

SUMMONS

(CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

VULCAN MATERIALS COMPANY, a New Jersey Corporation;
CALMAT CO., a Delaware Corporation; and DOES 1-50, Inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

GABRIEL GUZMAN JR., an individual, in his representative capacity
on behalf of the State of California and fellow Aggrieved Employees,

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

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

12/13/2021 at 03:09:53 PM

Clerk of the Superior Court
By Regina Chanez, Deputy Clerk

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):

San Diego Superior Court, Hall of Justice
330 W. Broadway Street
San Diego, CA 92101

CASE NUMBER: 37-2021-00052064-CU-0E-CTL
(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):

Shani O. Zakay, Esq. SBN:277924 Tel: (619) 892-7095 Fax: (858) 404-9203

Zakay Law Group, APLC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 12/14/2021

(Fecha)

Clerk, by _____

(Secretario)

R. Chanez
R. Chanez

_____, 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)).

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

- ☐ by personal delivery on (date):

[SEAL]



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Attorneys for Plaintiff GABRIEL GUZMAN JR.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

GABRIEL GUZMAN JR., an individual, in his
representative capacity on behalf of the State of
California and fellow Aggrieved Employees,

Plaintiff,

v.

VULCAN MATERIALS COMPANY, a New
Jersey Corporation; CALMAT CO., a
Delaware Corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No. 37-2021-00052064-CU-OE-CTL

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

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

DEMAND FOR JURY TRIAL

1 Plaintiff GABRIEL GUZMAN JR (“PLAINTIFF”), an individual, in his representative
2 capacity on behalf of the State of California and fellow current and former Aggrieved Employees,
3 defined *supra*, against VULCAN MATERIAL COMPANY and CALMAT CO.,
4 (“DEFENDANTS”), 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. DEFENDANT’s 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, off-the-premises rest periods;
17 c. Failure to pay all minimum, regular, sick pay, and overtime wages, including the correct
18 rate;
19 d. Failure to maintain true and accurate records;
20 e. Failure to provide accurate itemized wage statements;
21 f. Failure to reimburse employees for required business expenses; and
22 g. Failure to timely pay wages due during, and upon termination of employment.

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

26 5. PLAINTIFF reserves the right to name additional representatives throughout the State of
27 California.
28

1 **THE PARTIES**

2 6. Defendant VULCAN MATERIALS COMPANY (“Defendant Vulcan”) is a New Jersey
3 corporation and at all relevant times mentioned herein conducted and continues to conduct substantial
4 and regular business throughout California.

5 7. Defendant CALMAT CO. (“Defendant Calmat”) is a Delaware corporation and at all
6 relevant times mentioned herein conducted and continues to conduct substantial and regular business
7 throughout California.

8 8. Defendant Vulcan and Defendant Calmat were the joint employers of PLAINTIFF as
9 evidenced by the contracts signed and by the company the PLAINTIFF performed work for
10 respectively, and are therefore jointly responsible as employers for the conduct alleged herein and
11 collectively referred to herein as “DEFENDANTS” and/or “DEFENDANT.”

12 9. DEFENDANT operate a business which produces construction aggregates like crushed
13 stone, sand, gravel, asphalt, and ready-mixed concrete for its clients, including the San Diego,
14 California location where PLAINTIFF worked.

15 10. PLAINTIFF was employed by DEFENDANT in California as a non-exempt employee
16 entitled to minimum wages, and rest periods from April of 2020 to November of 2020. PLAINTIFF
17 was at all times relevant mentioned herein classified by DEFENDANT as a non-exempt employee paid
18 on an hourly basis and entitled to minimum wage, overtime pay and compliant meal and rest periods.

19 11. PLAINTIFF brings this action in his representative capacity on behalf of the State of
20 California and on behalf of all of DEFENDANT’s current and former non-exempt employees employed
21 in California who suffered one or more Labor Code violations enumerated in Labor Code §§ 2698 *et*
22 *seq.* (hereinafter “AGGRIEVED EMPLOYEES”) and who worked for DEFENDANT between March
23 30, 2020 and the present (“PAGA PERIOD”).

24 12. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor Code §
25 2699(c) because he was employed by DEFENDANT and suffered one or more of the alleged Labor Code
26 violations committed by DEFENDANT.

13. PLAINTIFF and all other AGRIEVED EMPLOYEES are, and at all relevant times were, employees of DEFENDANT, 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).);

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

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

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

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

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

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

24 **JURISIDICITION AND VENUE**

25 25. This Court has jurisdiction over this Action pursuant to California Code of Civil
26 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This Court
27 has jurisdiction over PLAINTIFF’s claims for civil penalties under the Private Attorney General
28 Act of 2004, California Labor Code §2698, *et seq.*

1 26. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
2 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS, resides in this County,
3 and DEFENDANTS (i) currently maintains and at all relevant times maintained offices and facilities
4 in this County and/or conducts substantial business in this County, and (ii) committed the wrongful
5 conduct herein alleged in this County against PLAINTIFF and the AGGRIEVED EMPLOYEES.

6 **THE CONDUCT**

7 27. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
8 required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked, meaning
9 the time during which an employee is subject to the control of an employer, including all the time the
10 employee is suffered or permitted to work. From time to time, DEFENDANTS required PLAINTIFF
11 and AGGRIEVED EMPLOYEES to work without paying them for all the time they were under
12 DEFENDANTS' control. Specifically, PLAINTIFF performed work before and after the beginning of
13 his shift, spending time under DEFENDANTS' control for which he was not compensated. As a result,
14 the PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum wage and overtime
15 compensation by regularly working without their time being accurately recorded and without
16 compensation at the applicable minimum wage and overtime rates. DEFENDANTS' uniform policy
17 and practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked is
18 evidenced by DEFENDANTS' business records.

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

22 29. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES
23 compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF and
24 other AGGRIEVED EMPLOYEES incentive wages based on their performance for DEFENDANTS.
25 The non-discretionary incentive program provided all employees paid on an hourly basis with incentive
26 compensation when the employees met the various performance goals set by DEFENDANTS.
27 However, when calculating the regular rate of pay in order to pay overtime to PLAINTIFF and other
28 AGGRIEVED EMPLOYEES, DEFENDANTS failed to include the incentive compensation as part of

1 the employees' "regular rate of pay" for purposes of calculating overtime pay. Management and
2 supervisors described the incentive program to potential and new employees as part of the
3 compensation package. However, DEFENDANTS failed to include incentive compensation into the
4 "regular rate of pay" for purposes of calculating overtime pay. As a matter of law, the incentive
5 compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must be included in
6 the "regular rate of pay." The failure to do so has resulted in a systematic underpayment of overtime
7 compensation to PLAINTIFF and other AGGRIEVED EMPLOYEES by DEFENDANTS.

8 30. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
9 EMPLOYEES were also from time to time unable to take off duty meal breaks and were not fully
10 relieved of duty for meal periods. Specifically, PLAINTIFF and AGGRIEVED EMPLOYEES were
11 from time to time interrupted during their off-duty meal breaks to complete tasks for DEFENDANTS.
12 PLAINTIFF and other AGGRIEVED EMPLOYEES were required to perform work as ordered by
13 DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty meal break.
14 Further, DEFENDANTS failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a
15 second off-duty meal period each workday in which these employees were required by DEFENDANTS
16 to work ten (10) hours of work. DEFENDANTS' policy caused PLAINTIFF and other AGGRIEVED
17 EMPLOYEES to remain on-call and on-duty during what was supposed to be their off-duty meal
18 periods. PLAINTIFF and the other AGGRIEVED EMPLOYEES therefore forfeited meal breaks
19 without additional compensation and in accordance with DEFENDANTS' strict corporate policy and
20 practice.

21 31. During the PAGA PERIOD, from time to time, PLAINTIFF and other AGGRIEVED
22 EMPLOYEES were also required to work in excess of four (4) hours without being provided ten (10)
23 minute rest periods. Further, these employees were denied their first rest periods of at least ten (10)
24 minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at
25 least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second
26 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. When
27 they did have an opportunity to take their rest breaks, PLAINTIFF and the AGGRIEVED
28 EMPLOYEES were often interrupted and required by DEFENDANTS to work during their rest breaks.

1 When they did have an opportunity to take their rest breaks, PLAINTIFF and the AGGRIEVED
2 EMPLOYEES were required to remain on the premises, on-duty and on-call, and subject to
3 DEFENDANTS' control in accordance with DEFENDANTS' policy. PLAINTIFF and other
4 AGGRIEVED EMPLOYEES were also not provided with one hour wages in lieu thereof.
5 DEFENDANTS' policy caused PLAINTIFF and other AGGRIEVED EMPLOYEES to remain on-call
6 and on-duty during what was supposed to be their off-duty rest periods. As a result of their rigorous
7 work schedules, PLAINTIFF and other AGGRIEVED EMPLOYEES were periodically denied their
8 proper rest periods by DEFENDANTS and DEFENDANTS' managers.

9 32. Under California law, every employer shall pay to each employee, on the established
10 payday for the period involved, not less than the applicable minimum wage for all hours worked in the
11 payroll period, whether the remuneration is measured by time, piece, commission, or otherwise. Hours
12 worked is defined in the applicable Wage Order as "the time during which an employee is subject to
13 the control of an employer and includes all the time the employee is suffered or permitted to work,
14 whether or not required to do so." PLAINTIFF and other AGGRIEVED EMPLOYEES were from
15 time to time required to perform work for DEFENDANTS before and after their scheduled shifts, as
16 well as during their off-duty meal breaks. DEFENDANTS failed to compensate PLAINTIFF and other
17 AGGRIEVED EMPLOYEES for any of the time spent under DEFENDANTS' control while working
18 off-the-clock. As such, DEFENDANTS failed to pay PLAINTIFF and other AGGRIEVED
19 EMPLOYEES the applicable minimum wage for all hours worked in a payroll period.

20 33. In violation of the applicable sections of the California Labor Code and the requirements
21 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
22 policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the
23 other AGGRIEVED EMPLOYEES for all time worked. This uniform policy and practice of
24 DEFENDANTS is intended to purposefully avoid the payment of the correct compensation as required
25 by California law which allowed DEFENDANTS to illegally profit and gain an unfair advantage over
26 competitors who complied with the law. To the extent equitable tolling operates to toll claims by the
27 AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD should be adjusted
28 accordingly.

1 34. From time to time, when PLAINTIFF and other AGGRIEVED EMPLOYEES worked
2 during what was supposed to be their meal breaks or otherwise off the clock, DEFENDANTS also
3 failed to provide PLAINTIFF and the other AGGRIEVED EMPLOYEES with complete and accurate
4 wage statements which failed to show, among other things, the correct time worked, including, work
5 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek, and the
6 gross wages paid for those periods during the pay period, and the correct penalty payments or missed
7 meal and rest periods in violation of California Labor Code Sections 226 and 226.2.

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

16 36. Aside from the violations listed herein, DEFENDANTS failed to issue to PLAINTIFF an
17 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* From
18 time to time DEFENDANTS violated California Labor Code Section 226(a)(2) by failing to provide
19 an accurate amount of total hours worked by PLAINTIFF and other AGGRIEVED EMPLOYEES.
20 Specifically, DEFENDANTS included items, including but not limited to "COVID Pay," "California
21 Sick Pay," and "Meal Period Penalty Hourly" to the total hours worked. However, the foregoing items
22 are not considered total hours worked for purposes of California Labor Code Section 226(a)(2). Further,
23 DEFENDANTS from time to time failed to issue an itemized wage statement to PLAINTIFF and
24 AGGRIEVED EMPLOYEES that included the total hours worked at the applicable hourly rate. As a
25 result, from time to time DEFENDANTS provided PLAINTIFF and the other AGGRIEVED
26 EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

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

1 AGGRIEVED EMPLOYEES for required business expenses incurred by the PLAINTIFF and other
2 AGGRIEVED EMPLOYEES in direct consequence of discharging their duties on behalf of
3 DEFENDANTS. Under California Labor Code Section 2802, employers are required to indemnify
4 employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code §
5 2802 expressly states that "an employer shall indemnify his or her employee for all necessary
6 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
7 duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the
8 employee, at the time of obeying the directions, believed them to be unlawful."

9 38. In the course of their employment, PLAINTIFF and other AGGRIEVED EMPLOYEES
10 as a business expense, were required by DEFENDANTS to use their own personal cellular phones as
11 a result of and in furtherance of their job duties as employees for DEFENDANTS but were not
12 reimbursed or indemnified by DEFENDANTS for the cost associated with the use of their personal
13 cellular phones for DEFENDANTS' benefit. Specifically, PLAINTIFFS and other AGGRIEVED
14 EMPLOYEES were required by DEFENDANTS to use their personal cell phones for work related
15 issues. As a result, in the course of their employment with DEFENDANTS the PLAINTIFFS and other
16 AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but were not
17 limited to, costs related to the use of their personal cellular phones all on behalf of and for the benefit
18 of DEFENDANTS.

19 39. By reason of this uniform conduct applicable to PLAINTIFF and all AGGRIEVED
20 EMPLOYEES, DEFENDANTS committed acts of unfair competition in violation of the California
21 Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by engaging in a
22 company-wide policy and procedure which failed to accurately calculate and record the correct
23 overtime rate for the overtime worked by PLAINTIFF and other AGGRIEVED EMPLOYEES. The
24 proper calculation of these employees' overtime hour rates is the DEFENDANTS' burden. As a result
25 of DEFENDANTS' intentional disregard of the obligation to meet this burden, DEFENDANTS failed
26 to properly calculate and/or pay all required overtime compensation for work performed by
27 AGGRIEVED EMPLOYEES and violated the California Labor Code and regulations promulgated
28 thereunder as herein alleged.

40. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods. PLAINTIFF was 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 break, they required PLAINTIFF to remain on the premises, on-duty and on-call, for the rest break. DEFENDANTS' policy caused PLAINTIFF to remain on-call and on-duty during what was supposed to be his off-duty meal periods. 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 accurately display PLAINTIFF's correct time worked and wages, as well as payments for missed meal and rest periods for certain pay periods in violation of Cal. Lab. Code § 226(a). To date, DEFENDANTS have not fully paid PLAINTIFF the overtime compensation still owed to him or any penalty wages owed to him 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)

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

42. 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

1 that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general
2 to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
3 claims cannot be subject to arbitration.

4 43. PLAINTIFF brings this Representative Action on behalf of the State of California with
5 respect to himself and all other current and former AGGRIEVED EMPLOYEES employed by
6 DEFENDANT during the PAGA PERIOD.

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

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

13 46. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code
14 Section 2699.3. By certified letter, return receipt requested, dated March 30, 2021, PLAINTIFF gave
15 written notice to the Labor and Workforce Development Agency ("LWDA") and to DEENDANT of
16 the specific provisions of the Labor Code alleged to have been violated, including the facts and theories
17 to support the alleged violations.

18 47. As of the date of this complaint, more than sixty-five (65) days after serving the LWDA
19 with notice of DEFENDANT'S violations, the LWDA has not provided any notice by certified mail of
20 its intent to investigate the DEFENDANT'S alleged violations as mandated by Labor Code Section
21 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A, PLAINTIFF may
22 commence and is authorized to pursue this cause of action.

23 48. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the AGGRIEVED
24 EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of Labor Code Section 201,
25 202, 203, 204, 210, 218.5, 226, 226.7, 510, 512, 558, 1174(d), 1194, 1197, 1197.1, 1198, and 2802 in
26 the following amounts:

- 27 a. For violation of Labor Code Sections 201, 202, 203, and 204, one
28 hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period

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

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

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

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

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

23 f. For violations of Labor Code Sections 1194, 1197, 1198 and 1199,
24 a civil penalty in the amount of one hundred dollars (\$100) per
25 AGGRIEVED EMPLOYEE per pay period for the initial violation and two
26 hundred dollars fifty (\$250) per AGGIEVED EMPLOYEE per pay period
27 for each subsequent violation [penalty per Labor Code Section].
28

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

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

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against DEFENDANT as follows:

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

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

(c) For such other relief as the Court deems just and proper.

Dated: December 13, 2021

Respectfully Submitted,
JCL LAW FIRM, APC

By: Jean-Claude Lapuyade, Esq.
Attorneys for PLAINTIFF

1 **DEMAND FOR JURY TRIAL**

2 PLAINTIFF demands a jury trial on all issues triable to a jury.

3
4 Dated: December 13, 2021

Respectfully Submitted,
JCL LAW FIRM, APC

5
6 By: 
7 Jean-Claude Lapuyade, Esq.
8 Attorneys for PLAINTIFF
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