant Township Engineering”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

10. Defendant Township Building Services, Defendant Township Retail Services, Defendant Township Hospitality and Defendant Township Engineering 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 janitorial, landscaping and building maintenance services to their clients in the state of California, including in the county of Santa Clara, where PLAINTIFF worked.

/ / /

1 12. PLAINTIFF was employed by DEFENDANT in California from June of 2022 to
2 July of 2022 as a non-exempt employee, paid an hourly basis and entitled to the legally required
3 meal and rest periods and payment of minimum and overtime wages due for all time worked.

4 13. PLAINTIFF brings this action as an individual for herself and in her representative
5 capacity on behalf of the State of California and on behalf of all individuals who are or previously
6 were employed by DEFENDANTS in California and classified as non-exempt employees who
7 suffered one or more Labor Code violations enumerated in Labor Code §§ 2698, *et. seq.*
8 (hereinafter “AGGRIEVED EMPLOYEES”) and who worked for Defendant Township Building
9 Services, Defendant Township Retail Services, Defendant Township Hospitality, and or
10 Defendant Township Engineering between June of 2022, and the present (“PAGA Period”).

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

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

17 16. Each of the fictitiously named defendants participated in the acts alleged in this
18 Second Amended Complaint. The true names and capacities of the Defendants named as DOES
19 1 THROUGH 50, inclusive, are presently unknown to PLAINTIFF. PLAINTIFF will amend this
20 Second Amended Complaint, setting forth the true names and capacities of these fictitiously
21 named Defendants when their true names are ascertained. PLAINTIFF is informed and believes,
22 and on that basis alleges, that each of the fictitious Defendants have participated in the acts alleged
23 in this Second Amended Complaint.

24 17. DEFENDANTS, including DOES 1 THROUGH 50 (hereinafter collectively
25 “DEFENDANTS”), were PLAINTIFF’S employers or persons acting on behalf of PLAINTIFF’S
26 employer, within the meaning of California Labor Code § 558, who violated or caused to be
27 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
28 hours and days of work in any order of the Industrial Welfare Commission and, as such, are

1 subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all
2 relevant times.

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

8 **JOINT EMPLOYER**

9 19. The Private Attorney General Act (“PAGA”) permits an aggrieved employee to
10 enforce any provision of the California Labor Code that provides for a civil penalty. (*Lab. Code*
11 § 2699(a).)

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

16 21. Section 1197.1 of the Labor Code provides that “[a]ny employer *or other person*
17 acting either individually or as an officer, agent, or employee of another person, who pays or
18 causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
19 local law, or by an order of the commission shall be subject to a civil penalty...” (*Lab. Code* §
20 1197.1(a).)

21 22. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have
22 held that a corporate employer’s owners, officers and directors, are subject to civil penalties for
23 the employer’s failure to pay appropriate wages to its employees, and, since liability under either
24 558 or 1197.1 does not depend on a finding of an alter ego, no alter ego allegations or findings
25 are necessary. *Atempa v. Pedrazzani*, (2018) 27 Cal.App.5th 809; see generally *Ochoa-Hernandez*
26 *v. Cjaders Food, Inc.* (2009 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203
27 Cal.App.4th 1112, 1145-1146.

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1 23. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS,
2 and each of them, are subject to civil penalties for their failure to pay PLAINTIFF and
3 AGGRIEVED EMPLOYEES the appropriate wages as complained of herein and proximately
4 caused the complaints, injuries, and damages alleged herein.

5 24. At all relevant times, each DEFENDANT, whether named or fictitious, was the
6 agent, employee or other person acting on behalf of each other DEFENDANT, and, in
7 participating in the acts alleged in this Second Amended Complaint, acted within the scope of
8 such agency or employment and ratified the acts of the other.

9 25. Each DEFENDANT, whether named or fictitious, exercised control over
10 PLAINTIFF'S wages, working hours, and/or working conditions.

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

14 **JURISDICTION AND VENUE**

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

19 28. Venue is proper in this Court pursuant to California Code of Civil Procedure,
20 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS, resides
21 in this County, and DEFENDANTS (i) currently maintain and at all relevant times maintained
22 offices and facilities in this County and/or conduct substantial business in this County, and (ii)
23 committed the wrongful conduct herein alleged in this County against PLAINTIFF and
24 AGGRIEVED EMPLOYEES.

25 **THE CONDUCT**

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

1 failed to provide legally compliant meal and rest periods, failed to accurately compensate
2 PLAINTIFF and AGGRIEVED EMPLOYEES for missed meal and rest periods, failed to pay
3 PLAINTIFF and AGGRIEVED EMPLOYEES for all time worked, failed compensate
4 PLAINTIFF and AGGRIEVED EMPLOYEES for off-the-clock work, failed to pay PLAINTIFF
5 and AGGRIEVED EMPLOYEES overtime at the correct regular rate of pay, failed to compensate
6 PLAINTIFF and AGGRIEVED EMPLOYEES meal rest premiums at the regular rate, failed to
7 reimburse PLAINTIFF and other AGGRIEVED EMPLOYEES for business expenses, and failed
8 to issue to PLAINTIFF and AGGRIEVED EMPLOYEES with accurate itemized wage statements
9 showing, among other things, all applicable hourly rates in effect during the pay periods and the
10 corresponding amount of time worked at each hourly rate. DEFENDANT's uniform policies and
11 practices are intended to purposefully avoid the accurate and full payment for all time worked as
12 required by California law which allows DEFENDANT to illegally profit and gain an unfair
13 advantage over competitors who comply with the law. To the extent equitable tolling operates to
14 toll claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD
15 should be adjusted accordingly.

16 **A. Meal Period Violations**

17 30. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
18 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning
19 the time during which an employee is subject to the control of an employer, including all the time
20 the employee is suffered or permitted to work. From time to time during the PAGA PERIOD,
21 DEFENDANT required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying
22 them for all the time they were under DEFENDANT's control. Specifically, DEFENDANT
23 required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF'S
24 off-duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a
25 partial lunch. As a result, the PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited
26 minimum wage and overtime compensation by regularly working without their time being
27 accurately recorded and without compensation at the applicable minimum wage and overtime
28 rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other

1 AGGRIEVED EMPLOYEES for all time worked is evidenced by DEFENDANT's business
2 records.

3 31. From time to time during the PAGA PERIOD, as a result of their rigorous work
4 schedules and DEFENDANT's inadequate staffing practices, PLAINTIFF and other
5 AGGRIEVED EMPLOYEES are from time to time unable to take thirty (30) minute off duty
6 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
7 AGGRIEVED EMPLOYEES are required to perform work as ordered by DEFENDANT for more
8 than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANT
9 fails to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal
10 period for some workdays in which these employees are required by DEFENDANT to work ten
11 (10) hours of work. The nature of the work performed by PLAINTIFF and other AGGRIEVED
12 EMPLOYEES does not qualify for the limited and narrowly construed "on-duty" meal period
13 exception. When they were provided with meal periods, PLAINTIFF and other AGGRIEVED
14 EMPLOYEES were, from time to time, required to remain on premises, on duty, on call, and on
15 the premises. Further, DEFENDANT required PLAINTIFF and the AGGRIEVED EMPLOYEES
16 Members to maintain cordless communication devices on them during meal periods in order to
17 receive and respond to work-related communications. DEFENDANT's failure to provide
18 PLAINTIFF and the AGGRIEVED EMPLOYEES Members with legally required meal breaks is
19 evidenced by DEFENDANT's business records. PLAINTIFF and AGGRIEVED EMPLOYEES
20 therefore forfeit meal breaks without additional compensation and in accordance with
21 DEFENDANT's strict corporate policy and practice.

22 **B. Rest Period Violations**

23 32. From time to time during the PAGA PERIOD, PLAINTIFF and other
24 AGGRIEVED EMPLOYEES were also required to work in excess of four (4) hours without being
25 provided ten (10) minute rest periods as a result of their rigorous work requirements and
26 DEFENDANT's inadequate staffing. Further, for the same reasons, these employees were denied
27 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
28 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some

1 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and
2 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
3 time to time. When they were provided with rest breaks, PLAINTIFF and other AGGRIEVED
4 EMPLOYEES were, from time to time, required to remain on premises, on duty and/or on call
5 and/or on the premises. Further, DEFENDANT required PLAINTIFF and the AGGRIEVED
6 EMPLOYEES Members to maintain cordless communication devices on them during their rest
7 periods in order to receive and respond to work-related communications. PLAINTIFF and other
8 AGGRIEVED EMPLOYEES were also not provided with one-hour wages *in lieu* thereof. As a
9 result of their rigorous work schedules and DEFENDANT's inadequate staffing, PLAINTIFF and
10 other AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods by
11 DEFENDANT and DEFENDANT's managers.

12 **C. Unreimbursed Business Expenses**

13 33. DEFENDANT as a matter of corporate policy, practice, and procedure,
14 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
15 and the other AGGRIEVED EMPLOYEES for required business expenses incurred by the
16 PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of discharging their
17 duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers are
18 required to indemnify employees for all expenses incurred in the course and scope of their
19 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
20 employee for all necessary expenditures or losses incurred by the employee in direct consequence
21 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
22 even though unlawful, unless the employee, at the time of obeying the directions, believed them
23 to be unlawful."

24 34. In the course of their employment, DEFENDANT required PLAINTIFF and other
25 AGGRIEVED EMPLOYEES to incur personal expenses for the use of their personal cell phones
26 and vehicles as a result of and in furtherance of their job duties. Specifically, PLAINTIFF and
27 other AGGRIEVED EMPLOYEES were required to use their own cell phones and vehicles in
28 order to perform work related tasks. However, DEFENDANT unlawfully failed to reimburse

1 PLAINTIFF and other AGGRIEVED EMPLOYEES for the personal expenses incurred for the
2 use of their personal cell phones and vehicles. As a result, in the course of their employment with
3 DEFENDANT, the PLAINTIFF and other AGGRIEVED EMPLOYEES incurred unreimbursed
4 business expenses that included, but were not limited to, costs related to the use of their personal
5 cell phones and vehicles, all on behalf of and for the benefit of DEFENDANT.

6 **D. Wage Statement Violations**

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

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

23 37. In addition to the foregoing, DEFENDANT, from time to time, failed to provide
24 PLAINTIFF and the AGGRIEVED EMPLOYEES Members with wage statements that comply
25 with Cal. Lab. Code § 226.

26 38. As a result, DEFENDANT issued PLAINTIFF and AGGRIEVED EMPLOYEES
27 with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANT's violations are
28

1 knowing and intentional, were not isolated due to an unintentional payroll error due to clerical or
2 inadvertent mistake.

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

4 39. During the PAGA PERIOD, from time-to-time DEFENDANT failed and
5 continues to fail to accurately pay PLAINTIFF and AGGRIEVED EMPLOYEES for all hours
6 worked.

7 40. During the PAGA PERIOD, from time-to-time DEFENDANT required
8 PLAINTIFF and AGGRIEVED EMPLOYEES to perform pre-shift or post-shift work, including
9 but not limited to, time spent submitting to pre-shift Covid-19 screenings. This resulted in
10 PLAINTIFF and AGGRIEVED EMPLOYEES to have to work while off-the-clock.

11 41. DEFENDANT directed and directly benefited from the undercompensated off-the-
12 clock work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

13 42. DEFENDANT controlled the work schedules, duties, and protocols, applications,
14 assignments, and employment conditions of PLAINTIFF and AGGRIEVED EMPLOYEES.

15 43. DEFENDANT was able to track the amount of time PLAINTIFF and
16 AGGRIEVED EMPLOYEES spent working; however, DEFENDANT failed to document, track,
17 or pay PLAINTIFF and AGGRIEVED EMPLOYEES all wages earned and owed for all the work
18 they performed.

19 44. PLAINTIFF and AGGRIEVED EMPLOYEES were non-exempt employees,
20 subject to the requirements of the California Labor Code.

21 45. DEFENDANT's policies and practices deprived PLAINTIFF and the other
22 AGGRIEVED EMPLOYEES of all minimum regular, overtime, and double time wages owed for
23 the off-the-clock work activities. Because PLAINTIFF and AGGRIEVED EMPLOYEES
24 typically worked over forty (40) hours in a workweek, and more than eight (8) hours per day,
25 DEFENDANT's policies and practices also deprived them of overtime pay.

26 46. DEFENDANT knew or should have known that PLAINTIFF and AGGRIEVED
27 EMPLOYEES' off-the-clock work was compensable under the law.

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1 47. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES forfeited wages due to
2 them for all hours worked at DEFENDANT's direction, control, and benefit for the time spent
3 working while off-the-clock, including but not limited to, time spent submitting to Covid-19
4 screenings. DEFENDANT's uniform policy and practice to not pay PLAINTIFF and
5 AGGRIEVED EMPLOYEES wages for all hours worked in accordance with applicable law is
6 evidenced by DEFENDANT's business records.

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

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

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

22 50. In violation of the applicable sections of the California Labor Code and the
23 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
24 matter of company policy, practice, and procedure, intentionally and knowingly failed to
25 compensate PLAINTIFF and AGGRIEVED EMPLOYEES at the correct rate of pay for all
26 overtime and double time worked, meal and rest period premiums, and sick pay. This uniform
27 policy and practice of DEFENDANT is intended to purposefully avoid the payment of the correct
28 overtime and double time compensation, meal and rest period premiums, and sick pay as required

1 by California law which allowed DEFENDANT to illegally profit and gain an unfair advantage
2 over competitors who complied with the law. To the extent equitable tolling operates to toll
3 claims by the AGGRIEVED EMPLOYEES members against DEFENDANT, the PAGA
4 PERIOD should be adjusted accordingly.

5 **G. Violations for Untimely Payment of Wages**

6 51. Pursuant to California Labor Code section 204, PLAINTIFF and the
7 AGGRIEVED EMPLOYEES members were entitled to timely payment of wages during their
8 employment. PLAINTIFF and the AGGRIEVED EMPLOYEES members, from time to time, did
9 not receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
10 meal period premium wages, and rest period premium wages within permissible time period.

11 **H. Unlawful Deductions**

12 52. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
13 and AGGRIEVED EMPLOYEES' pay without explanations and without authorization to do so
14 or notice to PLAINTIFF and the AGGRIEVED EMPLOYEES Members. As a result,
15 DEFENDANTS violated Labor Code § 221.

16 **I. Unlawful Rounding Practices**

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

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

7 **J. Timekeeping Manipulation**

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

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

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

26 58. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES forfeited wages due
27 them for all hours worked at DEFENDANTS' direction, control and benefit for the time the
28 timekeeping system was inoperable. DEFENDANTS' uniform policy and practice to not pay

1 PLAINTIFF and AGGRIEVED EMPLOYEES wages for all hours worked in accordance with
2 applicable law is evidenced by DEFENDANTS' business records.

3 59. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
4 off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.
5 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
6 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
7 provide PLAINTIFF with a second off-duty meal period each workday in which she was required
8 by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF
9 with a rest break, they required PLAINTIFF to remain on-duty and on-call for the rest break.
10 DEFENDANT policy caused PLAINTIFF to remain on-call and on-duty during what was
11 supposed to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks
12 without additional compensation and in accordance with DEFENDANT'S strict corporate policy
13 and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that failed to
14 comply with Cal. Lab. Code § 226. Further, DEFENDANT also failed to reimburse PLAINTIFF
15 for required business expenses related to the personal expenses incurred for the use of her personal
16 cell phone and vehicle, on behalf of and in furtherance of her employment with DEFENDANT.
17 To date, DEFENDANT has not fully paid PLAINTIFF the minimum, overtime and double time
18 compensation still owed to her or any penalty wages owed to her under Cal. Lab. Code § 203.

19 **K. Illegal Restriction on Disclosure**

20 60. During the PAGA PERIOD DEFENDANTS prohibited PLAINTIFF from
21 disclosing any non-public information of commercial value. This expressly includes without
22 limitation, her wages, the identifies of her coworkers, training methods, operation methods, office
23 protocols and systems, and programs and systems. PLAINTIFF was subject to that prohibition
24 throughout her employment. Even after the termination of her employment with DEFENDANT,
25 PLAINTIFF remains subject to that prohibition.

26 61. The restrictions imposed by DEFENDANTS lack any exception to permit any of
27 the disclosures discussed in Labor Code §§232 and 1102.5(a). Simply, DEFENDANTS'
28 confidentiality policy and practice prohibits employees from disclosing any non-public

1 information of commercial value to any entity regardless of whether employees believe that the
2 information discloses a violation of state or federal statute, or a violation of or noncompliance
3 with a local, state or federal rule or regulation.

4 62. On information and belief, DEFENDANTS conduct has been substantially the
5 same at all relevant times throughout the state of California.

6 63. Labor Code § 2699(a) permits an aggrieved employee to recover any civil penalty
7 to be assessed and collected by the LWDA for a violation of the Labor Code on behalf of herself
8 or herself and other current or former employees pursuant to the procedures set forth in Labor
9 Code § 2699.3.

10 64. PLAINTIFF seeks to recover penalties from DEFENDANTS for their violations
11 as alleged herein pursuant to Labor Code §§ 232, 1102.5 on behalf of herself and on behalf of
12 AGGRIEVED EMPLOYEES that may have suffered the same or similar harm.

13 65. The amount in controversy for PLAINTIFF individually does not exceed the sum
14 or value of \$75,000.

15 **FIRST CAUSE OF ACTION**

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

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

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

19 66. PLAINTIFF and the AGGRIEVED EMPLOYEES reallege and incorporate by this
20 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

1 68. PLAINTIFF brings this individual PAGA and Representative PAGA Action on
2 behalf of the State of California with respect to herself and all other current and former
3 AGGRIEVED EMPLOYEES employed by DEFENDANTS during the PAGA PERIOD.

4 69. At all relevant times, for the reasons described herein, and others, PLAINTIFF and
5 the AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANTS within the
6 meaning of Labor Code Section 2699(c).

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

10 71. PLAINTIFF complied with the procedures for bringing suit specified in Labor
11 Code Section 2699.3. By certified letter, return receipt requested, dated June 13, 2023,
12 PLAINTIFF gave written notice to the Labor and Workforce Development Agency ("LWDA")
13 and to DEENDANTS of the specific provisions of the Labor Code alleged to have been violated,
14 including the facts and theories to support the alleged violations.

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

21 73. PLAINTIFF, and such persons that may be added from time to time who satisfy the
22 requirements and exhaust the administrative procedures under the Private Attorney General Act,
23 bring this Representative Action on behalf of the State of California with respect to herself and all
24 employees who worked for Defendant in California during the time period of June of 2023, until
the present (the "AGGRIEVED EMPLOYEES").

25 74. 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

1 timely pay wages, all in violation of the applicable Labor Code sections listed in Labor Code
2 §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6,
3 221, 226, 226.2, 226.3, 226.7, 227.3, 232, 246, 510, 512, 558, 1102.5, 1174(d), 1174.5, 1194,
4 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, and the applicable Industrial Wage
5 Order(s), and thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF
6 hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney General
7 Act of 2004 as the representative of the State of California for the illegal conduct perpetrated on
8 PLAINTIFF and the other AGGRIEVED EMPLOYEES.

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

16 76. To the extent that any of the conduct and violations alleged herein did not affect
17 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
18 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30
19 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.
20 5th 745, 751 ["PAGA allows an "aggrieved employee"—a person affected by at least one Labor
21 Code violation committed by an employer—to pursue penalties for all the Labor Code violations
22 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.

By:  _____
Jean-Claude Lapuyade
Attorney for PLAINTIFF