

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

COMMERCE DISTRIBUTION COMPANY LLC, a California limited liability company; SMART & FINAL STORES LLC, a California limited liability company; SMART & FINAL LLC, a Delaware limited liability company; and DOES 1-50, Inclusive,
YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

PAUL RODRIGUEZ, an individual, on behalf of himself and on behalf of all persons similarly situated,

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.

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.courtinfo.ca.gov/selfhelp/espanol/), 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.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Los Angeles Superior Court, Stanley Mosk Courthouse
111 North Hill Street
Los Angeles, CA 90012

CASE NUMBER:

(Número del Caso): 22STCV18277

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. SBN:248676 Tel: (619) 599-8292 Fax: (619) 599-829

JCL Law Firm, APC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE:

(Fecha) 06/06/2022

Sherri R. Carter Executive Officer / Clerk of Court

Clerk, by

M. Gonzalez

, 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)).

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 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other *(specify)*:

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on *(date)*:

[SEAL]



Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Rupert Byrdsong

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Attorneys for Plaintiff PAUL RODRIGUEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

PAUL RODRIGUEZ, an individual, on behalf
of himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

COMMERCE DISTRIBUTION COMPANY
LLC, a California limited liability company;
SMART & FINAL STORES LLC, a California
limited liability company; SMART & FINAL
LLC, a Delaware limited liability company; and
DOES 1-50, Inclusive,

Defendants.

Case No. **22STCV18277**

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. VIOLATIONS OF THE PRIVATE
ATTORNEY GENERAL ACT AT
LABOR CODE SECTIONS 2698 *ET SEQ.*

1 Plaintiff PAUL RODRIGUEZ (“PLAINTIFF”) an individual, in his representative capacity on
2 behalf of himself, the State of California, and fellow current and former AGGRIEVED EMPLOYEES,
3 defined *supra*, against Defendants COMMERCE DISTRIBUTION COMPANY LLC (“Defendant
4 Commerce Distribution Company”), SMART & FINAL STORES LLC (“Defendant Smart & Final
5 Stores”), and SMART & FINAL LLC (“Defendant Smart & Final”) (collectively “DEFENDANTS”),
6 alleges on information and belief, except for his own acts and knowledge which are based on personal
7 knowledge, the following:

8 **INTRODUCTION**

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

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

15 3. DEFENDANTS’ systematic pattern of wage and hour and IWC Wage Order violations
16 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, regular and overtime wages;
 - 20 d. Failure to correctly calculate the regular rate of pay;
 - 21 e. Failure to failed to pay for all hours worked;
 - 22 f. Failure to maintain true and accurate records;
 - 23 g. Failure to reimburse for required business expenses;
 - 24 h. Failure to provide accurate itemized wage statements; and
 - 25 i. Failure to timely pay wages due during, and upon termination of employment.
- 26
27
28

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

THE PARTIES

6. Defendant COMMERCE DISTRIBUTION COMPANY LLC is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

7. SMART & FINAL STORES LLC is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

8. SMART & FINAL LLC is a Delaware limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

9. DEFENDANTS operate food distribution centers and grocery in the State of California, including Los Angeles County, where PLAINTIFF worked..

10. PLAINTIFF has been employed by DEFENDANT in California from since 1996 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

11. PLAINTIFF brings this action in his representative capacity on behalf of the State of California and on behalf of all individuals who are or previously were employed by Defendant Commerce Distribution Company and/or Defendant Smart & Final Stores and/or Defendant Smart & Final in California and classified as non-exempt employees in California who suffered one or more Labor Code violations enumerated in Labor Code §§ 2698 *et seq.* (hereinafter “AGGRIEVED EMPLOYEES”) and who worked for DEFENDANTS between March 30, 2021 and the present (“PAGA PERIOD”).

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

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

14. 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.

15. 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.

16. 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.

JOINT EMPLOYER

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

18. Section 558 of the California Labor Code provides that “any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any

provision regulating hours and days of work in any order of the Industrial Welfare Commissions shall be subject to a civil penalty...” (*Lab. Code* § 558(a).);

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

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

21. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS, and each of them, are subject to civil penalties for their failure to pay PLAINTIFF and the aggrieved employees the appropriate wages as complained of herein and proximately caused the complaints, injuries, and damages alleged herein.

22. At all relevant times, each Defendant, whether named or fictitious, was the agent, employee or other person acting on behalf of each other Defendant, and, in participating in the acts alleged in this Complaint, acted within the scope of such agency or employment and ratified the acts of the other.

23. Each Defendant, whether named or fictitious, exercised control over PLAINTIFF’s wages, working hours, and/or working conditions.

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

JURISDICTION AND VENUE

25. 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 claims for civil penalties under the Private Attorney General Act of 2004, California Labor Code §2698, *et seq.*.

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

THE CONDUCT

27. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS 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 the AGGRIEVED EMPLOYEES for missed meal and rest periods, failed to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all time worked, failed compensate PLAINTIFF for off-the-clock work, failed to compensate PLAINTIFF and the AGGRIEVED EMPLOYEES overtime, double time, meal period premiums and sick pay at the correct regular rate of pay, and failed to issue to PLAINTIFF and the AGGRIEVED EMPLOYEES with accurate itemized wage statements showing, among other things, the total hours worked and all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. DEFENDANTS' 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 DEFENDANTS 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 DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

A. Meal Period Violations

28. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were 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

1 employee is suffered or permitted to work. From time-to-time during the PAGA PERIOD,
2 DEFENDANTS required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them
3 for all the time they were under DEFENDANTS' control. Specifically, as a result of PLAINTIFF's
4 demanding work requirements and DEFENDANT'S understaffing, DEFENDANTS required
5 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty meal
6 break. PLAINTIFF was from time to time interrupted by work assignments while clocked out for what
7 should have been PLAINTIFF's off-duty meal break. Indeed, there were many days where
8 PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and other AGGRIEVED
9 EMPLOYEES forfeited minimum wage and overtime wages by regularly working without their time
10 being accurately recorded and without compensation at the applicable minimum wage and overtime
11 rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other AGGRIEVED
12 EMPLOYEES for all time worked is evidenced by DEFENDANTS' business records.

13 29. From time-to-time during the PAGA PERIOD, as a result of their rigorous work
14 requirements and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other AGGRIEVED
15 EMPLOYEES were from time-to-time unable to take thirty (30) minute off-duty meal breaks and were
16 not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED EMPLOYEES
17 were required from time-to-time to perform work as ordered by DEFENDANTS for more than five (5)
18 hours during some shifts without receiving a meal break. Further, DEFENDANTS from time-to-time
19 failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period
20 for some workdays in which these employees were required by DEFENDANTS to work ten (10) hours
21 of work from time-to time. Additionally, DEFENDANTS from time-to-time failed to provide
22 PLAINTIFF and AGGRIEVED EMPLOYEES with a third off-duty meal period for some workdays
23 in which these employees were required by DEFENDANTS to work twelve (12) hours of work from
24 time-to-time. The nature of the work performed by PLAINTIFF and other AGGRIEVED
25 EMPLOYEES does not qualify for limited and narrowly construed "on-duty" meal period exception.
26 When they were provided with meal periods, PLAINTIFF and other AGGRIEVED EMPLOYEES
27 were, from time to time, required to remain on duty, and on call. Further, from time to time,
28 PLAINTIFF and other AGGRIEVED EMPLOYEES were required to remain on duty, on call, and/or

on the premises, and/or to carry cordless communication devices and respond to communications received on said devices during what was supposed to be their off-duty meal periods. PLAINTIFF and other AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

B. Rest Period Violations

30. From time-to-time during the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES were also required from time to time to work in excess of four (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work requirements and DEFENDANTS' inadequate staffing. Further, for the same reasons these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. When they were provided with rest breaks, PLAINTIFF and other AGGRIEVED EMPLOYEES were, from time to time, required to remain on duty and/or on call. PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one-hour wages *in lieu* thereof. Further, from time to time, PLAINTIFF and other AGGRIEVED EMPLOYEES were required to remain on duty, on call, and/or on the premises, and/or to carry cordless communication devices and respond to communications received on said devices during what was supposed to be their off-duty rest periods. PLAINTIFF and other AGGRIEVED EMPLOYEES therefore forfeited rest breaks without additional compensation in accordance with DEFENDANTS' written corporate policy prohibiting PLAINTIFF and other AGGRIEVED EMPLOYEES from leaving the premises during rest breaks. As a result of their rigorous work schedules and DEFENDANTS' inadequate staffing, PLAINTIFF and other AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

C. Unreimbursed Business Expenses

31. DEFENDANTS as a matter of corporate policy, practice, and procedure, intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF and the

AGGRIEVED EMPLOYEES for required business expenses incurred by the PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of discharging their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers are required to indemnify employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

32. In the course of their employment, DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to use their personal cell phone to correspond and coordinate tasks with their supervisor and/or other employees as a result of and in furtherance of their job duties as employees for DEFENDANTS. But for the use of their own personal cell phones, PLAINTIFF and the AGGRIEVED EMPLOYEES could not complete their essential job duties, including but not limited to sending and receiving work-related communications from DEFENDANTS. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and other AGGRIEVED EMPLOYEES for their use of their personal cell phones. As a result, in the course of their employment with DEFENDANTS, the PLAINTIFF and other AGGRIEVED EMPLOYEES incurred unreimbursed business expenses, but were not limited to, costs related to the use of their personal cellular phones, all on behalf of and for the benefit of DEFENDANT.

D. Wage Statement Violations

34. California Labor Code Section 226 requires an employer to furnish its employees an accurate itemized 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.

35. From time to time during the PAGA PERIOD, when PLAINTIFF and other AGGRIEVED EMPLOYEES missed meal and rest breaks, or were not paid for all hours worked, DEFENDANTS failed to provide PLAINTIFF and other AGGRIEVED EMPLOYEES with complete and accurate wage statements that include, among other things, the total hours worked, all applicable hourly rates in effect during the pay period, and the corresponding amount of time worked at each hourly rate.

36. In addition to the violations described above, DEFENDANTS, from time to time, failed to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with wage statements that comply with Cal. Lab. Code § 226.

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

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

38. During the PAGA PERIOD, from time-to-time DEFENDANTS failed and continue to fail to accurately pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all hours worked.

39. During the PAGA PERIOD, from time-to-time DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to perform work on days he was not scheduled to work, including responding to work-related communications received on his personal cell phone from DEFENDANTS' managers for work-related purposes. This resulted in PLAINTIFF and other AGGRIEVED EMPLOYEES having to work while off-the-clock.

40. DEFENDANTS directed and directly benefited from the uncompensated off-the-clock work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

41. DEFENDANTS controlled the work schedules, duties, protocols, applications, assignments, and employment conditions of PLAINTIFF and the other AGGRIEVED EMPLOYEES.

42. DEFENDANTS were able to track the amount of time PLAINTIFF and the other AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document, track, or pay PLAINTIFF and the other AGGRIEVED EMPLOYEES all wages earned and owed for all the

work they performed, including but not limited to, the time PLAINTIFF and AGGRIEVED EMPLOYEES spent during non-production periods and while waiting to load DEFENDANTS' trucks with goods.

43. PLAINTIFF and the other AGGRIEVED EMPLOYEES were non-exempt employees, subject to the requirements of the California Labor Code

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

45. DEFENDANTS knew or should have known that PLAINTIFF and the other AGGRIEVED EMPLOYEES off-the-clock work was compensable under the law.

46. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit for the time spent performing work, waiting to load DEFENDANTS' trucks with goods and working while clocked out for meal periods. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and the AGGRIEVED EMPLOYEES wages for all hours worked in accordance with applicable law is evidenced by DEFENDANTS' business records.

F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and Sick

Pay

47. From time-to-time during the PAGA PERIOD, DEFENDANTS failed and continue to fail to accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for their overtime and double time hours worked, meal and rest period premiums, and sick pay. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due them for working overtime without compensation at the correct overtime and double time rates, meal and rest period premiums, and sick pay rates. DEFENDANTS' uniform policy and practice to not pay the AGGRIEVED EMPLOYEES the correct rate for all overtime and double time worked, meal and rest

1 period premiums, and sick pay in accordance with applicable law is evidenced by DEFENDANTS'
2 business records.

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

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

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

27 51. In violation of the applicable sections of the California Labor Code and the requirements
28 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company

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

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

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

18 **H. Unlawful Deductions**

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

23 54. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take off duty
24 meal and rest breaks and was not fully relieved of duty for his rest and meal periods. PLAINTIFF was
25 required to perform work as ordered by DEFENDANTS for more than five (5) hours during a shift
26 without receiving an off-duty meal break. Further, DEFENDANTS failed to provide PLAINTIFF with
27 a second off-duty meal period each workday in which he was required by DEFENDANT to work ten
28 (10) hours of work. When DEFENDANTS provided PLAINTIFF with a rest break, they required

1 PLAINTIFF to remain on the premises, on-duty and on-call, for the rest break. DEFENDANTS' policy
2 caused PLAINTIFF to remain on-call, on-duty and/or on-premises during what was supposed to be his
3 off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks without additional
4 compensation and in accordance with DEFENDANTS' strict corporate policy and practice. Moreover,
5 DEFENDANTS also provided PLAINTIFF with a paystub that failed to comply with Cal. Lab. Code
6 § 226. To date, DEFENDANTS have not fully paid PLAINTIFF the minimum, overtime and double
7 time compensation still owed to him or any penalty wages owed to him under Cal. Lab. Code § 203.
8 The amount in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

9 **FIRST CAUSE OF ACTION**

10 **For Civil Penalties Pursuant to Private Attorneys General Act ("PAGA")**

11 **[Cal. Lab. Code §§ 2698, et seq.]**

12 **(By PLAINTIFF and AGGRIEVED EMPLOYEES and Against All DEFENDANTS)**

13 55. PLAINTIFF and the AGGRIEVED EMPLOYEES reallege and incorporate by this
14 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

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

27 58. At all relevant times, for the reasons described herein, and others, PLAINTIFF and the
28 AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANTS within the meaning of

1 Labor Code Section 2699(c).

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

5 60. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code
6 Section 2699.3. By certified letter, return receipt requested, dated March 30, 2022, PLAINTIFF gave
7 written notice to the Labor and Workforce Development Agency (“LWDA”) and to DEFENDANTS of
8 the specific provisions of the Labor Code alleged to have been violated, including the facts and theories
9 to support the alleged violations.

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

15 62. To the extent that it applies, PLAINTIFF invokes the tolling permitted pursuant to the
16 California State Judicial Counsel amended Rule of Court, Emergency Rule Number 9, tolled the statute
17 of limitation and statutes of repose from April 6, 2020 to either (a) August 3, 2020 for statutes of
18 limitation and repose for civil causes of action that are 180 days or less, of (b) October 1, 2020 for
19 statutes of limitation and repose for civil causes of action that exceed 180 days.

20 63. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the AGGRIEVED
21 EMPLOYEES are entitled to civil penalties for DEFENDANTS’ violations of Labor Code Section 201,
22 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d),
23 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804 in the following amounts:

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

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

c. For violations of Labor Code Sections 204, a civil penalty in the amount of one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE for any initial violation and two hundred dollars (\$200) for AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 210];

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

e. For violations of Labor Code Section 2269(a), a civil penalty in the amount of two hundred fifty dollars (\$250) per AGGRIEVED EMPLOYEE per violation in an initial citation and one thousand dollars (\$1,000) per AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 226.3];

f. For violations of Labor Code Section 1174(d), a civil penalty in the amount of five hundred (\$500) dollars for per AGGRIEVED EMPLOYEE [penalty per Labor Code Section 1174.5].

g. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and 1199, a civil penalty in the amount of one hundred dollars (\$100) per AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars fifty (\$250) per AGGRIEVED EMPLOYEE per pay period for each subsequent violation [penalty per Labor Code Section].

64. For all provisions of the Labor Code for which civil penalty is not specifically provided,

1 Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred dollars (\$100) for each
2 AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars (\$200) for
3 each AGGRIEVED EMPLOYEE per pay period for each subsequent violation. PLAINTIFF and the
4 AGGRIEVED EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in
5 connection with their claims for civil penalties pursuant to Labor Code Section 2699(g)(1).

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

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1 **PRAYER FOR RELIEF**

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

3 (a) For reasonable attorney's fees and costs of suit to the extent permitted by law, including
4 pursuant to Labor Code § 2699, *et seq.*;

5 (b) For civil penalties to the extent permitted by law pursuant to the Labor Code under the
6 Private Attorneys General Act; and

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

8
9 Dated: June 3, 2022

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

11 By: 
12 Jean-Claude Lapuyade
13 Attorneys for PLAINTIFF