

**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

SAN LEANDRO CAR STOP, LLC, a California Limited Liability Company; STOCKTON H, LLC, a California Limited Liability Company; and DOES 1-50, Inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:**

**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

SHAMOUN DUNCAN, an individual, on behalf of himself and on behalf of all persons similarly situated,

**ELECTRONICALLY FILED**  
Superior Court of California  
County of Alameda  
07/15/2022

Chad Finke, Executive Officer / Clerk of the Court

By: X. Bowie Deputy

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](http://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](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

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

*Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.*

The name and address of the court is:  
(El nombre y dirección de la corte es):  
Alameda Superior Court - Hayward Hall of Justice  
24405 Amador Street  
Hayward, CA 94544

CASE NUMBER:  
(Número del Caso): **22CV01444**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Shani O. Zakay, Esq. SBN:277924 Tel: (619) 255-9047 Fax: (858) 404-9203  
Zakay Law Group, APLC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 07/15/2022 Clerk, by X. Bowie, Deputy  
(Fecha) Chad Finke, Executive Officer / Clerk of the Court (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

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):
3.  on behalf of (specify):
 

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4.  by personal delivery on (date):

1 **ZAKAY LAW GROUP, APLC**  
2 Shani O. Zakay (State Bar #277924)  
3 Jackland K. Hom (State Bar #327243)  
4 Julieann Alvarado (State Bar #334727)  
5 5440 Morehouse Drive, Suite 3600  
6 San Diego, CA 92121  
7 Telephone: (619)255-9047  
8 Facsimile: (858) 404-9203  
9 [shani@zakaylaw.com](mailto:shani@zakaylaw.com)  
10 [jackland@zakaylaw.com](mailto:jackland@zakaylaw.com)  
11 [julieann@zakaylaw.com](mailto:julieann@zakaylaw.com)

12 **JCL LAW FIRM, APC**  
13 Jean-Claude Lapuyade (State Bar #248676)  
14 Eduardo Garcia (State Bar #290572)  
15 Sydney Castillo-Johnson (State Bar #343881)  
16 5440 Morehouse Drive, Suite 3600  
17 San Diego, CA 92121  
18 Telephone: (619) 599-8292  
19 Facsimile: (619) 599-8291  
20 [jlapuyade@jcl-lawfirm.com](mailto:jlapuyade@jcl-lawfirm.com)  
21 [egarcia@jcl-lawfirm.com](mailto:egarcia@jcl-lawfirm.com)  
22 [scastillo@jcl-lawfirm.com](mailto:scastillo@jcl-lawfirm.com)

23 Attorneys for Plaintiff SHAMOUN DUNCAN

24 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

25 **IN AND FOR THE COUNTY OF ALAMEDA**

26 SHAMOUN DUNCAN, an individual, on  
27 behalf of himself and on behalf of all persons  
28 similarly situated,

Plaintiff,

v.

SAN LEANDRO CAR STOP, LLC, a  
California Limited Liability Company;  
STOCKTON H, LLC, a California Limited  
Liability Company; and DOES 1-50, Inclusive,  
Defendants.

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of Alameda  
07/15/2022 at 11:00:03 AM  
By: Xian-xii Bowie,  
Deputy Clerk

Case No. **22CV01444**

**REPRESENTATIVE ACTION  
COMPLAINT FOR:**

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

1 Plaintiff SHAMOUN DUNCAN (“PLAINTIFF”) an individual, in his representative capacity on  
2 behalf of himself, the State of California, and fellow current and former AGGRIEVED EMPLOYEES,  
3 defined *supra*, against Defendants SAN LEANDRO CAR STOP, LLC and STOCKTON H, LLC  
4 (collectively “DEFENDANTS”), alleges on information and belief, except for his own acts and  
5 knowledge which are based on personal knowledge, the following:

6 **INTRODUCTION**

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

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

13 3. DEFENDANTS’ systematic pattern of wage and hour and IWC Wage Order violations  
14 toward PLAINTIFF and other aggrieved employees in California include, *inter alia*:

- 15 a. Failure to provide compliant meal and rest periods;
- 16 b. Failure to accurately compensate for missed meal and rest periods;
- 17 c. Failure to pay all minimum, regular and overtime wages;
- 18 d. Failure to correctly calculate the regular rate of pay;
- 19 e. Failed to reimburse for required business expenses;
- 20 f. Failure to maintain true and accurate records;
- 21 g. Failure to provide accurate itemized wage statements; and
- 22 h. Failure to timely pay wages due during, and upon termination of employment.

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

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

1 **THE PARTIES**

2 6. Defendant SAN LEANDRO CAR STOP, LLC (“Defendant San Leandro Car Stop”) is a  
3 California limited liability company that at all relevant times mentioned herein conducted and continues  
4 to conduct substantial and regular business in the state of California.

5 7. STOCKTON H, LLC (“Defendant Stockton H”) is a California limited liability company  
6 that at all relevant times mentioned herein conducted and continues to conduct substantial and regular  
7 business in the state of California.

8 8. DEFENDANT owns, operates, and/or manages a Chrysler, Dodge, Jeep, and Ram car  
9 dealership and provides vehicle sales services, including financing and repair services, in the state of  
10 California, including in Alameda County where PLAINTIFF worked.

11 9. PLAINTIFF was employed by DEFENDANTS in California from April of 2021 to  
12 December of 2021 paid in part an hourly wage, commission-based compensation, non-discretionary  
13 bonuses, and entitled to minimum wages, overtime pay and legally compliant meal and rest periods.

14 10. PLAINTIFF brings this action in his representative capacity on behalf of the State of  
15 California and on behalf of all individuals who are or previously were employed by Defendant San  
16 Leandro Car Stop and/or Defendant Stockton H in California who suffered one or more Labor Code  
17 violations enumerated in Labor Code §§ 2698 *et seq.* (hereinafter “AGGRIEVED EMPLOYEES”) and  
18 who worked for DEFENDANTS between May 10, 2021 and the present (“PAGA PERIOD”).

19 11. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor Code §  
20 2699(c) because he was employed by DEFENDANTS and suffered one or more of the alleged Labor  
21 Code violations committed by DEFENDANT.

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

25 13. Each of the fictitiously named defendants participated in the acts alleged in this  
26 Complaint. The true names and capacities of the defendants named as DOES 1 THROUGH 50,  
27 inclusive, are presently unknown to PLAINTIFF. PLAINTIFF will amend this Complaint, setting forth  
28 the true names and capacities of these fictitiously named defendants when their true names are

1 ascertained. PLAINTIFF is informed and believes, and on that basis alleges, that each of the fictitious  
2 defendants have participated in the acts alleged in this Complaint.

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

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

14 **JOINT EMPLOYER**

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

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

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

25 19. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have held that  
26 a corporate employer’s owners, officers and directors, are subject to civil penalties for the employer’s  
27 failure to pay appropriate wages to its employees, and, since liability under either 558 or 1197.1 does  
28 not depend on a finding of an alter ego, no alter ego allegations or findings are necessary. *Atempa v.*

1 *Pedrazzani*, (2018) 27 Cal.App.5<sup>th</sup> 809; see generally *Ochoa-Hernandez v. Cjaders Food, Inc.* (2009  
2 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203 Cal.App.4<sup>th</sup> 1112, 1145-1146.

3 20. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS, and each  
4 of them, are subject to civil penalties for their failure to pay PLAINTIFF and the aggrieved employees  
5 the appropriate wages as complained of herein and proximately caused the complaints, injuries, and  
6 damages alleged herein.

7 21. At all relevant times, each Defendant, whether named or fictitious, was the agent,  
8 employee or other person acting on behalf of each other Defendant, and, in participating in the acts  
9 alleged in this Complaint, acted within the scope of such agency or employment and ratified the acts  
10 of the other.

11 22. Each Defendant, whether named or fictitious, exercised control over PLAINTIFF's  
12 wages, working hours, and/or working conditions.

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

16 **JURISDICTION AND VENUE**

17 24. This Court has jurisdiction over this Action pursuant to California Code of Civil  
18 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This Court  
19 has jurisdiction over PLAINTIFF's claims for civil penalties under the Private Attorney General  
20 Act of 2004, California Labor Code §2698, *et seq.*

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

26 **THE CONDUCT**

27 26. In violation of the applicable sections of the California Labor Code and the requirements  
28 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of company

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

16 **A. Meal Period Violations**

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

1 PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked is evidenced by  
2 DEFENDANT's business records.

3 28. From time-to-time during the PAGA PERIOD, as a result of their rigorous work  
4 requirements and DEFENDANT's inadequate staffing practices, PLAINTIFF and other AGGRIEVED  
5 EMPLOYEES were from time to time unable to take thirty (30) minute off-duty meal breaks and were  
6 not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED EMPLOYEES  
7 were required from time to time to perform work as ordered by DEFENDANT for more than five (5)  
8 hours during some shifts without receiving a meal break. Further, DEFENDANT from time to time  
9 failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period  
10 for some workdays in which these employees were required by DEFENDANT to work ten (10) hours  
11 of work from time to time. The nature of the work performed by PLAINTIFF and AGGRIEVED  
12 EMPLOYEES does not qualify for limited and narrowly construed "on-duty" meal period exception.  
13 When they were provided with meal periods, PLAINTIFF and other AGGRIEVED EMPLOYEES  
14 were, from time to time, required to remain on duty and on call. PLAINTIFF and other AGGRIEVED  
15 EMPLOYEES therefore forfeited meal breaks without additional compensation and in accordance with  
16 DEFENDANT's strict corporate policy and practice. DEFENDANT'S failure to provide PLAINTIFF  
17 with legally required meal breaks and/or compensate PLAINTIFF at one (1) hour at his regular rate of  
18 pay for each missed, short, late, or interrupted meal period is evidenced by DEFENDANT's business  
19 records which contain no record of these breaks and/or compensation.

20 **B. Rest Period Violations**

21 29. Pursuant to the Industrial Welfare Commission Wage Orders and the California Labor  
22 Code, an employer shall authorize and permit all employees to take a rest period, which so far as  
23 practice shall be in the middle of each work period. Generally, an employer must provide ten (10)  
24 minutes of paid rest for every four (4) hours or major fraction thereof. If an employer fails to provide  
25 an employee a rest period, the employer shall pay the employee one (1) hour of pay at the employee's  
26 regular rate of compensation for each workday that the rest period is not provided.

27 30. From time-to-time during the PAGA PERIOD, as a result of their overburdened work  
28 requirements and/or inadequate staffing, PLAINTIFF and other AGGRIEVED EMPLOYEES were

1 also required from time to time to work in excess of four (4) hours without being provided ten (10)  
2 minute rest periods as a result of their rigorous work requirements and DEFENDANT's inadequate  
3 staffing. Further, for the same reasons these employees were denied their first rest periods of at least  
4 ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first  
5 and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight  
6 (8) hours from time to time, and a first, second and third rest period of at least ten (10) minutes for  
7 some shifts worked of ten (10) hours or more from time to time. When they were provided with rest  
8 breaks, PLAINTIFF and other AGGRIEVED EMPLOYEES were, from time to time, required to  
9 remain on duty and/or on call. PLAINTIFF and other AGGRIEVED EMPLOYEES were also not  
10 provided with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules and  
11 DEFENDANT's inadequate staffing, PLAINTIFF and other AGGRIEVED EMPLOYEES were from  
12 time to time denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

13 31. In addition, because of PLAINTIFF's and the other AGGRIEVED EMPLOYEES'  
14 commission pay plan described herein, DEFENDANT failed to compensate PLAINTIFF and the other  
15 AGGRIEVED EMPLOYEES for their rest periods as required by the applicable Wage Order and Labor  
16 Code. Specifically, DEFENDANT failed to advise PLAINTIFF and the other AGGRIEVED  
17 EMPLOYEES of their right to take separately and hourly paid duty-free ten (10) minute rest periods  
18 when working on a commission and/or commission draw basis and failed to separately compensate  
19 PLAINTIFF and other AGGRIEVED EMPLOYEES for the non-productive time associated with their  
20 rest periods. *See Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal.App.5th 98, 110 (adopting *Bluford*  
21 and its progeny in the context of commission-based compensation plans and holding "that such  
22 compensation plans must separately account and pay for rest periods to comply with California law.");  
23 see also *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal.App.4th 864, 872, *reh'g denied* (June 18, 2013),  
24 *review denied* (Aug. 28, 2013) ("rest periods must be separately compensated in a piece-rate system.  
25 Rest periods are considered hours worked and must be compensated.") (citing *Armenta v. Osmose, Inc.*  
26 (2005) 135 Cal.App.4th 314, 323. DEFENDANT did not have a policy or practice which accurately  
27 paid for off-duty rest periods to PLAINTIFF and other AGGRIEVED EMPLOYEES. Even during  
28 those pay periods where PLAINTIFF and other AGGRIEVED EMPLOYEES were separately

1 compensated for their rest periods, the compensation was paid at minimum wage or another rate that  
2 was less than PLAINTIFF's and other AGGRIEVED EMPLOYEES' regular rate of pay. As a result,  
3 DEFENDANT's failure to provide PLAINTIFF and other AGGRIEVED EMPLOYEES with all the  
4 legally required paid rest periods is evidenced by DEFENDANT's business records.

5 **C. Unreimbursed Business Expenses**

6 32. DEFENDANT as a matter of corporate policy, practice, and procedure, intentionally,  
7 knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF and the  
8 AGGRIEVED EMPLOYEES for required business expenses incurred by the PLAINTIFF and other  
9 AGGRIEVED EMPLOYEES in direct consequence of discharging their duties on behalf of  
10 DEFENDANT. Under California Labor Code Section 2802, employers are required to indemnify  
11 employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code §  
12 2802 expressly states that "an employer shall indemnify his or her employee for all necessary  
13 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her  
14 duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the  
15 employee, at the time of obeying the directions, believed them to be unlawful." In the course of their  
16 employment, DEFENDANT required PLAINTIFF and other AGGRIEVED EMPLOYEES to use their  
17 personal cell phones and personal vehicles as a result of and in furtherance of their job duties as  
18 employees for DEFENDANT. But for the use of their own personal cell phones and personal vehicles,  
19 PLAINTIFF and the AGGRIEVED EMPLOYEES could not complete their essential job duties.  
20 However, DEFENDANT unlawfully failed to reimburse PLAINTIFF and other AGGRIEVED  
21 EMPLOYEES for their use of their personal cell phones and personal vehicles. As a result, in the course  
22 of their employment with DEFENDANT, the PLAINTIFF and other AGGRIEVED EMPLOYEES  
23 incurred unreimbursed business expenses, but were not limited to, costs related to the use of their  
24 personal cell phones and personal vehicles, all on behalf of and for the benefit of DEFENDANT.

25 **D. Wage Statement Violations**

26 33. California Labor Code Section 226 requires an employer to furnish its employees an  
27 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the  
28 number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages

1 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the  
2 employee and only the last four digits of the employee's social security number or an employee  
3 identification number other than a social security number, (8) the name and address of the legal entity  
4 that is the employer and, (9) all applicable hourly rates in effect during the pay period and the  
5 corresponding number of hours worked at each hourly rate by the employee.

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

13 35. In addition to the foregoing, DEFENDANT from time to time issued wage statements to  
14 PLAINTIFF and other AGGRIEVED EMPLOYEES that satisfy all the requirements of Cal. Lab. Code  
15 § 226.

16 36. As a result, DEFENDANTS issued PLAINTIFF and the other AGGRIEVED  
17 EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANT's  
18 violations are knowing and intentional, were not isolated or due to an unintentional payroll error due  
19 to clerical or inadvertent mistake.

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

21 37. During the PAGA PERIOD, from time-to-time DEFENDANT failed and continue to fail  
22 to accurately pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all hours worked.

23 38. During the PAGA PERIOD, from time-to-time DEFENDANT required PLAINTIFF and  
24 other AGGRIEVED EMPLOYEES to perform pre-shift work, including but not limited to, undergoing  
25 COVID-19 health screenings, which included temperature checks, health questionnaires and filling out  
26 related paperwork before the beginning of his shift, and spending time under DEFENDANT's control  
27 for which he was not compensated. This resulted in PLAINTIFF and other AGGRIEVED  
28 EMPLOYEES to have to work while off-the-clock.

1 39. DEFENDANT directed and directly benefited from the uncompensated off-the-clock  
2 work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

3 40. DEFENDANT controlled the work schedules, duties, protocols, applications,  
4 assignments, and employment conditions of PLAINTIFF and the other AGGRIEVED EMPLOYEES.

5 41. DEFENDANT was able to track the amount of time PLAINTIFF and the other  
6 AGGRIEVED EMPLOYEES spent working; however, DEFENDANT failed to document, track, or pay  
7 PLAINTIFF and the other AGGRIEVED EMPLOYEES all wages earned and owed for all the work  
8 they performed, including submitting to pre-shift COVID-19 health screenings.

9 42. PLAINTIFF and the other AGGRIEVED EMPLOYEES were non-exempt employees,  
10 subject to the requirements of the California Labor Code.

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

16 44. DEFENDANT knew or should have known that PLAINTIFF and the other AGGRIEVED  
17 EMPLOYEES off-the-clock work was compensable under the law.

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

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

25 46. From time-to-time during the PAGA PERIOD, DEFENDANT failed and continue to fail  
26 to accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for their  
27 overtime and double time hours worked, meal and rest period premiums, and redeemed sick pay. As a  
28 result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due them for working

1 overtime without compensation at the correct overtime and double time rates, meal and rest period  
2 premiums, and redeemed sick pay rates. DEFENDANT's uniform policy and practice to not pay the  
3 AGGRIEVED EMPLOYEES the correct rate for all overtime and double time worked, meal and rest  
4 period premiums, and redeemed sick pay in accordance with applicable law is evidenced by  
5 DEFENDANT's business records.

6 47. State law provides that employees must be paid overtime at one-and-one-half times their  
7 "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES were compensated at an  
8 hourly rate plus non-discretionary incentive pay that was tied to specific elements of an employee's  
9 performance.

10 48. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'  
11 compensation was DEFENDANT's non-discretionary incentive and/or commission program that paid  
12 PLAINTIFF and other AGGRIEVED EMPLOYEES incentive wages based on their performance for  
13 DEFENDANT. The non-discretionary bonus and/or commission program provided all employees paid  
14 on an hourly basis with bonus compensation when the employees met the various performance goals  
15 set by DEFENDANT.

16 49. However, from-time-to-time, when calculating the regular rate of pay, in those pay periods  
17 where PLAINTIFF and other AGGRIEVED EMPLOYEES worked overtime, double time, paid meal  
18 and rest period premium payments, and/or redeemed sick pay, and earned non-discretionary bonus,  
19 DEFENDANT failed to accurately include the non-discretionary bonus and/or commission  
20 compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked rather  
21 than just all non-overtime hours worked.

22 50. Management and supervisors described the incentive/bonus program to potential and new  
23 employees as part of the compensation package. As a matter of law, the incentive compensation  
24 received by PLAINTIFF and other AGGRIEVED EMPLOYEES must be included in the "regular rate  
25 of pay." The failure to do so has resulted in a systematic underpayment of overtime and double time  
26 compensation, meal and rest period premiums, and redeemed sick pay to PLAINTIFF and other  
27 AGGRIEVED EMPLOYEES by DEFENDANTS.

1           51.       Specifically, California Labor Code Section 246 mandates that paid sick time for non-  
2 exempt employees shall be calculated in the same manner as the regular rate of pay for the workweek  
3 in which the non-exempt employee uses paid sick time, whether or not the employee actually works  
4 overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by failing to include the  
5 incentive compensation and/or commission as part of the "regular rate of pay" for purposes of sick pay  
6 compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable under  
7 Cal. Labor Code Sections 201, 202, 203 and/or 204.

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

18       **G. Piece-Rate and/or Commission Violations**

19           53.       From time-to-time during the PAGA PERIOD, PLAINTIFF and the AGGRIEVED  
20 EMPLOYEES were paid in part on a piece-rate and/or commission basis. In those instances where  
21 PLAINTIFF and the AGGRIEVED EMPLOYEES were paid in part on a piece-rate and/or commission  
22 basis, PLAINTIFF and the AGGRIEVED EMPLOYEES were entitled to be separately compensated for  
23 all non-productive time at an hourly rate that is no less than the applicable minimum wage.  
24 Notwithstanding, in those instances where PLAINTIFF and the AGGRIEVED EMPLOYEES were paid  
25 in part on a piece-rate basis and/or commission, DEFENDANT'S failed to separately compensate  
26 PLAINTIFF and the AGGRIEVED EMPLOYEES for all non-productive time, including but not limited  
27 to, paid rest periods, at an hourly rate that is no less than the applicable minimum wage. As a result,  
28 PLAINTIFF and the AGGRIEVED EMPLOYEES forfeited minimum wages and overtime wages by

1 DEFENDANT’S failure to separately compensate their non-productive time at an hourly rate that is no  
2 less than the applicable minimum wage.

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

4 54. Pursuant to California Labor Code section 204, PLAINTIFF and AGGRIEVED  
5 EMPLOYEES were entitled to timely payment of wages during their employment. PLAINTIFF and  
6 other AGGRIEVED EMPLOYEES, from time to time, did not receive payment of all wages, including,  
7 but not limited to, overtime wages, minimum wages, meal period premiums, and separate compensation  
8 for rest breaks within a permissible time period.

9 55. The employment of PLAINTIFF and many other AGGRIEVED EMPLOYEES  
10 terminated, and DEFENDANT has not tendered payment of wages to these employees who were  
11 underpaid for minimum wage and/or overtime wage, and/or missed meal and rest breaks as required by  
12 law.

13 56. To date, DEFENDANT has yet to pay PLAINTIFF and other AGGRIEVED  
14 EMPLOYEES all of the wages and all premiums due to them for missed meal and rest breaks and  
15 DEFENDANT has failed to pay any penalty wages owed to them under California Labor Code section  
16 203. As a result of DEFENDANT’S failure to pay PLAINTIFF and me AGGRIEVED EMPLOYEES  
17 for all hours worked, pay meal premiums at the correct rate, and separately compensated PLAINTIFF  
18 and other AGGRIEVED EMPLOYEES for rest breaks, DEFENDANT also failed to pay all wages to  
19 PLAINTIFF and other AGGRIEVED EMPLOYEES at the time of termination, thereby violating  
20 California Labor Code section 203.

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

1 periods. PLAINTIFF therefore forfeited meal and rest breaks without additional compensation and in  
2 accordance with DEFENDANTS' strict corporate policy and practice. Moreover, DEFENDANTS also  
3 provided PLAINTIFF with a paystub that failed to comply with Cal. Lab. Code § 226. Further,  
4 DEFENDANTS also failed to reimburse PLAINTIFF for required business expenses related to the use  
5 of his personal cell phone and/or personal vehicle, on behalf of and in furtherance of his employment  
6 with DEFENDANTS. To date, DEFENDANTS have not fully paid PLAINTIFF the minimum, overtime  
7 and double time compensation still owed to him or any penalty wages owed to him under Cal. Lab. Code  
8 § 203. The amount in controversy for PLAINTIFF individually does not exceed the sum or value of  
9 \$75,000.

10 **FIRST CAUSE OF ACTION**

11 **For Civil Penalties Pursuant to Private Attorneys General Act ("PAGA")**

12 **[Cal. Lab. Code §§ 2698, et seq.]**

13 **(By PLAINTIFF and AGGRIEVED EMPLOYEES and Against All DEFENDANTS)**

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

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

25 60. PLAINTIFF brings this Representative Action on behalf of the State of California with  
26 respect to himself and all other current and former AGGRIEVED EMPLOYEES employed by  
27 DEFENDANTS in California during the PAGA PERIOD.

28 61. At all relevant times, for the reasons described herein, and others, PLAINTIFF and the

1 AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANTS within the meaning of  
2 Labor Code Section 2699(c).

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

6 63. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code  
7 Section 2699.3. By certified letter, return receipt requested, dated May 10, 2022, PLAINTIFF gave  
8 written notice to the Labor and Workforce Development Agency (“LWDA”) and to DEENDANTS of  
9 the specific provisions of the Labor Code alleged to have been violated, including the facts and theories  
10 to support the alleged violations.

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

16 65. To the extent that it applies, PLAINTIFF invokes the tolling permitted pursuant to the  
17 California State Judicial Counsel amended Rule of Court, Emergency Rule Number 9, tolled the statute  
18 of limitation and statutes of repose from April 6, 2020 to either (a) August 3, 2020 for statutes of  
19 limitation and repose for civil causes of action that are 180 days or less, of (b) October 1, 2020 for  
20 statutes of limitation and repose for civil causes of action that exceed 180 days.

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

- 25 a. For violation of Labor Code Sections 201, 202, 203, and 204, one  
26 hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period  
27 for the initial violation and two hundred dollars (\$200) for AGGIEVED  
28 EMPLOYEE per pay period for each subsequent violation [penalty per

1 Labor Code Section 2699(f)(2)];

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

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

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

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

21 f. For violations of Labor Code Section 1174(d), a civil penalty in the  
22 amount of five hundred (\$500) dollars for per AGGRIEVED EMPLOYEE  
23 [penalty per Labor Code Section 1174.5].

24 g. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and  
25 1199, a civil penalty in the amount of one hundred dollars (\$100) per  
26 AGGRIEVED EMPLOYEE per pay period for the initial violation and two  
27 hundred dollars fifty (\$250) per AGGIEVED EMPLOYEE per pay period  
28 for each subsequent violation [penalty per Labor Code Section].

