

SUMMONS

(CITACION JUDICIAL)

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

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

CITY ELECTRIC SUPPLY COMPANY, a Florida corporation; and DOES 1-50, Inclusive,

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

RICHARD WINN, an individual, on behalf of himself and on behalf of all persons similarly situated,

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
09/18/2023 at 08:40:25 AM
Clerk of the Superior Court
By Erika Engel, Deputy Clerk

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

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

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

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

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

The name and address of the court is:

(El nombre y dirección de la corte es): San Diego Superior Court

Hall of Justice Courthouse - 330 West Broadway, San Diego, CA 92101

CASE NUMBER:
(Número del Caso):

37-2023-00040231-CU-OE-CTL

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: 09/18/2023
(Fecha)

Clerk, by

(Secretario)

E. Engel
E. Engel

, 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

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo-Johnson (State Bar #343881)
Monnett De La Torre (State Bar #272884)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com
mdelatorre@jcl-lawfirm.com

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ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

RICHARD WINN, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

CITY ELECTRIC SUPPLY COMPANY, a
Florida corporation; and DOES 1-50, Inclusive,

Defendants.

Case No: 37-2023-00040231-CU-OE-CTL

REPRESENTATIVE ACTION
COMPLAINT FOR:

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

1 PLAINTIFF RICHARD WINN (“PLAINTIFF”), an individual, in his individual and
2 representative capacity, on behalf of himself, the State of California, and fellow current and former
3 AGGRIEVED EMPLOYEES, defined *supra*, against CITY ELECTRIC SUPPLY COMPANY, a
4 Florida corporation (“DEFENDANT” and/or “DEFENDANTS”), alleges on information and
5 belief, except for his own acts and knowledge which are based on personal knowledge, the
6 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 the LWDA and other current and former aggrieved employees of
11 DEFENDANT for engaging in a pattern and practice of wage and hour violations under the
12 California Labor Code.

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

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

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

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

1 DEFENDANT in California seeking all civil penalties and unpaid wages permitted pursuant to
2 California Labor 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 CITY ELECTRIC SUPPLY COMPANY (“DEFENDANT” or
7 “DEFENDANT”) is a Florida corporation that at all relevant times mentioned herein conducted
8 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 an electric wholesale business throughout the
12 state of California, including in the county of San Diego

13 9. PLAINTIFF was employed by DEFENDANT in California from 2007 to January
14 of 2023, paid in part an hourly wage, non-discretionary bonuses, commissions, and entitled to the
15 legally required meal and rest periods and payment of minimum and overtime wages due for all
16 time worked.

17 10. PLAINTIFF brings this action in in his representative capacity on behalf of the
18 State of California and on behalf of all non-exempt and/or commission-based employees
19 employed by DEFENDANT who suffered one or more Labor Code violations enumerated in
20 Labor Code §§ 2698, *et. seq.* (hereinafter “AGGRIEVED EMPLOYEES”) between June 22,
21 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 PLAINTIFF's and 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 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities in this County and/or conducted substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against PLAINTIFF and 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 PLAINTIFF and 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."

28 ///

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

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

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

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

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

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

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

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

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

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

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

1 42. In violation of the applicable sections of the California Labor Code and the
2 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT 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 DEFENDANT is intended to purposefully avoid the payment of the correct
7 overtime and double time compensation, meal and rest period premiums, and sick pay as required
8 by California law which allowed DEFENDANT to illegally profit and gain an unfair advantage
9 over competitors who complied with the law. To the extent equitable tolling operates to toll
10 claims by the AGGRIEVED EMPLOYEES members against DEFENDANT, the PAGA
11 PERIOD should be adjusted accordingly.

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

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

18 **H. Unlawful Deductions**

19 44. DEFENDANT, from time-to-time unlawfully deducted wages from PLAINTIFF
20 and AGGRIEVED EMPLOYEES' pay without explanations and without authorization to do so
21 or notice to PLAINTIFF and the AGGRIEVED EMPLOYEES Members. As a result,
22 DEFENDANTS violated Labor Code § 221.

23 **I. Unlawful Rounding Practices**

24 45. During the PAGA PERIOD, DEFENDANT did not have in place an immutable
25 timekeeping system to accurately record and pay PLAINTIFF and other AGGRIEVED
26 EMPLOYEES for the actual time these employees worked each day, including overtime hours.
27 Specifically, DEFENDANT had in place an unlawful rounding policy and practice that resulted
28 in PLAINTIFF and AGGRIEVED EMPLOYEES being undercompensated for all of their time

1 worked. As a result, DEFENDANT was able to and did in fact unlawfully, and unilaterally round
2 the time recorded in DEFENDANT'S timekeeping system for PLAINTIFF and AGGRIEVED
3 EMPLOYEES in order to avoid paying these employees for all their time worked, including the
4 applicable overtime compensation for overtime worked. As a result, PLAINTIFF and other
5 AGGRIEVED EMPLOYEES, from time to time, forfeited compensation for their time worked
6 by working without their time being accurately recorded and without compensation at the
7 applicable overtime rates.

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

14 **J. Timekeeping Manipulation**

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

23 48. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES, from time-to-time,
24 forfeited time worked by working without their time being accurately recorded and without
25 compensation at the applicable pay rates.

26 49. The mutability of the timekeeping system also allowed DEFENDANT to alter
27 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANT'S
28 timekeeping system so as to create the appearance that PLAINTIFF and AGGRIEVED

1 EMPLOYEES clocked out for thirty (30) minute meal break when in fact the employees were not
2 at all times provided an off-duty meal break. This practice is a direct result of DEFENDANT's
3 uniform policy and practice of denying employees uninterrupted thirty (30) minute off-duty meal
4 breaks each day or otherwise compensate them for missed meal breaks.

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

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

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1 **FIRST CAUSE OF ACTION**

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

3 **(Cal. Lab. Code §§2698 et seq.)**

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

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

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

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

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

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

26 57. PLAINTIFF complied with the procedures for bringing suit specified in Labor
27 Code Section 2699.3. By certified letter, return receipt requested, dated July 13, 2023,
28 PLAINTIFF gave written notice to the Labor and Workforce Development Agency ("LWDA")

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

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

9 59. PLAINTIFF, and such persons that may be added from time to time who satisfy
10 the requirements and exhaust the administrative procedures under the Private Attorney General
11 Act, bring this Representative Action on behalf of the State of California with respect to himself
12 and all non-exempt employees employed by DEFENDANT in California during the time period
13 of July 13, 2022, until the present (the "AGGRIEVED EMPLOYEES").

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

28 61. For all provisions of the Labor Code for which civil penalty is not specifically
provided, Labor Code § 2699(f) imposes upon DEFENDANT a penalty of one hundred dollars
(\$100) for each AGGRIEVED EMPLOYEE, including PLAINTIFF, per pay period for the

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

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

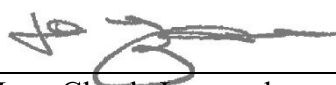
12 **PRAYER FOR RELIEF**

13 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANT as follows:

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

19 DATED: September 18, 2023

20 **JCL LAW FIRM, APC**

21 By: 

22 Jean-Claude Lapuyade
23 Attorney for PLAINTIFF
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