

SUMMONS

(CITACION JUDICIAL)

FOR COURT USE ONLY
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2022-09-21 10:23:45

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

JANCO INDUSTRIES, INC., a California corporation; and DOES 1-50, Inclusive,

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

MARTIN MARISCAL, DANIEL GARCIA, and RAFAEL ROJAS, individuals, on behalf of themselves and on behalf of all other aggrieved employees,

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 Joaquin Superior Court

Civil Division - 180 E Weber Ave., Suite 200 Stockton, CA 95202

CASE NUMBER:
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Shani O. Zakay, Esq.; Zakay Law Group APLC; 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121; (619) 255-9047

DATE:

(Fecha)

Clerk, by

(Secretario)

, 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)).

[SEAL]

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):

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Attorneys for PLAINTIFFS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

MARTIN MARISCAL, DANIEL GARCIA,
and RAFAEL ROJAS, individuals, on behalf of
themselves and on behalf of all other aggrieved
employees,

Plaintiffs,

v.

JANCO INDUSTRIES, INC., a California
corporation; and DOES 1-50, Inclusive,

Defendant.

Case No:

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

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

DEMAND FOR A JURY TRIAL

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Superior Court of California
County of San Joaquin
2022-09-21 10:23:45
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Case Management Conference
03/20/2023 08:45 AM in 10B

STK-CV-UOE-2022-0008450

1 PLAINTIFFS MARTIN MARISCAL, DANIEL GARCIA, and RAFAEL ROJAS
2 (“PLAINTIFFS”), individuals, in their representative capacity on behalf of the State of California
3 and fellow current and former Aggrieved Employees, defined *supra*, against JANCO
4 INDUSTRIES, INC. (“DEFENDANT”), alleges on information and belief, except for their own
5 acts and knowledge, which are based on personal knowledge, the following:

6 **INTRODUCTION**

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

11 2. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANT
12 decreased its employment-related costs by systematically violating California wage and hour
13 laws.

14 3. DEFENDANT’s systematic pattern of wage and hour and IWC Wage Order
15 violations toward PLAINTIFFS and other aggrieved employees in California include, *inter alia*:

- 16 a. Failure to provide compliant meal periods;
 - 17 b. Failure to allow employees to take duty-free rest periods;
 - 18 c. Failure to pay all minimum and regular wages;
 - 19 d. Failure to maintain true and accurate records;
 - 20 e. Failure to provide accurate itemized wage statements;
 - 21 f. Failure to reimburse employees for required business expenses; and
 - 22 g. Failure to timely pay wages due during, and upon termination of employment.
- 23 4. PLAINTIFFS bring this representative action against DEFENDANT on behalf of
24 themselves and all other aggrieved employees of DEFENDANT in California
25 seeking all civil penalties and unpaid wages permitted pursuant to California Labor
26 Code § 2699, *et seq.*

27 5. PLAINTIFFS reserve the right to name additional representatives throughout the
28 State of California.

THE PARTIES

6. Defendant JANCO INDUSTRIES, INC. (“DEFENDANT”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

7. DEFENDANT provides production machining services in the State of California, including in the county of San Joaquin, where PLAINTIFFS worked.

8. PLAINTIFF Martin Mariscal (“PLAINTIFF Mariscal”) was employed by DEFENDANT in California from February of 2022 to May of 2022 as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

9. PLAINTIFF Daniel Garcia (“PLAINTIFF Garcia”) was employed by DEFENDANT in California from February of 2022 to May of 2022 as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

10. PLAINTIFF Rafael Rojas (“PLAINTIFF Rojas”) was employed by DEFENDANT in California from February of 2022 to May of 2022 as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

11. PLAINTIFFS bring this action in their representative capacity on behalf of the State of California and on behalf of all DEFENDANT’S current and former non-exempt employees employed in California (hereinafter “AGGRIEVED EMPLOYEES”) and who worked for DEFENDANT between July 13, 2021 and the present (“PAGA PERIOD”).

12. PLAINTIFFS are “AGGRIEVED EMPLOYEES” within the meaning of Labor § Code 2699(c) because they were employed by DEFENDANT and suffered one or more of the alleged Labor Code violations committed by DEFENDANT.

13. PLAINTIFFS and all other AGGRIEVED EMPLOYEES are, and at all relevant times were, employees of DEFENDANT, within the meanings set forth in the California Labor Code and the applicable Industrial Welfare Commission Wage Order.

14. Each of the fictitiously named defendants participated in the acts alleged in this Complaint. The true names and capacities of the defendants named as DOES 1 THROUGH 50, inclusive, are presently unknown to PLAINTIFFS. PLAINTIFFS will amend this Complaint, setting forth the true names and capacities of these fictitiously named defendants when their true names are ascertained. PLAINTIFFS are informed and believe, and on that basis allege, that each of the fictitious defendants have participated in the acts alleged in this Complaint.

15. DEFENDANT, including DOES 1 THROUGH 50 (hereinafter collectively “DEFENDANTS”), were PLAINTIFF’S employers or persons acting on behalf of PLAINTIFFS’ employer, within the meaning of California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

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

JOINT EMPLOYER

17. The Private Attorney General Act (“PAGA”), permits an aggrieved employee to enforce any provision of the California Labor Code that provides for a civil penalty. (Lab. Code § 2699(a).)

18. Section 558 of the California Labor Code provides that “any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commissions shall be subject to a civil penalty...” (Lab. Code § 558(a).);

19. Section 1197.1 of the Labor Code provides that “[a]ny employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or

1 causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
2 local law, or by an order of the commission shall be subject to a civil penalty...” (Lab. Code §
3 1197.1(a).)

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

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

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

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

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

24 **JURISDICTION AND VENUE**

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

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

THE CONDUCT

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

Meal Period Violations

28. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were required to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all

1 the time the employee is suffered or permitted to work. From time to time, DEFENDANTS
2 required PLAINTIFFS and AGGRIEVED EMPLOYEES to work without paying them for all the
3 time they were under DEFENDANTS' control. Specifically, as a result of PLAINTIFFS'
4 demanding work requirements and DEFENDANT's understaffing, DEFENDANT required
5 PLAINTIFFS to work while clocked out during what was supposed to be PLAINTIFFS' off-duty
6 meal break. PLAINTIFFS were from time to time interrupted by work assignments while clocked
7 out for what should have been PLAINTIFFS' off-duty meal break. Indeed, there were many days
8 where PLAINTIFFS did not even receive a partial lunch. More specifically, from time to time,
9 PLAINTIFFS and other AGGRIEVED EMPLOYEES were required by DEFENDANT to work
10 through their meal breaks in order to meet DEFENDANTS' prescribed labor hours to perform all
11 the tasks required of them by DEFENDANT. PLAINTIFFS and other AGGRIEVED
12 EMPLOYEES were required to perform work-related tasks. Additionally, PLAINTIFFS and other
13 AGGRIEVED EMPLOYEES were required to perform as much work as possible and quickly as
14 possible in order to meet DEFENDANT's strict performance and production requirements. As a
15 result, the PLAINTIFFS and other AGGRIEVED EMPLOYEES forfeited minimum wage and
16 overtime compensation by regularly working without their time being accurately recorded and
17 without compensation at the applicable minimum wage and overtime rates. DEFENDANTS'
18 uniform policy and practice not to pay PLAINTIFFS and other AGGRIEVED EMPLOYEES for
19 all time worked is evidenced by DEFENDANTS' business records.

20 29. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
21 requirements and DEFENDANT's inadequate staffing practices, PLAINTIFFS and other
22 AGGRIEVED EMPLOYEES were from time to time unable to take thirty (30) minute off-duty
23 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFFS and other
24 AGGRIEVED EMPLOYEES were required from time to time to perform work as ordered by
25 DEFENDANT for more than five (5) hours during some shifts without receiving a meal break.
26 Further, DEFENDANT from time to time failed to provide PLAINTIFFS and AGGRIEVED
27 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
28 were required by DEFENDANT to work ten (10) hours of work from time to time. The nature of

1 the work performed by PLAINTIFFS and AGGRIEVED EMPLOYEES does not qualify for
2 limited and narrowly construed “on-duty” meal period exception. When they were provided with
3 meal periods, PLAINTIFFS and AGGRIEVED EMPLOYEES were, from time to time, required
4 to remain on duty and on call. PLAINTIFFS and AGGRIEVED EMPLOYEES therefore forfeited
5 meal breaks without additional compensation and in accordance with DEFENDANT’s strict
6 corporate policy and practice.

7 **Rest Period Violations**

8 30. During the PAGA PERIOD, from time to time, PLAINTIFFS and other
9 AGGRIEVED EMPLOYEES were also required to work in excess of four (4) hours without being
10 provided ten (10) minute rest periods. Further, these employees were denied their first rest periods
11 of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and
12 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight
13 (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked
14 of ten (10) hours or more. When they did have an opportunity to take their rest breaks,
15 PLAINTIFFS and the AGGRIEVED EMPLOYEES were often interrupted and required by
16 DEFENDANTS to work during their rest breaks. When they did have an opportunity to take their
17 rest breaks, PLAINTIFFS and the AGGRIEVED EMPLOYEES were required to remain on the
18 premises, on-duty and on-call, and subject to DEFENDANTS’ control in accordance with
19 DEFENDANTS’ policy. PLAINTIFFS and other AGGRIEVED EMPLOYEES were also not
20 provided with one hour wages in lieu thereof. DEFENDANTS’ policy caused PLAINTIFFS and
21 other AGGRIEVED EMPLOYEES to remain on-call and on-duty during what was supposed to be
22 their off-duty rest periods. As a result of their rigorous work schedules, PLAINTIFFS and other
23 AGGRIEVED EMPLOYEES were periodically denied their proper rest periods by
24 DEFENDANTS and DEFENDANTS’ managers.

25 **Unlawful Rounding Violations**

26 31. During the PAGA PERIOD, DEFENDANT did not have in place an immutable
27 timekeeping system to accurately record and pay PLAINTIFFS and other AGGRIEVED
28 EMPLOYEES for the actual time these employees worked each day, including overtime hours.

Specifically, DEFENDANTS had in place an unlawful rounding policy and practice that resulted in PLAINTIFFS and AGGRIEVED EMPLOYEES being undercompensated for all of their time worked. As a result, DEFENDANT was able to and did in fact unlawfully, and unilaterally round the time recorded in DEFENDANT's timekeeping system for PLAINTIFFS and the AGGRIEVED EMPLOYEES in order to avoid paying these employees for all their time worked, including the applicable overtime compensation for overtime worked. As a result, PLAINTIFFS and other AGGRIEVED EMPLOYEES, from time to time, forfeited compensation for their time worked by working without their time being accurately recorded and without compensation at the applicable overtime rates.

32. Further, the mutability of DEFENDANT's timekeeping system and unlawful rounding policy and practice resulted in PLAINTIFFS and AGGRIEVED EMPLOYEES' time being inaccurately recorded. As a result, from time to time, DEFENDANT's unlawful rounding policy and practice caused PLAINTIFFS and AGGRIEVED EMPLOYEES to perform work as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal break. Additionally, DEFENDANT's unlawful rounding policy and practice caused PLAINTIFFS and AGGRIEVED EMPLOYEES to perform work as ordered by DEFENDANT for more than ten (10) hours during a shift without receiving a second off-duty meal break.

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

33. From time-to-time during the PAGA PERIOD, DEFENDANTS failed and continue to fail to accurately calculate and pay PLAINTIFFS and the other AGGRIEVED EMPLOYEES their overtime and double time hours worked, meal and rest period premiums, and sick pay. As a result, PLAINTIFFS and the other AGGRIEVED EMPLOYEES forfeited wages due them for working overtime without compensation at the correct overtime and double time rates, meal and rest period premiums, and sick pay rates. DEFENDANTS' uniform policy and practice to not pay the AGGRIEVED EMPLOYEES the correct rate for all overtime and double time worked, meal and rest period premiums, and sick pay in accordance with applicable law is evidenced by DEFENDANTS' business records.

1 34. State law provides that employees must be paid overtime at one-and-one-half times
2 their “regular rate of pay.” PLAINTIFFS and other AGGRIEVED EMPLOYEES were
3 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
4 employee’s performance.

5 35. The second component of PLAINTIFFS’ and other AGGRIEVED EMPLOYEES’
6 compensation was DEFENDANT’s non-discretionary incentive program that paid PLAINTIFFS
7 and other AGGRIEVED EMPLOYEES’ incentive wages based on their performance for
8 DEFENDANT. The non-discretionary bonus program provided all employees paid on an hourly
9 basis with bonus compensation when the employees met the various performance goals set by
10 DEFENDANT.

11 36. However, from-time-to-time, when calculating the regular rate of pay, in those pay
12 periods where PLAINTIFFS and other AGGRIEVED EMPLOYEES worked overtime, double
13 time, paid meal and rest period premium payments, and/or paid sick pay, and earned non-
14 discretionary bonus, DEFENDANT failed to accurately include the non-discretionary bonus
15 compensation as part of the employees’ “regular rate of pay” and/or calculated all hours worked
16 rather than just all non-overtime hours worked. Management and supervisors described the
17 incentive/bonus program to potential and new employees as part of the compensation package.
18 As a matter of law, the incentive compensation received by PLAINTIFFS and other
19 AGGRIEVED EMPLOYEES must be included in the “regular rate of pay.” The failure to do so
20 has resulted in a systematic underpayment of overtime and double time compensation, meal and
21 rest period premiums, and sick pay to PLAINTIFFS and other AGGRIEVED EMPLOYEES by
22 DEFENDANT. Specifically, California Labor Code Section 246 mandates that paid sick time for
23 non-employees shall be calculated in the same manner as the regular rate of pay for the workweek
24 in which the non-exempt employee uses paid sick time, whether or not the employee actually
25 works overtime in that workweek. DEFENDANT’s conduct, as articulated herein, by failing to
26 include the incentive compensation as part of the “regular rate of pay” for purposes of sick pay
27 compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable
28 under Cal. Labor Code Sections 201, 202, 203 and/or 204.

1 37. In violation of the applicable sections of the California Labor Code and the
2 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
3 matter of company policy, practice and procedure, intentionally and knowingly failed to
4 compensate PLAINTIFFS and the other AGGRIEVED EMPLOYEES at the correct rate of pay
5 for all overtime and double time worked, meal and rest period premiums, and sick pay. This
6 uniform policy and practice of DEFENDANT is intended to purposefully avoid the payment of
7 the correct overtime and double time compensation, meal and rest period premiums, and sick pay
8 as required by California law which allowed DEFENDANT to illegally profit and gain an unfair
9 advantage over competitors who complied with the law. To the extent equitable tolling operates
10 to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD
11 should be adjusted accordingly.

12 **Wage Statement Violations**

13 38. From time to time, when PLAINTIFFS and other AGGRIEVED EMPLOYEES
14 worked off the clock, DEFENDANTS also failed to provide PLAINTIFFS and the other
15 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to show,
16 among other things, the correct time worked, including, and the gross wages paid for those periods
17 during the pay period, and the correct penalty payments or missed rest periods in violation of
18 California Labor Code Sections 226 and 226.2.

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

27 40. From time to time during the PAGA PERIOD, when PLAINTIFFS and other
28 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurate missed meal

1 and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed to
2 provide PLAINTIFFS and AGGRIEVED EMPLOYEES with complete and accurate wage
3 statements which failed to show, among other things, the total hours worked and all applicable
4 hourly rates in effect during the pay period and the corresponding amount of time worked at each
5 hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods.

6 41. In addition to the violations described above, DEFENDANTS, from time to time,
7 failed to provide PLAINTIFFS and the AGGRIEVED EMPLOYEES with wage statements that
8 comply with Cal. Lab. Code § 226.

9 42. As a result, DEFENDANT issued PLAINTIFFS and the AGGRIEVED
10 EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANT's
11 violations are knowing and intentional, were not isolated or due to an unintentional payroll error
12 due to clerical or inadvertent mistake.

13 **Unreimbursed Business Expenses**

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

25 44. In the course of their employment, PLAINTIFFS and other AGGRIEVED
26 EMPLOYEES as a business expense, were required by DEFENDANTS to use their own personal
27 cellular phones, personal vehicles, and tools as a result of and in furtherance of their job duties as
28 employees for DEFENDANTS but were not reimbursed or indemnified by DEFENDANTS for

1 the cost associated with the use of their personal cellular phones, personal vehicles, and tools for
2 DEFENDANTS' benefit. Specifically, PLAINTIFFS and other AGGRIEVED EMPLOYEES
3 were required by DEFENDANTS to use their personal cell phones, personal vehicles, and tools
4 for work related issues. As a result, in the course of their employment with DEFENDANTS the
5 PLAINTIFFS and other AGGRIEVED EMPLOYEES incurred unreimbursed business expenses
6 which included, but were not limited to, costs related to the use of their personal cellular phones,
7 personal vehicles, and tools all on behalf of and for the benefit of DEFENDANTS.

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

9 45. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
10 required to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for all their time worked,
11 meaning the time during which an employee is subject to the control of an employer, including
12 all the time the employee is suffered or permitted to work. From time to time, DEFENDANT
13 required PLAINTIFFS and AGGRIEVED EMPLOYEES to work without paying them for all
14 the time they were under DEFENDANT's control. Specifically, PLAINTIFFS performed work
15 before and after the beginning of their shift, spending time under the DEFENDANTS' control
16 for which they were not compensated. More specifically, from time to time, PLAINTIFFS and
17 other AGGRIEVED EMPLOYEES were required by DEFENDANT to perform work before and
18 after the beginning of their shifts in order to meet DEFENDANT's prescribed labor hours to
19 perform all the tasks required of them by DEFENDANT. Additionally, since DEFENDANT
20 required PLAINTIFFS and AGGRIEVED EMPLOYEES to perform as much work as possible
21 and as quickly as possible in order to meet DEFENDANT's strict performance and production
22 requirements, PLAINTIFFS and other AGGRIEVED EMPLOYEES were, from time to time,
23 required to work off-the-clock before and after their shifts in order to meet DEFENDANT's strict
24 requirements.

25 46. As a result, the PLAINTIFFS and other AGGRIEVED EMPLOYEES forfeited
26 minimum wage and overtime compensation by regularly working without their time being
27 accurately recorded and without compensation at the applicable minimum wage and overtime
28 rates. DEFENDANT failed to pay PLAINTIFFS and other AGGRIEVED EMPLOYEES

1 necessary wages for attending for performing work at DEFENDANT's direction, request and
2 benefit, while off-the clock. DEFENDANTS' uniform policy and practice not to pay
3 PLAINTIFFS and other AGGRIEVED EMPLOYEES for all time worked is evidenced by
4 DEFENDANTS' business records.

5 47. DEFENDANT directed and directly benefited from the uncompensated off-the-
6 clock work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

7 48. DEFENDANT controlled the work schedules, duties, protocols, applications,
8 assignments, and employment conditions of PLAINTIFFS and the other AGGRIEVED
9 EMPLOYEES.

10 49. DEFENDANTS were able to track the amount of time PLAINTIFFS and the other
11 AGGRIEVED EMPLOYEES spent working; however, DEFENDANT failed to document, track,
12 or pay PLAINTIFFS and the AGGRIEVED EMPLOYEES all wages earned and owed for all
13 the work they performed, including pre-shift, post shift and during meal period off-the-clock
14 work.

15 50. PLAINTIFFS and the other AGGRIEVED EMPLOYEES were non-exempt
16 employees, subject to the requirements of the California Labor Code.

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

22 52. DEFENDANT knew or should have known that PLAINTIFFS and the other
23 AGGRIEVED EMPLOYEES-the-clock work was compensable under the law.

24 53. As a result, PLAINTIFFS and the AGGRIEVED EMPLOYEES forfeited wages
25 due them for all hours worked at DEFENDANT's direction, control and benefit for the time spent
26 working while off-the-clock. DEFENDANT's uniform policy and practice to not pay
27 PLAINTIFFS and the AGGRIEVED EMPLOYEES wages for all hours worked in accordance
28 with applicable law is evidenced by DEFENDANT's business records.

54. Specifically, as to PLAINTIFFS, PLAINTIFFS were from time to time unable to take off duty meal and rest breaks and were not fully relieved of duty for their rest and meal periods. PLAINTIFFS were required to perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to provide PLAINTIFFS with a second off-duty meal period each workday in which they were required by DEFENDANT to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFFS with a rest break, they required PLAINTIFFS to remain on-duty and on-call, for the rest break. DEFENDANTS' policy caused PLAINTIFFS to remain on-call and on-duty during what was supposed to be their off-duty meal periods. PLAINTIFFS therefore forfeited meal and rest breaks without additional compensation and in accordance with DEFENDANTS' strict corporate policy and practice. Moreover, DEFENDANTS also provided PLAINTIFFS with a paystub that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANTS failed to reimburse PLAINTIFFS for the use of their personal cell phone, personal vehicle, and personal expenses for the purchase of tools as a result of and in furtherance of their job duties for DEFENDANTS. To date, DEFENDANTS have not fully paid PLAINTIFFS the minimum, overtime and double time compensation still owed to them or any penalty wages owed to them under Cal. Lab. Code § 203. The amount in controversies for PLAINTIFFS individually do not exceed the sum or value of \$75,000.

FIRST CAUSE OF ACTION

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

[Cal. Lab. Code §§ 2698, et seq.]

(By PLAINTIFFS and AGGRIEVED EMPLOYEES and Against All DEFENDANTS)

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

56. PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law enforcement action designed to protect the public and not to benefit private parties. The

1 purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing"
2 citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California
3 Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as
4 private attorneys general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch.
5 906, § 1. Accordingly, PAGA claims cannot be subject to arbitration.

6 57. PLAINTIFFS bring this Representative Action on behalf of the State of California
7 with respect to themselves and all other current and former AGGRIEVED EMPLOYEES
8 employed by DEFENDANT during the PAGA PERIOD.

9 58. At all relevant times, for the reasons described herein, and others, PLAINTIFFS and
10 the AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANT within the meaning
11 of Labor Code Section 2699(c).

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

15 60. PLAINTIFFS complied with the procedures for bringing suit specified in Labor
16 Code Section 2699.3. By certified letter, return receipt requested, dated July 13, 2022 and August
17 11, 2022, PLAINTIFFS gave written notice to the Labor and Workforce Development Agency
18 ("LWDA") and to DEENDANT of the specific provisions of the Labor Code alleged to have been
19 violated, including the facts and theories to support the alleged violations.

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

25 62. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the
26 AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of
27 Labor Code Section 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7,
28 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802 and 2804 in
the following amounts:

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

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

- 5 b. For violations of Labor Code Section 226(a), a civil penalty in the amount of
6 two hundred fifty dollars (\$250) for each AGGRIEVED EMPLOYEE for any
7 initial violation and one thousand dollars for each subsequent violation
8 [penalty per Labor Code Section 226.3];
- 9 c. For violations of Labor Code Sections 204, a civil penalty in the amount of
10 one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE for any initial
11 violation and two hundred dollars (\$200) for AGGRIEVED EMPLOYEE for
12 each subsequent violation [penalty per Labor Code Section 210];
- 13 d. For violations of Labor Code Sections 226.7, 510 and 512, a civil penalty in
14 the amount of fifty dollars (\$50) for each underpaid AGGRIEVED
15 EMPLOYEE for the initial violation and hundred dollars (\$100) for each
16 underpaid AGGRIEVED EMPLOYEE for each subsequent violation [penalty
17 per Labor Code Section 558];
- 18 e. For violations of Labor Code Section 2269(a), a civil penalty in the amount of
19 two hundred fifty dollars (\$250) per AGGRIEVED EMPLOYEE per violation
20 in an initial citation and one thousand dollars (\$1,000) per AGGRIEVED
21 EMPLOYEE for each subsequent violation [penalty per Labor Code Section
22 226.3];
- 23 f. For violations of Labor Code Sections 1194, 1197, 1198 and 1199, a civil
24 penalty in the amount of one hundred dollars (\$100) per AGGRIEVED
25 EMPLOYEE per pay period for the initial violation and two hundred dollars
26 fifty (\$250) per AGGRIEVED EMPLOYEE per pay period for each
27 subsequent violation [penalty per Labor Code Section].
- 28 g. For all provisions of the Labor Code for which civil penalty is not specifically
provided, Labor Code § 2699(f) imposes upon Defendant a penalty of one
hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period

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

6 63. To the extent that any of the conduct and violations alleged herein did not affect
7 PLAINTIFF during the PAGA PERIOD, PLAINTIFFS seek penalties for those violations that
8 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30
9 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.
10 5th 745, 751 ["PAGA allows an "aggrieved employee"—a person affected by at least one Labor
11 Code violation committed by an employer—to pursue penalties for all the Labor Code violations
12 committed by that employer."], Emphasis added, reh'g denied (June 13, 2018).)

13 **PRAYER FOR RELIEF**

14 WHEREFORE, PLAINTIFFS pray for judgment against DEFENDANT as follows:

- 15 (a) For reasonable attorney's fees and costs of suit to the extent permitted by law,
16 including pursuant to Labor Code § 2699, *et seq.*;
17 (b) For civil penalties to the extent permitted by law pursuant to the Labor Code under
18 the Private Attorneys General Act; and
19 (c) For such other relief as the Court deems just and proper.

20 DATED: September 16, 2022

21 **ZAKAY LAW GROUP, APLC**

22 By: 
23 Shani O. Zakay
24 Attorney for PLAINTIFFS
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