

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT:**(AVISO AL DEMANDADO):**

SIGNATURE COMMERCIAL SOLUTIONS, LLC, a Florida limited liability company; and DOES 1-50, Inclusive,

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

JONATHAN CHEUNG, 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: 22STCV13034
(Número del Caso):

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):

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DATE: 04/19/2022 Sherri R. Carter Executive Officer / Clerk of Court Clerk, by J. Gnade, Deputy
(Fecha) (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 416.60 (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):

[SEAL]



Assigned for all purposes to: Spring Street Courthouse, Judicial Officer:

Electronically Filed by Superior Court of California, County of Los Angeles on 04/19/2022 08:56 AM Sherri R. Carter, Executive Officer/Clerk of Court, by J. Gnade, Deputy Clerk

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Attorneys for Plaintiff JONATHAN CHEUNG

SUPERIOR COURT OF THE STATE OF CALIFORNIA**IN AND FOR THE COUNTY OF LOS ANGELES**

JONATHAN CHEUNG, an individual, on
behalf of himself and on behalf of all persons
similarly situated,

Plaintiff,

v.

SIGNATURE COMMERCIAL SOLUTIONS,
LLC, a Florida limited liability company; and
DOES 1-50, Inclusive,

Defendants.

Case No. **22STCV13034****REPRESENTATIVE ACTION
COMPLAINT FOR:**

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

1 Plaintiff JONATHAN CHEUNG (“PLAINTIFF”) an individual, in his representative capacity
2 on behalf of himself, the State of California, and fellow current and former AGGRIEVED
3 EMPLOYEES, defined *supra*, against Defendant SIGNATURE COMMERCIAL SOLUTIONS, LLC
4 (“DEFENDANT”), alleges on information and belief, except for his own acts and knowledge which
5 are based on personal knowledge, the following:

6 **INTRODUCTION**

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

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

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

- 15 a. Failure to provide compliant meal and rest periods;
- 16 b. Failure to allow employees to take duty-free meal and rest periods;
- 17 c. Failure to pay all minimum, regular and overtime wages;
- 18 d. Failure to correctly calculate the regular rate of pay;
- 19 e. Failure to failed to pay for all hours worked;
- 20 f. Failure to maintain true and accurate records;
- 21 g. Failure to reimburse for required business expenses;
- 22 h. Failure to provide accurate itemized wage statements; and
- 23 i. Failure to timely pay wages due during, and upon termination of employment.

24 4. PLAINTIFF brings this representative action against DEFENDANT on behalf of himself
25 and all other aggrieved employees of DEFENDANT in California seeking all civil penalties and unpaid
26 wages permitted pursuant to California Labor Code § 2699, *et seq.*

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

THE PARTIES

6. Defendant SIGNATURE COMMERCIAL SOLUTIONS, LLC is a Florida 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. DEFENDANT is a company that offers technical, professional, and industrial staffing services for the accounting and finance, administrative, architecture, automotive, aviation, call center, and clinical research industries in the State of California, including Los Angeles County, where PLAINTIFF worked.

8. PLAINTIFF was employed by DEFENDANT in California 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 from July 2021 to December of 2021.

9. PLAINTIFFF 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 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 February 8, 2021 and the present (“PAGA PERIOD”).

10. 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.

11. 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.

12. 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.

13. 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.

14. 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

15. 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).)

16. 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).);

17. 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).)

18. 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.

19. 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.

20. 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.

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

22. 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

23. 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.*

24. 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

25. 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

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

14 **A. Meal Period Violations**

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

1 rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other AGGRIEVED
2 EMPLOYEES for all time worked is evidenced by DEFENDANTS' business records.

3 27. From time-to-time during the PAGA PERIOD, as a result of their rigorous work
4 requirements and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other AGGRIEVED
5 EMPLOYEES were from time to time unable to take thirty (30) minute off-duty meal breaks and were
6 not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED EMPLOYEES
7 were required from time to time to perform work as ordered by DEFENDANTS for more than five (5)
8 hours during some shifts without receiving a meal break. Further, DEFENDANTS from time to time
9 failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period
10 for some workdays in which these employees were required by DEFENDANTS to work ten (10) hours
11 of work from time to time. The nature of the work performed by PLAINTIFF and other AGGRIEVED
12 EMPLOYEES does not qualify for limited and narrowly construed "on-duty" meal period exception.
13 When they were provided with meal periods, PLAINTIFF and other AGGRIEVED EMPLOYEES
14 were, from time to time, required to remain on duty, and on call. PLAINTIFF and other AGGRIEVED
15 EMPLOYEES therefore forfeited meal breaks without additional compensation and in accordance with
16 DEFENDANTS' strict corporate policy and practice.

17 **B. Rest Period Violations**

18 28. From time-to-time during the PAGA PERIOD, PLAINTIFF and other AGGRIEVED
19 EMPLOYEES were also required from time to time to work in excess of four (4) hours without being
20 provided ten (10) minute rest periods as a result of their rigorous work requirements and
21 DEFENDANTS' inadequate staffing. Further, for the same reasons these employees were denied their
22 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours
23 from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of
24 between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least
25 ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. When they were
26 provided with rest breaks, PLAINTIFF and other AGGRIEVED EMPLOYEES were, from time to
27 time, required to remain on duty and/or on call. PLAINTIFF and other AGGRIEVED EMPLOYEES
28 were also not provided with one-hour wages *in lieu* thereof. Further, from time to time, PLAINTIFF

1 and other AGGRIEVED EMPLOYEES were required to remain on duty, on call, and/or on the
2 premises. As a result of their rigorous work schedules and DEFENDANTS' inadequate staffing,
3 PLAINTIFF and other AGGRIEVED EMPLOYEES were from time to time denied their proper rest
4 periods by DEFENDANTS and DEFENDANTS' managers.

5 **C. Unlawful Rounding Violations**

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

17 30. Further, the mutability of DEFENDANTS' timekeeping system and unlawful rounding
18 policy and practice resulted in PLAINTIFF and AGGRIEVED EMPLOYEES' time being inaccurately
19 recorded. As a result, from time to time, DEFENDANTS' unlawful rounding policy and practice
20 caused PLAINTIFF and AGGRIEVED EMPLOYEES to perform work as ordered by DEFENDANTS
21 for more than five (5) hours during a shift without receiving an off-duty meal break. Additionally,
22 DEFENDANTS' unlawful rounding policy and practice caused PLAINTIFF and AGGRIEVED
23 EMPLOYEES to perform work as ordered by DEFENDANTS for more than ten (10) hours during a
24 shift without receiving a second off-duty meal break.

25 **D. Unreimbursed Business Expenses**

26 31. DEFENDANTS as a matter of corporate policy, practice, and procedure, intentionally,
27 knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF and the
28 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, personal computer and home internet plan to perform work-related tasks, correspond and coordinate tasks with their supervisors and/or other employees as a result of and in furtherance of their job duties as employees for DEFENDANT. But for the use of their own personal cell phones, personal computers and home internet plans, PLAINTIFF and the AGGRIEVED EMPLOYEES could not complete their essential job duties, including but not limited to performing work-related tasks and sending and receiving work-related communications from DEFENDANTS. However, DEFENDANTS unlawfully failed to sufficiently reimburse PLAINTIFF and other AGGRIEVED EMPLOYEES for their use of their personal cell phones, personal computers and home internet plans. Further, as a result of being required to work remotely in their home offices, PLAINTIFF and other AGGRIEVED EMPLOYEES incurred additional unreimbursed business expenses in the form of rent and/or mortgage expenses. 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, personal computers and home internet plans, plus any pro rata expenses for rent and/or mortgage, all on behalf of and for the benefit of DEFENDANT.

E. Unpaid Holiday Pay

33. During the PAGA PERIOD, DEFENDANTS had in place a policy and practice to pay holiday pay to PLAINTIFF and other AGGRIEVED EMPLOYEES. However, despite this policy and practice, DEFENDANTS from time to time failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for holiday pay. As a result, during the PAGA PERIOD, PLAINTIFF and other

1 AGGRIEVED EMPLOYEES did not receive compensation for holiday pay to which they were
2 entitled.

3 **F. Wage Statement Violations**

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

12 35. From time to time during the PAGA PERIOD, when PLAINTIFF and other
13 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were not paid for all hours worked,
14 DEFENDANTS failed to provide PLAINTIFF and other AGGRIEVED EMPLOYEES with complete
15 and accurate wage statements that include, among other things, the correct amount of total hours
16 worked, all applicable hourly rates in effect during the pay period, and the corresponding amount of
17 time worked at each hourly rate. Further, from time to time, DEFENDANTS included Sick pay hours
18 into the computation of total hours worked for purposes of Cal. Lab. Code § 226(a)(2), notwithstanding
19 the fact that Sick pay hours are not considered hours worked. DEFENDANTS' inclusion of Sick pay
20 hours into the total hours worked in itemized wage statements issued to PLAINTIFF and other
21 AGGRIEVED EMPLOYEES violates Cal. Lab. Code § 226(a)(2).

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

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

G. 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 pre-shift, post-shift, and during a scheduled meal break while off-the-clock. 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 pre-shift, post-shift, and during meal periods while off-the-clock work.

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 before and after shifts, receiving and responding to work-related communications on personal cell phones outside of their scheduled shifts 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.

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

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

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

50. However, from-time-to-time, when calculating the regular rate of pay, in those pay periods where PLAINTIFF and other AGGRIEVED EMPLOYEES worked overtime, double time, paid meal and rest period premium payments, and/or paid sick pay, and earned non-discretionary compensation, DEFENDANTS failed to accurately include the non-discretionary compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked rather than just all non-overtime hours worked. As a matter of law, the compensation received by PLAINTIFF and other AGGRIEVED

1 EMPLOYEES must be included in the “regular rate of pay.” The failure to do so has resulted in a
2 systematic underpayment of overtime and double time compensation, meal and rest period premiums,
3 and sick pay to PLAINTIFF and other AGGRIEVED EMPLOYEES by DEFENDANTS. Specifically,
4 California Labor Code Section 246 mandates that paid sick time for non-employees shall be calculated
5 in the same manner as the regular rate of pay for the workweek in which the non-exempt employee
6 uses paid sick time, whether or not the employee actually works overtime in that workweek.
7 DEFENDANTS’ conduct, as articulated herein, by failing to include the incentive compensation as
8 part of the “regular rate of pay” for purposes of overtime, double time, paid meal and rest period
9 premium payments, and/or paid sick pay compensation was in violation of Cal. Lab. Code § 246 the
10 underpayment of which is recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

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

21 **I. Unlawful Deductions**

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

26 53. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take off duty
27 meal and rest breaks and was not fully relieved of duty for his rest and meal periods. PLAINTIFF was
28 required to perform work as ordered by DEFENDANTS for more than five (5) hours during a shift

without receiving an off-duty meal break. Further, DEFENDANTS failed to provide PLAINTIFF with a second off-duty meal period each workday in which he was required by DEFENDANT to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFF with a rest and/or meal break, they required PLAINTIFF to remain on the premises, on-duty and on-call, for the rest and/or break. PLAINTIFF therefore forfeited meal and rest breaks without additional compensation and in accordance with DEFENDANTS' strict corporate policy and practice. Moreover, DEFENDANTS also provided PLAINTIFF with a paystub that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANTS also failed to reimburse PLAINTIFF for required business expenses related to the use of his cell phone, on behalf of and in furtherance of his employment with DEFENDANTS. To date, DEFENDANTS have not fully paid PLAINTIFF the minimum, overtime and double time compensation still owed to him or any penalty wages owed to her under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

FIRST CAUSE OF ACTION

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

[Cal. Lab. Code §§ 2698, et seq.]

(By PLAINTIFF and AGGRIEVED EMPLOYEES and Against All DEFENDANTS)

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

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

56. PLAINTIFF brings this Representative Action on behalf of the State of California with

respect to himself and all other current and former AGGRIEVED EMPLOYEES employed by DEFENDANTS during the PAGA PERIOD.

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

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

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

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

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

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

a. For violation of Labor Code Sections 201, 202, 203, and 204, one

1 hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period
2 for the initial violation and two hundred dollars (\$200) for AGGRIEVED
3 EMPLOYEE per pay period for each subsequent violation [penalty per
4 Labor Code Section 2699(f)(2)];

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

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

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

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

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

27 g. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and
28 1199, a civil penalty in the amount of one hundred dollars (\$100) per

1 AGGRIEVED EMPLOYEE per pay period for the initial violation and two
2 hundred dollars fifty (\$250) per AGGRIEVED EMPLOYEE per pay period
3 for each subsequent violation [penalty per Labor Code Section].

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

10 64. 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 affected
12 other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519;
13 See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 ["PAGA allows
14 an "aggrieved employee"—a person affected by at least one Labor Code violation committed by an
15 employer—to pursue penalties for all the Labor Code violations committed by that employer."],
16 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: April 19, 2022

Respectfully Submitted,
ZAKAY LAW GROUP, APLC

11 By: 
12 Shani O. Zakay, Esq.
13 Attorneys for PLAINTIFF
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