

SUMMONS

(CITACION JUDICIAL)

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

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

EVERGREEN ENVIRONMENTAL SERVICES LLC, a Texas limited liability company;
(Additional Parties Attachment is Attached)

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

ANTONIO MELGAREJO, on behalf of the State of California in their representative capacity as a private attorney general,

Electronically FILED by
Superior Court of California,
County of Los Angeles
2/28/2025 2:20 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By F. Caldera, Deputy Clerk

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

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

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

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

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

The name and address of the court is:
(El nombre y dirección de la corte es): Los Angeles Superior Court

Compton Courthouse - 200 West Compton Blvd., Compton, CA 90220

CASE NUMBER:
(Número del Caso):

25CM CV00333

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Jean-Claude Lapuyade, Esq. T: (619)599-8292 JCL Law Firm, APC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 02/28/2025
(Fecha)

Clerk, by F. Caldera, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

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

SHORT TITLE:

Melgarejo v. Evergreen Environmental Services LLC, et al.

CASE NUMBER:

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

☐ Plaintiff ☒ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

HPC INDUSTRIAL SERVICES LLC, a Delaware limited liability company; PHILLIPS 66 COMPANY, a Delaware corporation ; and DOES 1-50, Inclusive,

JCL LAW FIRM, APC

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Superior Court of California,
County of Los Angeles
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David W. Slayton,
Executive Officer/Clerk of Court,
By F. Caldera, Deputy Clerk

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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

ANTONIO MELGAREJO, on behalf of the
State of California in their representative
capacity as a private attorney general,

Plaintiff,

v.

EVERGREEN ENVIRONMENTAL
SERVICES LLC, a Texas limited liability
company; HPC INDUSTRIAL SERVICES
LLC, a Delaware limited liability company;
PHILLIPS 66 COMPANY, a Delaware
corporation ; and DOES 1-50, Inclusive,

Defendants.

Case No: **25CMCV00333**

REPRESENTATIVE ACTION
COMPLAINT FOR:

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

1 PLAINTIFF ANTONIO MELGAREJO ("PLAINTIFF") on behalf of the people of the State
2 of California, and as an "aggrieved employee" acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, Section 2699, *et seq.* ("PAGA") only, alleges on
4 information and belief, except for their own acts and knowledge which are based on personal
5 knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Defendant EVERGREEN
8 ENVIRONMENTAL SERVICES LLC ("Defendant EVERGREEN") a Texas limited liability
9 company, Defendant HPC INDUSTRIAL SERVICES LLC ("Defendant HPC INDUSTRIAL") a
10 Delaware limited liability company, and Defendant PHILLIPS 66 COMPANY ("Defendant
11 PHILLIPS") a Delaware corporation (collectively, "DEFENDANTS") seeking only to recover
12 PAGA civil penalties on behalf of all current and former aggrieved employees who worked for
13 DEFENDANTS. PLAINTIFF does **not seek to recover anything other than penalties as**
14 **permitted by California Labor Code Section 2699.** To the extent that statutory violations are
15 mentioned for wage violations, PLAINTIFF does not seek underlying general and/or special
16 damages for those violations, but simply the civil penalties permitted by California Labor Code
17 Section 2699.

18 2. California has enacted the PAGA which permits PLAINTIFF to bring an action on
19 behalf of others for PAGA penalties *only*, which is the precise and sole nature of this action.

20 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for DEFENDANTS'
21 violations under PAGA and solely for the relief as permitted by PAGA that is, penalties and any
22 other relief the Court deems proper pursuant to PAGA. Nothing in this complaint should be
23 constructed as attempting to obtain any relief that would not be available in a PAGA-only action.

24 4. PLAINTIFF is not suing in PLAINTIFF'S individual capacity; PLAINTIFF is
25 proceeding herein solely under the PAGA, on behalf of the State of California for all aggrieved
26 employees, including PLAINTIFF and other aggrieved employees. Nothing in this complaint
27 should be construed as PLAINTIFF suing in PLAINTIFF'S individual capacity.

28 ///

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

6. DEFENDANTS' systematic pattern of wage and hour and Industrial Welfare Commission ("IWC") Wage Order violations toward PLAINTIFF and other aggrieved employees in California include, *inter alia*:

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

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

THE PARTIES

8. Defendant EVERGREEN ENVIRONMENTAL SERVICES LLC (“Defendant EVERGREEN”) is a Texas limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

9. Defendant HPC INDUSTRIAL SERVICES LLC (“Defendant HPC INDUSTRIAL”) is a Delaware limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

10. Defendant PHILLIPS 66 COMPANY (“Defendant PHILLIPS”) is a Delaware corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

1 11. DEFENDANTS were the employer of PLAINTIFF as evidenced by the documents
2 issued to PLAINTIFF and by the company for which PLAINTIFF performed work.

3 12. Defendant EVERGREEN, Defendant HPC INDUSTRIAL, and Defendant
4 PHILLIPS were the joint employers of PLAINTIFF and the AGGRIEVED EMPLOYEES as
5 evidenced by the documents issued to PLAINTIFF and the AGGRIEVED EMPLOYEES, by the
6 company PLAINTIFF and the AGGRIEVED EMPLOYEES performed work for respectively, and
7 as these entities each exerted control over the hours, wages and/or working conditions of
8 PLAINTIFF and the AGGRIEVED EMPLOYEES. Therefore, Defendant EVERGREEN,
9 Defendant HPC INDUSTRIAL, and Defendant PHILLIPS are jointly responsible as employers for
10 the conduct alleged herein as “DEFENDANTS.”

11 13. DEFENDANTS own and operate a hazardous waste disposal company in California,
12 including in the county of Los Angeles.

13 14. PLAINTIFF was employed by DEFENDANTS in California from June 2023 to
14 April 2024, as a non-exempt employee, paid on an hourly basis, and entitled to the legally required
15 meal and rest periods and payment of minimum and overtime wages due for all time worked.

16 15. PLAINTIFF, and such persons who may be added from time to time who satisfy the
17 requirements and exhaust the administrative procedures under the PAGA, bring this Representative
18 Action on behalf of the State of California with respect to themselves and all individuals who are or
19 previously were employed by Defendant EVERGREEN and/or Defendant HPC INDUSTRIAL
20 and/or Defendant PHILLIPS in California and classified as non-exempt employees
21 (“AGGRIEVED EMPLOYEES”) during the time period of December 24, 2023, and the present
22 (“PAGA PERIOD”).

23 16. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor Code
24 Section 2699(c) because PLAINTIFF was employed by DEFENDANTS and personally suffered
25 each of the alleged Labor Code violations committed by DEFENDANTS.

26 17. PLAINTIFF and all other AGGRIEVED EMPLOYEES are, and at all relevant times
27 were, employees of DEFENDANTS, within the meanings set forth in the California Labor Code
28 and the applicable IWC Wage Order.

18. 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.

19. 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 Section 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 IWC and, as such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code Section 558, at all relevant times.

20. 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 Section 1197.1, who paid or caused to be paid to any employee a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties for each underpaid employee.

JURISDICTION AND VENUE

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

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

/ / /

THE CONDUCT

23. In violation of the applicable sections of the California Labor Code and the requirements of the 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 AGGRIEVED EMPLOYEES for missed meal and rest periods, failed to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all time worked, failed to compensate PLAINTIFF and AGGRIEVED EMPLOYEES for off-the-clock work, failed to pay PLAINTIFF and AGGRIEVED EMPLOYEES overtime at the correct regular rate of pay, failed to compensate PLAINTIFF and AGGRIEVED EMPLOYEES meal rest premiums at the regular rate, failed to reimburse PLAINTIFF and other AGGRIEVED EMPLOYEES for business expenses, and knowingly and intentionally failed to issue to PLAINTIFF and AGGRIEVED EMPLOYEES accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. 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

24. Pursuant to the IWC 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 employee is suffered or permitted to work. From time to time during the PAGA PERIOD, DEFENDANTS required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them for all the time they were under DEFENDANTS' control. Specifically, DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF'S off-duty meal break. Indeed, there were many days when PLAINTIFF did not even receive a partial lunch.

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

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

25 **B. Rest Period Violations**

26 26. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
27 were from time to time also required to work in excess of four (4) hours without being provided ten
28 (10) minute rest periods as a result of their rigorous work requirements and DEFENDANTS'

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

15 **C. Unreimbursed Business Expenses**

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

27 28. In the course of their employment, DEFENDANTS required PLAINTIFF and other
28 AGGRIEVED EMPLOYEES to incur personal expenses as a result of and in furtherance of their

1 job duties for the use of their personal cell phones and for the maintenance of their work uniforms.
2 Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES were required to use their own
3 personal cell phones and clean and maintain their work uniforms in order to perform work related
4 tasks. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and other
5 AGGRIEVED EMPLOYEES for the personal expenses incurred for the use of their personal cell
6 phones and for the maintenance of their work uniforms. As a result, in the course of their
7 employment with DEFENDANTS, the PLAINTIFF and other AGGRIEVED EMPLOYEES
8 incurred unreimbursed business expenses that included, but were not limited to, costs related to the
9 use of their personal cell phones and for the maintenance of their work uniforms, all on behalf of
10 and for the benefit of DEFENDANTS.

11 **D. Wage Statement Violations**

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

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

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1 31. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide
2 PLAINTIFF and the AGGRIEVED EMPLOYEES with wage statements that comply with
3 California Labor Code Section 226(a)(1)-(9).

4 32. As a result, DEFENDANTS issued PLAINTIFF and AGGRIEVED EMPLOYEES
5 with wage statements that violate California Labor Code Section 226(a)(1)-(9). Further,
6 DEFENDANTS' violations are knowing and intentional; they were not isolated due to an
7 unintentional payroll error due to clerical or inadvertent mistake.

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

9 33. During the PAGA PERIOD, from time to time DEFENDANTS failed and continue
10 to fail to accurately pay PLAINTIFF and AGGRIEVED EMPLOYEES for all hours worked.

11 34. During the PAGA PERIOD, from time to time DEFENDANTS required
12 PLAINTIFF and AGGRIEVED EMPLOYEES to perform pre-shift or post-shift work. This
13 resulted in PLAINTIFF and AGGRIEVED EMPLOYEES having to work while off-the-clock.

14 35. DEFENDANTS directed and directly benefited from the undercompensated off-the-
15 clock work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

16 36. DEFENDANTS controlled the work schedules, duties, protocols, applications,
17 assignments, and employment conditions of PLAINTIFF and AGGRIEVED EMPLOYEES.

18 37. DEFENDANTS were able to track the amount of time PLAINTIFF and
19 AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document, track,
20 or pay PLAINTIFF and AGGRIEVED EMPLOYEES all wages earned and owed for all the work
21 they performed.

22 38. PLAINTIFF and AGGRIEVED EMPLOYEES were non-exempt employees,
23 subject to the requirements of the California Labor Code.

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

1 40. DEFENDANTS knew or should have known that PLAINTIFF and AGGRIEVED
2 EMPLOYEES' off-the-clock work was compensable under the law.

3 41. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES forfeited wages due to
4 them for all hours worked at DEFENDANTS' direction, control, and benefit for the time spent
5 working while off-the-clock. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF
6 and AGGRIEVED EMPLOYEES wages for all hours worked in accordance with applicable law is
7 evidenced by DEFENDANTS' business records.

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

10 42. From time to time during the PAGA PERIOD, DEFENDANTS failed and continues
11 to fail to accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for
12 their overtime and double time hours worked, meal and rest period premiums, and redeemed sick
13 pay. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due to
14 them for working overtime without compensation at the correct overtime and double time rates,
15 meal and rest period premiums, and redeemed sick pay rates. DEFENDANTS' uniform policy and
16 practice not to pay PLAINTIFF and the AGGRIEVED EMPLOYEES at the correct rate for all
17 overtime and double time worked, meal and rest period premiums, and redeemed sick pay in
18 accordance with applicable law is evidenced by DEFENDANTS' business records.

19 43. State law provides that employees must be paid overtime at one-and-one-half times
20 their "regular rate of pay." (Cal. Lab. Code § 510.) PLAINTIFF and other AGGRIEVED
21 EMPLOYEES were compensated at an hourly rate plus incentive pay that was tied to specific
22 elements of an employee's performance.

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

1 45. From time to time, when calculating the regular rate of pay, in those pay periods
2 where PLAINTIFF and other AGGRIEVED EMPLOYEES worked overtime, double time, paid
3 meal and rest period premium payments, and/or redeemed sick pay, and earned non-discretionary
4 bonus, DEFENDANTS failed to accurately include the non-discretionary bonus compensation as
5 part of the employees' "regular rate of pay" and/or calculated all hours worked rather than just all
6 non-overtime hours worked. Management and supervisors described the incentive/bonus program
7 to potential and new employees as part of the compensation package. As a matter of law, the
8 incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must be
9 included in the "regular rate of pay." The failure to do so has resulted in a systematic underpayment
10 of overtime and double time compensation, meal and rest period premiums, and redeemed sick pay
11 to PLAINTIFF and other AGGRIEVED EMPLOYEES by DEFENDANTS. Specifically,
12 California Labor Code Section 246 mandates that paid sick time for non-exempt employees shall
13 be calculated in the same manner as the regular rate of pay for the workweek in which the non-
14 exempt employee uses paid sick time, whether or not the employee actually works overtime in that
15 workweek. DEFENDANTS' conduct, as articulated herein, by failing to include the incentive
16 compensation as part of the "regular rate of pay" for purposes of sick pay compensation was in
17 violation of California Labor Code Section 246 the underpayment of which is recoverable under
18 California Labor Code Sections 201, 202, 203 and/or 204.

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

1 **G. Sick Pay Violations**

2 47. California Labor Code Section 246 (a)(1) mandates that “An employee who, on or
3 after July 1, 2015, works in California for the same employer for 30 or more days within a year
4 from the commencement of employment is entitled to paid sick days as specified in this section.”
5 Further, California Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements.
6 From time to time, DEFENDANTS failed to have a policy or practice in place that provided
7 PLAINTIFF and AGGRIEVED EMPLOYEES with sick days and/or paid sick leave. As of January
8 1, 2024, DEFENDANTS failed to adhere to the law in that they failed to provide and allow
9 employees to use at least forty hours or five days of paid sick leave per year.

10 48. California Labor Code Section 246(i) requires an employer to furnish its employees
11 with written wage statements setting forth the amount of paid sick leave available. From time to
12 time, DEFENDANTS violated California Labor Code Section 246 by failing to furnish PLAINTIFF
13 and AGGRIEVED EMPLOYEES with wage statements setting forth the amount of paid sick leave
14 available.

15 **H. Violations for Untimely Payment of Wages**

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

21 50. Pursuant to California Labor Code Section 201, “If an employer discharges an
22 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”
23 Pursuant to California Labor Code Section 202, if an employee quits his or her employment, “his
24 or her wages shall become due and payable not later than 72 hours thereafter, unless the employee
25 has given 72 hours previous notice of his or her intention to quit, in which case the employee is
26 entitled to his or her wages at the time of quitting.” PLAINTIFF and the AGGRIEVED
27 EMPLOYEES were, from time to time, not timely provided the wages earned and unpaid at the
28 time of their discharge and/or at the time of quitting, in violation of California Labor Code Sections

201 and 202. Further, DEFENDANTS' violations are willful and intentional; they were not isolated due to an unintentional payroll error due to clerical or inadvertent mistake.

51. As such, PLAINTIFF demands up to thirty days of pay as penalty for not timely paying all wages due at time of termination for all AGGRIEVED EMPLOYEES whose employment ended during the PAGA PERIOD.

I. Unlawful Deductions

52. DEFENDANTS, from time to time unlawfully deducted wages from PLAINTIFF and AGGRIEVED EMPLOYEES' pay without explanations and without authorization to do so or notice to PLAINTIFF and the AGGRIEVED EMPLOYEES. As a result, DEFENDANTS violated Labor Code Section 221.

J. Unlawful Rounding Practices

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

54. Further, the mutability of DEFENDANTS' timekeeping system and unlawful rounding policy and practice resulted in PLAINTIFF and AGGRIEVED EMPLOYEES' time being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding policy and practice caused PLAINTIFF and AGGRIEVED EMPLOYEES to perform work as ordered by

1 DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty meal
2 break.

3 **K. Timekeeping Manipulation**

4 55. During the PAGA PERIOD, DEFENDANTS, from time to time, did not have an
5 immutable timekeeping system to accurately record and pay PLAINTIFF and AGGRIEVED
6 EMPLOYEES for the actual time PLAINTIFF and AGGRIEVED EMPLOYEES worked each day,
7 including regular time, overtime hours, sick pay, meal and rest breaks. As a result, DEFENDANTS
8 was able to and did in fact, unlawfully, and unilaterally alter the time recorded in DEFENDANTS'
9 timekeeping system for PLAINTIFF and AGGRIEVED EMPLOYEES in order to avoid paying
10 these employees for all hours worked, applicable overtime compensation, applicable sick pay,
11 missed meal breaks and missed rest break.

12 56. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES, from time to time,
13 forfeited time worked by working without their time being accurately recorded and without
14 compensation at the applicable pay rates.

15 57. The mutability of the timekeeping system also allowed DEFENDANTS to alter
16 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'
17 timekeeping system so as to create the appearance that PLAINTIFF and AGGRIEVED
18 EMPLOYEES clocked out for thirty (30) minute meal breaks when in fact the employees were not
19 at all times provided an off-duty meal break. This practice is a direct result of DEFENDANTS'
20 uniform policy and practice of denying employees uninterrupted thirty (30) minute off-duty meal
21 breaks each day or otherwise compensating them for missed meal breaks.

22 58. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES forfeited wages due to
23 them for all hours worked at DEFENDANTS' direction, control and benefit for the time the
24 timekeeping system was inoperable. DEFENDANTS' uniform policy and practice to not pay
25 PLAINTIFF and AGGRIEVED EMPLOYEES wages for all hours worked in accordance with
26 applicable law is evidenced by DEFENDANTS' business records.

27 59. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
28 off-duty meal and rest breaks and was not fully relieved of duty for PLAINTIFF'S rest and meal

1 periods. PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than
2 five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS
3 failed to provide PLAINTIFF with a second off-duty meal period each workday in which
4 DEFENDANTS required PLAINTIFF to work ten (10) hours of work. When DEFENDANTS
5 provided PLAINTIFF with a rest break, they required PLAINTIFF to remain on premises, on-duty
6 and on-call for the rest break. DEFENDANTS' policy caused PLAINTIFF to remain on premises,
7 on-call and on-duty during what was supposed to be PLAINTIFF'S off-duty meal periods.
8 PLAINTIFF therefore forfeited meal and rest breaks without additional compensation and in
9 accordance with DEFENDANTS' strict corporate policy and practice. Moreover, DEFENDANTS
10 also provided PLAINTIFF with paystubs that failed to comply with California Labor Code Section
11 226. Further, DEFENDANTS also failed to reimburse PLAINTIFF for required business expenses
12 related to the personal expenses incurred for the use of PLAINTIFF'S personal cell phone and for
13 the maintenance of work uniforms, on behalf of and in furtherance of PLAINTIFF'S employment
14 with DEFENDANTS. To date, DEFENDANTS have not fully paid PLAINTIFF the minimum,
15 overtime and double time compensation still owed to PLAINTIFF or any penalty wages owed to
16 PLAINTIFF under California Labor Code Section 203. The amount in controversy for PLAINTIFF
17 individually does not exceed the sum or value of \$75,000.

18 **FIRST CAUSE OF ACTION**

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

20 **(Cal. Lab. Code §§2698 *et seq.*)**

21 **(Alleged by PLAINTIFF against all DEFENDANTS)**

22 60. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
23 herein, the prior paragraphs of this Complaint.

24 61. PAGA is a mechanism by which the State of California itself can enforce state labor
25 laws through the employee suing under the PAGA who do so as the proxy or agent of the state's
26 labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally
27 a law enforcement action designed to protect the public and not to benefit private parties. The
28 purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing"

1 citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California
2 Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as
3 private attorneys general to recover civil penalties for Labor Code violations ..." (Stats. 2003, ch.
4 906, § 1.) Accordingly, PAGA claims cannot be subject to arbitration.

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

8 63. Labor Code Sections 2699(a) and (k) authorize an AGGRIEVED EMPLOYEE, like
9 PLAINTIFF, on behalf of themselves and other current or former employees, to bring a civil action
10 to recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3

11 64. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code
12 Section 2699.3. By certified letter, return receipt requested, dated December 24, 2024,
13 PLAINTIFF gave written notice to the Labor and Workforce Development Agency ("LWDA")
14 and to DEFENDANTS of the specific provisions of the Labor Code alleged to have been violated,
15 including the facts and theories to support the alleged violations. (See Exhibit #1.)

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

21 66. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the
22 AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of
23 Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7,
24 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802 and
25 2804 in the following amounts:

- 26 a. For violation of Labor Code Sections 201, 202, 203, and 204, up to (\$200)
27 per AGGRIEVED EMPLOYEE per pay period [penalty per Labor Code
28 Section 2699(f)];

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

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

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

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

17 f. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and 1199,
18 a civil penalty in the amount of one hundred dollars (\$100) for each
19 AGGRIEVED EMPLOYEE per pay period for the initial violation and two
20 hundred dollars fifty (\$250) for each AGGRIEVED EMPLOYEE per pay
21 period for each subsequent violation [penalty per Labor Code Section 1197.1].

22 67. For all provisions of the Labor Code for which civil penalty is not specifically
23 provided, Labor Code Section 2699(f) imposes upon DEFENDANTS a penalty of up to two
24 hundred dollars (\$200) for each AGGRIEVED EMPLOYEE per pay period. PLAINTIFF and the
25 AGGRIEVED EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in
26 connection with their claims for civil penalties pursuant to Labor Code Section 2699(k)(1).

27
28 ///

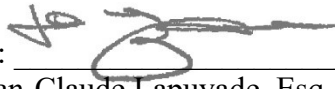
PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as follows:

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

DATED: February 28, 2025

JCL LAW FIRM, APC

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