

SUMMONS

(CITACION JUDICIAL)

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

ELECTRONICALLY FILED
Superior Court of California
County of Sacramento
11/04/2024
M. Pipe Deputy

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

KNIGHT SACRAMENTO SU INC., a California corporation; KNIGHT SACRAMENTO V INC., a California corporation; (Additional Parties Attachment form is attached)

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

MICHELLE PHAN, on behalf of the State of California in her representative capacity as a private attorney general,

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): Sacramento Superior Court

Gordon D. Schaber Courthouse - 720 9th Street, Sacramento, CA 95814

CASE NUMBER:
(Número del Caso):

24CV022264

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:

(Fecha) 11/04/2024

Clerk, by

(Secretario) /s/ M. Pipe

, 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

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):

SHORT TITLE: Michelle Phan v. Knight Sacramento Su Inc., et al.	CASE NUMBER:
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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

KNIGHT SACRAMENTO AC INC., a California corporation; KNIGHT SACRAMENTO AU INC., a California corporation; KNIGHT SACRAMENTO AC INC., a California corporation; KNIGHT SACRAMENTO CD INC., a California corporation; KNIGHT CLAREMONT INC., a California corporation; KNIGHT SUNRISE FONTANA LLC, a California limited liability company; KNIGHT SUNRISE HOLLYWOOD LLC, a California limited liability company; and DOES 1-50, Inclusive,

11/01/2024

By: M. Pipe Deputy

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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

MICHELLE PHAN, on behalf of the State of
California in her representative capacity as a
private attorney general,

Plaintiff,

v.

KNIGHT SACRAMENTO SU INC., a
California corporation; KNIGHT
SACRAMENTO V INC., a California
corporation; KNIGHT SACRAMENTO AC
INC., a California corporation; KNIGHT
SACRAMENTO AU INC., a California
corporation; KNIGHT SACRAMENTO CD
INC., a California corporation; KNIGHT
CLAREMONT INC., a California corporation;
KNIGHT SUNRISE FONTANA LLC, a
California limited liability company; KNIGHT
SUNRISE HOLLYWOOD LLC, a California
limited liability company; and DOES 1-50,
Inclusive,

Defendants.

Case No: **24CV022264**

REPRESENTATIVE ACTION
COMPLAINT FOR:

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

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

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against KNIGHT SACRAMENTO SU INC.;
8 KNIGHT SACRAMENTO V INC.; KNIGHT SACRAMENTO AC INC.; KNIGHT
9 SACRAMENTO AU INC.; KNIGHT SACRAMENTO CD INC.; KNIGHT CLAREMONT
10 INC.; KNIGHT SUNRISE FONTANA LLC; and KNIGHT SUNRISE HOLLYWOOD LLC,
11 ("DEFENDANT" and/or "DEFENDANTS") seeking only to recover PAGA civil penalties on
12 behalf of all current and former aggrieved employees that worked for DEFENDANT.
13 PLAINTIFF does **not seek to recover anything other than penalties as permitted by**
14 **California Labor Code § 2699**. To the extent that statutory violations are mentioned for wage
15 violations, PLAINTIFF does not seek underlying general and/or special damages for those
16 violations, but simply the civil penalties permitted by California Labor Code § 2699.

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

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

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

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

6. DEFENDANT’S systematic pattern of wage and hour and 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 KNIGHT SACRAMENTO SU INC. (“Defendant Knight Sacramento SU”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

9. Defendant KNIGHT SACRAMENTO V INC. (“Defendant Knight Sacramento V”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

10. Defendant KNIGHT SACRAMENTO AC INC. (“Defendant Knight Sacramento AC”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

/ / /

1 11. Defendant KNIGHT SACRAMENTO AU INC. (“Defendant Knight Sacramento
2 AU”) is a California corporation that at all relevant times mentioned herein conducted and
3 continues to conduct substantial and regular business throughout California.

4 12. Defendant KNIGHT SACRAMENTO CD INC. (“Defendant Knight Sacramento
5 CD”) is a California corporation that at all relevant times mentioned herein conducted and
6 continues to conduct substantial and regular business throughout California.

7 13. Defendant KNIGHT CLAREMONT INC. (“Defendant Knight Claremont”) is a
8 California corporation that at all relevant times mentioned herein conducted and continues to
9 conduct substantial and regular business throughout California.

10 14. Defendant KNIGHT SUNRISE FONTANA LLC (“Defendant Knight Sunrise
11 Fontana”) is a California limited liability company that at all relevant times mentioned herein
12 conducted and continues to conduct substantial and regular business throughout California.

13 15. Defendant KNIGHT SUNRISE HOLLYWOOD LLC (“Defendant Knight Sunrise
14 Hollywood”) is a California limited liability company that at all relevant times mentioned herein
15 conducted and continues to conduct substantial and regular business throughout California.

16 16. Defendant Knight Sacramento SU, Defendant Knight Sacramento V, Defendant
17 Knight Sacramento AC, Defendant Knight Sacramento AU, Defendant Knight Sacramento CD,
18 Defendant Knight Claremont, Defendant Knight Sunrise Fontana, and Defendant Knight Sunrise
19 Hollywood were the joint employers of PLAINTIFF and the AGGRIEVED EMPLOYEES as
20 evidenced by the documents issued to PLAINTIFF and the AGGRIEVED EMPLOYEES, by the
21 company PLAINTIFF and the AGGRIEVED EMPLOYEES performed work for respectively,
22 and as these entities each exerted control over the hours, wages and/or working conditions of
23 PLAINTIFF and the AGGRIEVED EMPLOYEES. Therefore, Defendant Knight Sacramento
24 SU, Defendant Knight Sacramento V, Defendant Knight Sacramento AC, Defendant Knight
25 Sacramento AU, Defendant Knight Sacramento CD, Defendant Knight Claremont, Defendant
26 Knight Sunrise Fontana, and Defendant Knight Sunrise Hollywood are jointly responsible as
27 employers for the conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”

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

3 18. DEFENDANTS operate car dealerships throughout the state of California,
4 including in the county of Sacramento, where PLAINTIFF worked.

5 19. PLAINTIFF was employed by DEFENDANTS in California intermittently from
6 2014 to July of 2024, paid in part an hourly wage, and entitled to the legally required meal and
7 rest periods and payment of minimum and overtime wages due for all time worked.

8 20. PLAINTIFF, and such persons that may be added from time to time who satisfy
9 the requirements and exhaust the administrative procedures under the Private Attorney General
10 Act, bring this Representative Action on behalf of the State of California with respect to herself
11 and all individuals who are or previously were employed by Defendant Knight Sacramento SU,
12 and/or Defendant Knight Sacramento V, and/or Defendant Knight Sacramento AC, and/or
13 Defendant Knight Sacramento AU, and/or Defendant Knight Sacramento CD, and/or Defendant
14 Knight Claremont, and/or Defendant Knight Sunrise Fontana, and/or Defendant Knight Sunrise
15 Hollywood in California and classified as non-exempt employees (“AGGRIEVED
16 EMPLOYEES”) during the time period of August 27, 2023, and the present (“PAGA Period”).

17 21. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor
18 Code § 2699(c) because she was employed by DEFENDANT and personally suffered each of the
19 alleged Labor Code violations committed by DEFENDANT.

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

23 23. Each of the fictitiously named defendants participated in the acts alleged in this
24 Complaint. The true names and capacities of the Defendants named as DOES 1 THROUGH 50,
25 inclusive, are presently unknown to PLAINTIFF. PLAINTIFF will amend this Complaint, setting
26 forth the true names and capacities of these fictitiously named Defendants when their true names
27 are ascertained. PLAINTIFF is informed and believes, and on that basis alleges, that each of the
28 fictitious Defendants have participated in the acts alleged in this Complaint.

24. 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.

25. DEFENDANTS were PLAINTIFF'S employer or persons acting on behalf of PLAINTIFF'S employer either individually or as an officer, agent, or employee of another person, within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties for each underpaid employee.

JURISDICTION AND VENUE

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

27. 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

28. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANTS as a matter of company policy, practice, and procedure, intentionally, knowingly, and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate PLAINTIFF and AGGRIEVED EMPLOYEES for missed meal and rest periods, failed to pay

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

14 **A. Meal Period Violations**

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

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

17 **B. Rest Period Violations**

18 31. From time to time during the PAGA PERIOD, PLAINTIFF and other
19 AGGRIEVED EMPLOYEES were also required 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 DEFENDANT's inadequate staffing. Further, for the same reasons, these employees were denied
22 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
23 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some
24 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and
25 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
26 time to time. When they were provided with rest breaks, PLAINTIFF and other AGGRIEVED
27 EMPLOYEES were, from time to time, required to remain on premises, on duty and/or on call.
28 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one-hour wages

1 *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANT's inadequate
2 staffing, PLAINTIFF and other AGGRIEVED EMPLOYEES were from time to time denied their
3 proper rest periods by DEFENDANT and DEFENDANT's managers.

4 **C. Unreimbursed Business Expenses**

5 32. DEFENDANTS as a matter of corporate policy, practice, and procedure,
6 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
7 and the other AGGRIEVED EMPLOYEES for required business expenses incurred by the
8 PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of discharging their
9 duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers are
10 required to indemnify employees for all expenses incurred in the course and scope of their
11 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
12 employee for all necessary expenditures or losses incurred by the employee in direct consequence
13 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
14 even though unlawful, unless the employee, at the time of obeying the directions, believed them
15 to be unlawful."

16 33. In the course of their employment, DEFENDANT required PLAINTIFF and other
17 AGGRIEVED EMPLOYEES to incur personal expenses for the use of their personal cell phones
18 and for the purchase and maintenance of work uniforms as a result of and in furtherance of their
19 job duties. Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES were required to
20 use their own cell phones and purchase and maintain their work uniforms in order to perform
21 work related tasks. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and
22 other AGGRIEVED EMPLOYEES for the personal expenses incurred for the use of their
23 personal cell phones and purchase and maintenance of their work uniforms. As a result, in the
24 course of their employment with DEFENDANTS, the PLAINTIFF and other AGGRIEVED
25 EMPLOYEES incurred unreimbursed business expenses that included, but were not limited to,
26 costs related to the use of their personal cell phones and purchase and maintenance of their work
27 uniforms, all on behalf of and for the benefit of DEFENDANTS.

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1 **D. Wage Statement Violations**

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

10 35. From time to time during the PAGA PERIOD, when PLAINTIFF and other
11 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurately for missed
12 meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed
13 to provide PLAINTIFF and other AGGRIEVED EMPLOYEES with complete and accurate wage
14 statements which failed to show, among other things, all deductions, the total hours worked and
15 all applicable hourly rates in effect during the pay period, and the corresponding amount of time
16 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
17 periods.

18 36. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide
19 PLAINTIFF and the AGGRIEVED EMPLOYEES Members with wage statements that comply
20 with Cal. Lab. Code § 226(a)(1)-(9).

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

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

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

1 39. During the PAGA PERIOD, from time-to-time DEFENDANTS required
2 PLAINTIFF and AGGRIEVED EMPLOYEES to perform pre-shift or post-shift work. This
3 resulted in PLAINTIFF and AGGRIEVED EMPLOYEES having to work while off-the-clock.

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

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

8 42. DEFENDANTS were able to track the amount of time PLAINTIFF and
9 AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document,
10 track, or pay PLAINTIFF and AGGRIEVED EMPLOYEES all wages earned and owed for all
11 the work they performed.

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

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

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

21 46. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES forfeited wages due to
22 them for all hours worked at DEFENDANTS' direction, control, and benefit for the time spent
23 working while off-the-clock. DEFENDANTS' uniform policy and practice to not pay
24 PLAINTIFF and AGGRIEVED EMPLOYEES wages for all hours worked in accordance with
25 applicable law is evidenced by DEFENDANTS' business records.

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

47. From time to time during the PAGA PERIOD, DEFENDANTS failed and continues 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 redeemed sick pay. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due to them for working overtime without compensation at the correct overtime and double time rates, meal and rest period premiums, and redeemed sick pay rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and the AGGRIEVED EMPLOYEES Members at the correct rate for all overtime and double time worked, meal and rest period premiums, and redeemed 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 and/or commissions.

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. 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 redeemed sick pay, and earned non-discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked rather than just all non-overtime hours worked. Management and supervisors described the incentive/bonus program

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

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

24 **G. Commission and Piece-Rate Violations**

25 52. From time-to-time during the PAGA PERIOD, PLAINTIFF and AGGRIEVED
26 EMPLOYEES were paid in part on a commission and/or piece-rate basis. In those instances where
27 PLAINTIFF and AGGRIEVED EMPLOYEES were paid in part on a commission and/or piece-
28 rate basis, PLAINTIFF and AGGRIEVED EMPLOYEES were entitled to be separately

1 compensated for all non-productive time at an hourly rate that is no less than the applicable
2 minimum wage. Notwithstanding, in those instances where PLAINTIFF and AGGRIEVED
3 EMPLOYEES were paid in part on a commission and/or piece-rate basis, DEFENDANTS failed
4 to separately compensate PLAINTIFF and AGGRIEVED EMPLOYEES for all non-productive
5 time, including but not limited to, paid rest periods, at an hourly rate that is no less than the
6 applicable minimum wage. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES forfeited
7 minimum wages and overtime wages by DEFENDANT'S failure to separately compensate their
8 non-productive time at an hourly rate that is no less than the applicable minimum wage.

9 53. Further, from time-to-time during the PAGA PERIOD, DEFENDANTS
10 improperly misclassified PLAINTIFF and AGRIEVED EMPLOYEES who were paid on a draw
11 versus commission basis as exempt from overtime compensation. During the PAGA PERIOD,
12 DEFENDANTS included advanced draws in order to meet the salary-basis test for the overtime
13 exemption. However, DEFENDANTS cannot rely on advanced draws in order to meet the salary-
14 basis test for such an exemption. (See *Semprini v. Wedbush* (2020) 57 Cal.App.5th 252-254.) As a
15 result, PLAINTIFF and AGGRIEVED EMPLOYEES who were paid on a draw versus
16 commission basis forfeited overtime wages by DEFENDANTS' failure to accurately classify
17 them as non-exempt from overtime compensation.

18 **H. Sick Pay Violations**

19 54. Cal. Labor Code Section 246 (a)(1) mandates that "An employee who, on or after
20 July 1, 2015, works in California for the same employer for 30 or more days within a year from
21 the commencement of employment is entitled to paid sick days as specified in this section."
22 Further, Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements. From
23 time to time, DEFENDANTS failed to have a policy or practice in place that provided
24 PLAINTIFF and AGGRIEVED EMPLOYEES with sick days and/or paid sick leave.

25 55. California Labor Code Section 246(i) requires an employer to furnish its
26 employees with written wage statements setting forth the amount of paid sick leave available.
27 From time to time, DEFENDANTS violated Cal. Lab. Code § 246 by failing to furnish
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1 PLAINTIFF and AGGRIEVED EMPLOYEES with wage statements setting forth the amount of
2 paid sick leave available.

3 **I. Violations for Untimely Payment of Wages**

4 56. Pursuant to California Labor Code section 204, PLAINTIFF and the
5 AGGRIEVED EMPLOYEES members were entitled to timely payment of wages during their
6 employment. PLAINTIFF and the AGGRIEVED EMPLOYEES members, from time to time, did
7 not receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
8 meal period premium wages, and rest period premium wages within permissible time period.

9 57. Pursuant to Cal. Lab. Code § 201, “If an employer discharges an employee, the
10 wages earned and unpaid at the time of discharge are due and payable immediately.” Pursuant to
11 Cal. Lab. Code § 202, if an employee quits his or her employment, “his or her wages shall become
12 due and payable not later than 72 hours thereafter, unless the employee has given 72 hours
13 previous notice of his or her intention to quit, in which case the employee is entitled to his or her
14 wages at the time of quitting.” PLAINTIFF and the AGGRIEVED EMPLOYEES were, from time
15 to time, not timely provided the wages earned and unpaid at the time of their discharge and/or at
16 the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202. Further, DEFENDANT’s
17 violations are willful and intentional, were not isolated due to an unintentional payroll error due
18 to clerical or inadvertent mistake.

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

22 **J. Unlawful Deductions**

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

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1 **K. Unlawful Rounding Practices**

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

14 61. Further, the mutability of DEFENDANT’S timekeeping system and unlawful
15 rounding policy and practice resulted in PLAINTIFF and AGGRIEVED EMPLOYEES’ time
16 being inaccurately recorded. As a result, from time to time, DEFENDANT’S unlawful rounding
17 policy and practice caused PLAINTIFF and AGGRIEVED EMPLOYEES to perform work as
18 ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-
19 duty meal break.

20 **L. Timekeeping Manipulation**

21 62. During the PAGA PERIOD, DEFENDANTS, from time-to-time, did not have an
22 immutable timekeeping system to accurately record and pay PLAINTIFF and AGGRIEVED
23 EMPLOYEES for the actual time PLAINTIFF and AGGRIEVED EMPLOYEES worked each
24 day, including regular time, overtime hours, sick pay, meal and rest breaks. As a result,
25 DEFENDANTS were able to and did in fact, unlawfully, and unilaterally alter the time recorded
26 in DEFENDANTS’ timekeeping system for PLAINTIFF and AGGRIEVED EMPLOYEES in
27 order to avoid paying these employees for all hours worked, applicable overtime compensation,
28 applicable sick pay, missed meal breaks and missed rest break.

1 63. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES, from time-to-time,
2 forfeited time worked by working without their time being accurately recorded and without
3 compensation at the applicable pay rates.

4 64. The mutability of the timekeeping system also allowed DEFENDANTS to alter
5 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANT'S
6 timekeeping system so as to create the appearance that PLAINTIFF and AGGRIEVED
7 EMPLOYEES clocked out for thirty (30) minute meal break when in fact the employees were not
8 at all times provided an off-duty meal break. This practice is a direct result of DEFENDANT's
9 uniform policy and practice of denying employees uninterrupted thirty (30) minute off-duty meal
10 breaks each day or otherwise compensate them for missed meal breaks.

11 65. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES forfeited wages due
12 them for all hours worked at DEFENDANT'S direction, control and benefit for the time the
13 timekeeping system was inoperable. DEFENDANT'S uniform policy and practice to not pay
14 PLAINTIFF and AGGRIEVED EMPLOYEES wages for all hours worked in accordance with
15 applicable law is evidenced by DEFENDANT'S business records.

16 66. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
17 off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.
18 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
19 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
20 provide PLAINTIFF with a second off-duty meal period each workday in which she was required
21 by DEFENDANTS to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFF
22 with a rest break, they required PLAINTIFF to remain on-duty and on-call for the rest break.
23 DEFENDANTS policy caused PLAINTIFF to remain on-call and on-duty during what was
24 supposed to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks
25 without additional compensation and in accordance with DEFENDANT'S strict corporate policy
26 and practice. Moreover, DEFENDANTS also provided PLAINTIFF with paystubs that failed to
27 comply with Cal. Lab. Code § 226. Further, DEFENDANTS also failed to reimburse PLAINTIFF
28 for required business expenses related to the personal expenses incurred for the use of her personal

1 cell phone, personal vehicle and purchase of work uniforms, on behalf of and in furtherance of
2 her employment with DEFENDANTS. To date, DEFENDANTS have not fully paid PLAINTIFF
3 the minimum, overtime and double time compensation still owed to her or any penalty wages
4 owed to her under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually
5 does not exceed the sum or value of \$75,000.

6 **FIRST CAUSE OF ACTION**

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

8 **(Cal. Lab. Code §§2698 et seq.)**

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

10 67. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
11 herein, the prior paragraphs of this Complaint.

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

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

25 70. Labor Code Sections 2699(a) and (k) authorize an AGGRIEVED EMPLOYEE,
26 like PLAINTIFF, on behalf of herself and other current or former employees, to bring a civil
27 action to recover civil penalties pursuant to the procedures specified in Labor Code Section
28 2699.3

1 71. PLAINTIFF complied with the procedures for bringing suit specified in Labor
2 Code Section 2699.3. By certified letter, return receipt requested, dated August 27, 2024,
3 PLAINTIFF gave written notice to the Labor and Workforce Development Agency (“LWDA”)
4 and to DEFENDANTS of the specific provisions of the Labor Code alleged to have been
5 violated, including the facts and theories to support the alleged violations. See Exhibit #1.

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

11 73. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the
12 AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS’ violations of
13 Labor Code Section 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7,
14 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199,
15 2802 and 2804 in the following amounts:

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

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

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

27 d. For violations of Labor Code Sections 226.7, 510 and 512, a civil penalty
28 in the amount of fifty dollars (\$50) for each underpaid AGGRIEVED

1 EMPLOYEE for the initial violation and hundred dollars (\$100) for each
2 underpaid AGGRIEVED EMPLOYEE for each subsequent violation [penalty
3 per Labor Code Section 558];

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

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

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

17 **PRAYER FOR RELIEF**

18 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as follows:

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

21 2. For civil penalties to the extent permitted by law pursuant to the Labor Code under
22 the Private Attorneys General Act; and

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

24 DATED: November 1, 2024

25 **JCL LAW FIRM, APC**

26 By: 

27 Jean-Claude Lapuyade
28 Attorney for PLAINTIFF