

SUMMONS

(CITACION JUDICIAL)

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

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

HOGAN PERSONNEL, LLC, a Missouri limited liability company; HOGAN TRUCK LEASING, INC., a Missouri corporation; and DOES 1-50, Inclusive,

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

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

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

04/03/2025
By: Heather Duffer, DEPUTY

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): San Bernardino Superior Court

SBJC - 247 West Third Street, San Bernardino, CA 92415

CASE NUMBER:
(Número del Caso):

CIVSB2506892

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: 4/3/2025
(Fecha)

Clerk, by /s/ Heather Duffer, Deputy
(Secretario) (Adjunto)

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



NOTICE TO THE PERSON SERVED: You are served

- ☐ 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):

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo-Johnson (State Bar #343881)
John L. Nitti (State Bar #330752)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com
jnitti@jcl-lawfirm.com

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
3/10/2025 12:35 PM
By: Heather Duffer, DEPUTY

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Nicole Noursamadi (State Bar #357246)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
shani@zakaylaw.com
nicole@zakaylaw.com

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

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

Plaintiff,

v.

HOGAN PERSONNEL, LLC, a Missouri
limited liability company; HOGAN TRUCK
LEASING, INC., a Missouri corporation; and
DOES 1-50, Inclusive,

Defendants.

Case No: CIVSB2506892

REPRESENTATIVE ACTION
COMPLAINT FOR:

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

1 PLAINTIFF LUTHER HILL ("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, 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 HOGAN PERSONNEL, LLC, and
8 Defendant HOGAN TRUCK LEASING, INC., (collectively, "DEFENDANTS") seeking only to
9 recover PAGA civil penalties on behalf of all current and former aggrieved employees who worked
10 for DEFENDANTS. PLAINTIFF does **not seek to recover anything other than penalties as**
11 **permitted by California Labor Code Section 2699.** To the extent that statutory violations are
12 mentioned for wage violations, PLAINTIFF does not seek underlying general and/or special
13 damages for those violations, but simply the civil penalties permitted by California Labor Code
14 Section 2699.

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

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

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

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

28 ///

1 EMPLOYEES. Therefore, Defendant Hogan Personnel and Defendant Hogan Truck are jointly
2 responsible as employers for the conduct alleged herein as “DEFENDANTS.”

3 11. DEFENDANTS own and operate a transportation service company in California,
4 including in the County of San Bernardino.

5 12. PLAINTIFF was employed by DEFENDANTS in California from February 2023 to
6 May 2024, as a non-exempt employee, paid on an hourly basis, and entitled to the legally required
7 meal and rest periods and payment of minimum and overtime wages due for all time worked.

8 13. PLAINTIFF, and such persons who may be added from time to time who satisfy the
9 requirements and exhaust the administrative procedures under the PAGA, bring this Representative
10 Action on behalf of the State of California with respect to themselves and all individuals who are or
11 previously were employed by Defendant Hogan Personnel and/or Defendant Hogan Truck in
12 California and classified as non-exempt employees (“AGGRIEVED EMPLOYEES”) during the
13 time period of January 3, 2024, and the present (“PAGA PERIOD”).

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

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

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

26 17. DEFENDANTS, including DOES 1 THROUGH 50 (hereinafter collectively
27 “DEFENDANTS”), were PLAINTIFF’S employers or persons acting on behalf of PLAINTIFF’S
28 employer, within the meaning of California Labor Code Section 558, who violated or caused to be

1 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
2 hours and days of work in any order of the IWC and, as such, are subject to civil penalties for each
3 underpaid employee, as set forth in Labor Code Section 558, at all relevant times.

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

9 **JURISDICTION AND VENUE**

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

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

19 **THE CONDUCT**

20 21. In violation of the applicable sections of the California Labor Code and the
21 requirements of the IWC Wage Order, DEFENDANTS as a matter of company policy, practice,
22 and procedure, intentionally, knowingly, and systematically failed to provide legally compliant
23 meal and rest periods, failed to accurately compensate PLAINTIFF and AGGRIEVED
24 EMPLOYEES for missed meal and rest periods, failed to pay PLAINTIFF and AGGRIEVED
25 EMPLOYEES for all time worked, failed to compensate PLAINTIFF and AGGRIEVED
26 EMPLOYEES for off-the-clock work, failed to pay PLAINTIFF and AGGRIEVED EMPLOYEES
27 overtime at the correct regular rate of pay, failed to compensate PLAINTIFF and AGGRIEVED
28 EMPLOYEES meal rest premiums at the regular rate, failed to reimburse PLAINTIFF and other

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

10 **A. Meal Period Violations**

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

24 23. During the PAGA PERIOD, as a result of their rigorous work schedules and
25 DEFENDANTS' inadequate staffing practices, PLAINTIFF and other AGGRIEVED
26 EMPLOYEES were from time to time unable to take thirty (30) minute off-duty meal breaks and
27 were not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED
28 EMPLOYEES were from time to time required to perform work as ordered by DEFENDANTS for

1 more than five (5) hours during some shifts without receiving a meal break. Further, from time to
2 time DEFENDANTS failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a
3 second off-duty meal period for some workdays in which DEFENDANTS require these employees
4 to work ten (10) hours of work. The nature of the work performed by PLAINTIFF and other
5 AGGRIEVED EMPLOYEES does not qualify for the limited and narrowly construed “on-duty”
6 meal period exception. When they were provided with meal periods, PLAINTIFF and other
7 AGGRIEVED EMPLOYEES were, from time to time, required to remain on premises, on duty and
8 on call. 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 meal breaks.
11 DEFENDANTS’ failure to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with legally
12 required meal breaks is evidenced by DEFENDANTS’ business records. PLAINTIFF and
13 AGGRIEVED EMPLOYEES therefore forfeit meal breaks without additional compensation and in
14 accordance with DEFENDANTS’ strict corporate policy and practice.

15 **B. Rest Period Violations**

16 24. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
17 were from time to time also required to work in excess of four (4) hours without being provided ten
18 (10) minute rest periods as a result of their rigorous work requirements and DEFENDANTS’
19 inadequate staffing. Further, for the same reasons, these employees were from time to time denied
20 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
21 (4) hours, denied from time to time a first and second rest period of at least ten (10) minutes for
22 some shifts worked of between six (6) and eight (8) hours, and denied from time to time a first,
23 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or
24 more. When they were provided with rest breaks, PLAINTIFF and other AGGRIEVED
25 EMPLOYEES were, from time to time, required to remain on premises, on duty and/or on call.
26 Further, DEFENDANTS from time to time required PLAINTIFF and other AGGRIEVED
27 EMPLOYEES to maintain cordless communication devices in order to receive and respond to
28 work-related communications during what was supposed to be their off-duty rest breaks.

1 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one-hour wages
2 *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANTS' inadequate
3 staffing, PLAINTIFF and other AGGRIEVED EMPLOYEES were from time to time denied their
4 proper rest periods by DEFENDANTS and DEFENDANTS' managers.

5 **C. Unreimbursed Business Expenses**

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

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

D. Wage Statement Violations

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

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

29. Further, DEFENDANTS from time to time failed to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with wage statements that show all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

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

31. As a result, DEFENDANTS issued PLAINTIFF and AGGRIEVED EMPLOYEES with wage statements that violate California Labor Code Section 226. Further, DEFENDANTS' violations are knowing and intentional; they were not isolated due to an unintentional payroll error due to clerical or inadvertent mistake.

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

2 32. During the PAGA PERIOD, from time to time DEFENDANTS failed and continue
3 to fail to accurately pay PLAINTIFF and AGGRIEVED EMPLOYEES for all hours worked.

4 33. During the PAGA PERIOD, from time to time DEFENDANTS required
5 PLAINTIFF and AGGRIEVED EMPLOYEES to perform pre-shift or post-shift work, including
6 but not limited to, performing keyholder duties. This resulted in PLAINTIFF and AGGRIEVED
7 EMPLOYEES having to work while off-the-clock.

8 34. DEFENDANTS directed and directly benefited from the undercompensated off-the-
9 clock work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

10 35. DEFENDANTS controlled the work schedules, duties, protocols, applications,
11 assignments, and employment conditions of PLAINTIFF and AGGRIEVED EMPLOYEES.

12 36. DEFENDANTS were able to track the amount of time PLAINTIFF and
13 AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document, track,
14 or pay PLAINTIFF and AGGRIEVED EMPLOYEES all wages earned and owed for all the work
15 they performed.

16 37. PLAINTIFF and AGGRIEVED EMPLOYEES were non-exempt employees,
17 subject to the requirements of the California Labor Code.

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

23 39. DEFENDANTS knew or should have known that PLAINTIFF and AGGRIEVED
24 EMPLOYEES' off-the-clock work was compensable under the law.

25 40. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES forfeited wages due to
26 them for all hours worked at DEFENDANTS' direction, control, and benefit for the time spent
27 working while off-the-clock. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF
28

1 and AGGRIEVED EMPLOYEES wages for all hours worked in accordance with applicable law is
2 evidenced by DEFENDANTS' business records.

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

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

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

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

24 44. From time to time, when calculating the regular rate of pay, in those pay periods
25 where PLAINTIFF and other AGGRIEVED EMPLOYEES worked overtime, double time, paid
26 meal and rest period premium payments, and/or redeemed sick pay, and earned non-discretionary
27 bonus, DEFENDANTS failed to accurately include the non-discretionary bonus compensation as
28 part of the employees' "regular rate of pay" and/or calculated all hours worked rather than just all

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

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

24 **G. Sick Pay Violations**

25 46. California Labor Code Section 246 (a)(1) mandates that “An employee who, on or
26 after July 1, 2015, works in California for the same employer for 30 or more days within a year
27 from the commencement of employment is entitled to paid sick days as specified in this section.”
28 Further, California Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements.

1 From time to time, DEFENDANTS failed to have a policy or practice in place that provided
2 PLAINTIFF and AGGRIEVED EMPLOYEES with sick days and/or paid sick leave. As of January
3 1, 2024, DEFENDANTS failed to adhere to the law in that they failed to provide and allow
4 employees to use at least forty hours or five days of paid sick leave per year.

5 47. California Labor Code Section 246(i) requires an employer to furnish its employees
6 with written wage statements setting forth the amount of paid sick leave available. From time to
7 time, DEFENDANTS violated California Labor Code Section 246 by failing to furnish PLAINTIFF
8 and AGGRIEVED EMPLOYEES with wage statements setting forth the amount of paid sick leave
9 available.

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

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

16 49. Pursuant to California Labor Code Section 201, "If an employer discharges an
17 employee, the wages earned and unpaid at the time of discharge are due and payable immediately."
18 Pursuant to California Labor Code Section 202, if an employee quits his or her employment, "his
19 or her wages shall become due and payable not later than 72 hours thereafter, unless the employee
20 has given 72 hours previous notice of his or her intention to quit, in which case the employee is
21 entitled to his or her wages at the time of quitting." PLAINTIFF and the AGGRIEVED
22 EMPLOYEES were, from time to time, not timely provided the wages earned and unpaid at the
23 time of their discharge and/or at the time of quitting, in violation of California Labor Code Sections
24 201 and 202. Further, DEFENDANTS' violations are willful and intentional; they were not isolated
25 due to an unintentional payroll error due to clerical or inadvertent mistake.

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

1 **I. Unlawful Deductions**

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

6 **J. Unlawful Rounding Practices**

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

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

25 **K. Timekeeping Manipulation**

26 54. During the PAGA PERIOD, DEFENDANTS, from time to time, did not have an
27 immutable timekeeping system to accurately record and pay PLAINTIFF and AGGRIEVED
28 EMPLOYEES for the actual time PLAINTIFF and AGGRIEVED EMPLOYEES worked each day,

1 including regular time, overtime hours, sick pay, meal and rest breaks. As a result, DEFENDANTS
2 was able to and did in fact, unlawfully, and unilaterally alter the time recorded in DEFENDANTS'
3 timekeeping system for PLAINTIFF and AGGRIEVED EMPLOYEES in order to avoid paying
4 these employees for all hours worked, applicable overtime compensation, applicable sick pay,
5 missed meal breaks and missed rest break.

6 55. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES, from time to time,
7 forfeited time worked by working without their time being accurately recorded and without
8 compensation at the applicable pay rates.

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

16 57. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES forfeited wages due to
17 them for all hours worked at DEFENDANTS' direction, control and benefit for the time the
18 timekeeping system was inoperable. DEFENDANTS' uniform policy and practice to not pay
19 PLAINTIFF and AGGRIEVED EMPLOYEES wages for all hours worked in accordance with
20 applicable law is evidenced by DEFENDANTS' business records.

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

1 on-call and on-duty during what was supposed to be PLAINTIFF'S off-duty meal periods.
2 PLAINTIFF therefore forfeited meal and rest breaks without additional compensation and in
3 accordance with DEFENDANTS' strict corporate policy and practice. Moreover, DEFENDANTS
4 also provided PLAINTIFF with paystubs that failed to comply with California Labor Code Section
5 226. Further, DEFENDANTS also failed to reimburse PLAINTIFF for required business expenses
6 related to the personal expenses incurred for the use of PLAINTIFF'S personal cell phone, and for
7 the purchase of work tools, on behalf of and in furtherance of PLAINTIFF'S employment with
8 DEFENDANTS. To date, DEFENDANTS have not fully paid PLAINTIFF the minimum, overtime
9 and double time compensation still owed to PLAINTIFF or any penalty wages owed to PLAINTIFF
10 under California Labor Code Section 203. The amount in controversy for PLAINTIFF individually
11 does not exceed the sum or value of \$75,000.

12 **FIRST CAUSE OF ACTION**

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

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

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

16 59. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
17 herein, the prior paragraphs of this Complaint.

18 60. PAGA is a mechanism by which the State of California itself can enforce state labor
19 laws through the employee suing under the PAGA who do so as the proxy or agent of the state's
20 labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally
21 a law enforcement action designed to protect the public and not to benefit private parties. The
22 purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing"
23 citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California
24 Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as
25 private attorneys general to recover civil penalties for Labor Code violations ..." (Stats. 2003, ch.
26 906, § 1.) Accordingly, PAGA claims cannot be subject to arbitration.

27
28 ///

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

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

7 63. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code
8 Section 2699.3. By certified letter, return receipt requested, dated January 3, 2025, PLAINTIFF
9 gave written notice to the Labor and Workforce Development Agency (“LWDA”) and to
10 DEFENDANTS of the specific provisions of the Labor Code alleged to have been violated,
11 including the facts and theories to support the alleged violations. (See Exhibit #1.)

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

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

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

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

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

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

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

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

18 66. For all provisions of the Labor Code for which civil penalty is not specifically
19 provided, Labor Code Section 2699(f) imposes upon DEFENDANTS a penalty of up to two
20 hundred dollars (\$200) for each AGGRIEVED EMPLOYEE per pay period. PLAINTIFF and the
21 AGGRIEVED EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in
22 connection with their claims for civil penalties pursuant to Labor Code Section 2699(k)(1).
23
24
25
26
27
28

///

1 **PRAYER FOR RELIEF**

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

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

8
9 DATED: March 10, 2025

10 **JCL LAW FIRM, APC**

11 By: 

12 Jean-Claude Lapuyade, Esq.
13 Attorney for PLAINTIFF
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28