

SUMMONS

(CITACION JUDICIAL)

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

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

STONELEDGE FURNITURE LLC, a Wisconsin limited liability company; and DOES 1-50, Inclusive,

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

RICARDO BRITO, 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): San Francisco Superior Court

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

CASE NUMBER:
(Número del Caso):

CGC-23-608656

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) **08/28/2023**

Clerk, by **DAEJA ROGERS**, 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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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

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

Plaintiff,

v.

STONELEDGE FURNITURE LLC, a
Wisconsin limited liability company; and
DOES 1-50, Inclusive,

Defendants.

Case No:

REPRESENTATIVE ACTION
COMPLAINT FOR:

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

ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

08/28/2023

Clerk of the Court

BY: DAEJA ROGERS

Deputy Clerk

CGC-23-608656

1 PLAINTIFF RICARDO BRITO (“PLAINTIFF”), an individual, in his representative
2 capacity and on behalf of himself, the State of California, and fellow current and former
3 AGGRIEVED EMPLOYEES, defined *supra*, against STONELEDGE FURNITURE LLC, a
4 Wisconsin limited liability company (“DEFENDANT” and/or “DEFENDANTS”), alleges on
5 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 individual and representative action pursuant to the Private
9 Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”) on behalf of
10 himself as an individual and other current and former aggrieved employees of DEFENDANT for
11 engaging in a pattern 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.

27 4. PLAINTIFF brings this individual and representative action against
28 DEFENDANT on behalf of himself and all other aggrieved employees of DEFENDANT in

1 California seeking all civil penalties and unpaid wages permitted pursuant to California Labor
2 Code § 2699, *et seq.*

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

5 **THE PARTIES**

6 6. Defendant STONELEDGE FURNITURE, LLC (“DEFENDANT” or
7 “DEFENDANT”) is a Wisconsin limited liability company that at all relevant times mentioned
8 herein conducted and continues to conduct substantial and regular business throughout California.

9 7. DEFENDANT was the employer of PLAINTIFF as evidenced by the documents
10 issued to PLAINTIFF and by the company PLAINTIFF performed work for.

11 8. DEFENDANT owns and operates furniture stores throughout the state of
12 California, including in the county of San Francisco.

13 9. PLAINTIFF was employed by DEFENDANT in California from March of 2023
14 to January of 2023, paid in part an hourly wage, commission-based compensation, non-
15 discretionary bonuses, and entitled to the legally required meal and rest periods and payment of
16 minimum and overtime wages due for all time worked.

17 10. PLAINTIFF brings this action in as an individual for himself and in his
18 representative capacity on behalf of the State of California and on behalf of all non-exempt and/or
19 commission-based employees employed by DEFENDANT who suffered one or more Labor Code
20 violations enumerated in Labor Code §§ 2698, *et. seq.* (hereinafter “AGGRIEVED
21 EMPLOYEES”) between June 22, 2022, and the present (“PAGA Period”).

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

25 12. PLAINTIFF and all other AGRIEVED EMPLOYEES are, and at all relevant times
26 were, employees of DEFENDANT, within the meanings set forth in the California Labor Code
27 and the applicable Industrial Welfare Commission Wage Order.

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

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

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

JURISDICTION AND VENUE

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

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

THE CONDUCT

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

A. Meal Period Violations

19. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time to time during the PAGA PERIOD, DEFENDANT required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them for all the time they were under DEFENDANT’s control. Specifically, DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF’S off-duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a

1 partial lunch. As a result, the PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited
2 minimum wage and overtime compensation by regularly working without their time being
3 accurately recorded and without compensation at the applicable minimum wage and overtime
4 rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other
5 AGGRIEVED EMPLOYEES for all time worked is evidenced by DEFENDANT's business
6 records.

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

26 **B. Rest Period Violations**

27 21. From time to time during the PAGA PERIOD, PLAINTIFF and other
28 AGGRIEVED EMPLOYEES were also required to work in excess of four (4) hours without being

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

16 **C. Unreimbursed Business Expenses**

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

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23. In the course of their employment, DEFENDANT required PLAINTIFF and other AGGRIEVED EMPLOYEES to incur personal expenses for the use of their personal cell phones as a result of and in furtherance of their job duties. Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES were required to use their own cell phones in order to perform work related tasks. However, DEFENDANT unlawfully failed to reimburse PLAINTIFF and other AGGRIEVED EMPLOYEES for the personal expenses incurred for the use of their personal cell phones. As a result, in the course of their employment with DEFENDANT, the PLAINTIFF and other AGGRIEVED EMPLOYEES incurred unreimbursed business expenses that included, but were not limited to, costs related to the use of their personal cell phones, all on behalf of and for the benefit of DEFENDANT.

D. Wage Statement Violations

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

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

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26. Further, from time to time during the PAGA PERIOD, DEFENDANT included, among other things, "Vacation," "Sick Pay," and "Personal Day" hours into the computation of total hours worked for purposes of Cal. Lab. Code §226(a)(2), notwithstanding the fact that Vacation, Sick Pay, and Personal Day hours are not considered hours worked. DEFENDANT'S inclusion of, among other things, Vacation, Sick Pay, and Personal Day hours into the total hours worked in itemized wage statements issued to PLAINTIFF and other AGGRIEVED EMPLOYEES violates Cal. Lab. Code §226(a)(2).

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

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

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

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

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

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

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

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

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

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

5 35. DEFENDANT's 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 DEFENDANT's 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 DEFENDANT's direction, control, and benefit for the time spent
14 working while off-the-clock, including but not limited to, time spent submitting to Covid-19
15 screenings. DEFENDANT's uniform policy and practice to not pay PLAINTIFF and
16 AGGRIEVED EMPLOYEES wages for all hours worked in accordance with applicable law is
17 evidenced by DEFENDANT's business records.

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

20 38. From time to time during the PAGA PERIOD, DEFENDANT failed and continues
21 to fail to accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES
22 for their overtime and double time hours worked, meal and rest period premiums, and redeemed
23 sick pay. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages
24 due to them for working overtime without compensation at the correct overtime and double time
25 rates, meal and rest period premiums, and redeemed sick pay rates. DEFENDANT's uniform
26 policy and practice not to pay the AGGRIEVED EMPLOYEES Members at the correct rate for
27 all overtime and double time worked, meal and rest period premiums, and redeemed sick pay in
28 accordance with applicable law is evidenced by DEFENDANT's 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. In violation of the applicable sections of the California Labor Code and the
6 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
7 matter of company policy, practice, and procedure, intentionally and knowingly failed to
8 compensate PLAINTIFF and AGGRIEVED EMPLOYEES at the correct rate of pay for all
9 overtime and double time worked, meal and rest period premiums, and sick pay. This uniform
10 policy and practice of DEFENDANT is intended to purposefully avoid the payment of the correct
11 overtime and double time compensation, meal and rest period premiums, and sick pay as required
12 by California law which allowed DEFENDANT to illegally profit and gain an unfair advantage
13 over competitors who complied with the law. To the extent equitable tolling operates to toll
14 claims by the AGGRIEVED EMPLOYEES members against DEFENDANT, the PAGA
15 PERIOD should be adjusted accordingly.

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

17 41. Pursuant to California Labor Code section 204, PLAINTIFF and the
18 AGGRIEVED EMPLOYEES members were entitled to timely payment of wages during their
19 employment. PLAINTIFF and the AGGRIEVED EMPLOYEES members, from time to time, did
20 not receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
21 meal period premium wages, and rest period premium wages within permissible time period.

22 **H. Unlawful Deductions**

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

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1 **I. Unlawful Rounding Practices**

2 43. During the AGGRIEVED EMPLOYEES PERIOD, DEFENDANTS did not have
3 in place an immutable timekeeping system to accurately record and pay PLAINTIFF and other
4 AGGRIEVED EMPLOYEES for the actual time these employees worked each day, including
5 overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding policy and
6 practice that resulted in PLAINTIFF and AGGRIEVED EMPLOYEES being undercompensated
7 for all of their time worked. As a result, DEFENDANTS were able to and did in fact unlawfully,
8 and unilaterally round the time recorded in DEFENDANT’S timekeeping system for PLAINTIFF
9 and AGGRIEVED EMPLOYEES in order to avoid paying these employees for all their time
10 worked, including the applicable overtime compensation for overtime worked. As a result,
11 PLAINTIFF and other AGGRIEVED EMPLOYEES, from time to time, forfeited compensation
12 for their time worked by working without their time being accurately recorded and without
13 compensation at the applicable overtime rates.

14 44. Further, the mutability of DEFENDANT’S timekeeping system and unlawful
15 rounding policy and practice resulted in PLAINTIFF and AGGRIEVED EMPLOYEES’ time
16 being inaccurately recorded. As a result, from time to time, DEFENDANT’S unlawful rounding
17 policy and practice caused PLAINTIFF and AGGRIEVED EMPLOYEES to perform work as
18 ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-
19 duty meal break.

20 **J. Timekeeping Manipulation**

21 45. During the PAGA PERIOD, DEFENDANTS, from time-to-time, did not have an
22 immutable timekeeping system to accurately record and pay PLAINTIFF and AGGRIEVED
23 EMPLOYEES for the actual time PLAINTIFF and AGGRIEVED EMPLOYEES worked each
24 day, including regular time, overtime hours, sick pay, meal and rest breaks. As a result,
25 DEFENDANT was able to and did in fact, unlawfully, and unilaterally alter the time recorded in
26 DEFENDANT’S timekeeping system for PLAINTIFF and AGGRIEVED EMPLOYEES in order
27 to avoid paying these employees for all hours worked, applicable overtime compensation,
28 applicable sick pay, missed meal breaks and missed rest break.

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

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

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

16 49. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
17 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
18 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
19 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
20 provide PLAINTIFF with a second off-duty meal period each workday in which he was required
21 by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF
22 with a rest break, they required PLAINTIFF to remain on-duty and on-call for the rest break.
23 DEFENDANT policy caused PLAINTIFF to remain on-call and on-duty during what was
24 supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks
25 without additional compensation and in accordance with DEFENDANT'S strict corporate policy
26 and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that failed to
27 comply with Cal. Lab. Code § 226. Further, DEFENDANT also failed to reimburse PLAINTIFF
28 for required business expenses related to the personal expenses incurred for the use of his personal

1 cell phone, on behalf of and in furtherance of his employment with DEFENDANT. To date,
2 DEFENDANT has not fully paid PLAINTIFF the minimum, overtime and double time
3 compensation still owed to him or any penalty wages owed to him under Cal. Lab. Code § 203.
4 The amount in controversy for PLAINTIFF individually does not exceed the sum or value of
5 \$75,000.

6 **FIRST CAUSE OF ACTION**

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

8 **(Cal. Lab. Code §§2698 et seq.)**

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

10 50. PLAINTIFF and the AGGRIEVED EMPLOYEES reallege and incorporate by this
11 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

22 52. PLAINTIFF brings this individual PAGA and Representative PAGA Action on
23 behalf of the State of California with respect to himself and all other current and former
24 AGGRIEVED EMPLOYEES employed by DEFENDANTS during the PAGA PERIOD.

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

28 54. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE,
like PLAINTIFF, on behalf of himself and other current or former employees, to bring a civil

1 action to recover civil penalties pursuant to the procedures specified in Labor Code Section
2 2699.3.

3 55. PLAINTIFF complied with the procedures for bringing suit specified in Labor
4 Code Section 2699.3. By certified letter, return receipt requested, dated June 22, 2023,
5 PLAINTIFF gave written notice to the Labor and Workforce Development Agency ("LWDA")
6 and to DEENDANTS of the specific provisions of the Labor Code alleged to have been violated,
7 including the facts and theories to support the alleged violations.

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

14 57. PLAINTIFF, and such persons that may be added from time to time who satisfy
15 the requirements and exhaust the administrative procedures under the Private Attorney General
16 Act, bring this Representative Action on behalf of the State of California with respect to himself
17 and all non-exempt and/or commission-based employees employed by Defendant in California
18 during the time period of June 22, 2022, until the present (the "AGGRIEVED EMPLOYEES").

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

1 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
2 the other AGGRIEVED EMPLOYEES.

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

10 60. To the extent that any of the conduct and violations alleged herein did not affect
11 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
12 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30
13 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.
14 5th 745, 751 ["PAGA allows an "aggrieved employee"—a person affected by at least one Labor
15 Code violation committed by an employer—to pursue penalties for all the Labor Code violations
16 committed by that employer."], Emphasis added, reh'g denied (June 13, 2018).)

17 **PRAYER FOR RELIEF**

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

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

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

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

24 DATED: August 28, 2023

25 **JCL LAW FIRM, APC**

26 By: 

27 Jean-Claude Lapuyade
28 Attorney for PLAINTIFF