

**SUMMONS
(CITACION JUDICIAL)**

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

PAQ, INC., DBA FOOD 4 LESS and/or RANCHO SAN MIGUEL MARKETS; and DOES 1 through 50, Inclusive;

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

JESSE GALINDO, an individual, on behalf of himself, and on behalf of all persons similarly situated,

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

**FILED
SUPERIOR COURT**

2022 JAN 24 PM 2:49

BRANDON E. RILEY, CLERK

BY MIA STIPE
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), 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.

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/), 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 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.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):

San Joaquin Superior Court
180 E Weber Ave.
Stockton, CA 95202

STK-CV-10E-2022 452

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: JAN 24 2022
(Fecha)

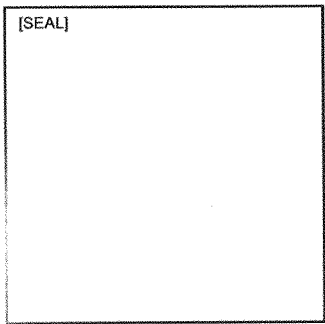
BRANDON E. RILEY

Clerk, by _____
(Secretario)

MIA STIPE

Deputy
(Adjunto)

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



NOTICE TO THE PERSON SERVED: You are served

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

under: <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):

2022 JAN 24 PM 2:49

BRANDON E. RILEY, CLERK

BY MIA STIPE
DEPUTY

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712081/1435

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

JESSE GALINDO, an individual, on behalf of himself, and on behalf of all persons similarly situated,

Plaintiffs,

vs.

PAQ, INC., DBA FOOD 4 LESS and/or RANCHO SAN MIGUEL MARKETS; and DOES 1 through 50, Inclusive;

Defendants.

Case No.

STK-CV-UOE-2022- 452

REPRESENTATIVE ACTION COMPLAINT FOR:

1. VIOLATIONS OF THE PRIVATE ATTORNEY GENERAL ACT PURSUANT TO LABOR CODE SECTIONS 2698, et seq.

DEMAND FOR JURY TRIAL

1 Plaintiff JESSE GALINDO (“PLAINTIFF”) on behalf of the people of the State of California and
2 as “aggrieved employees” acting as a private attorney general under the Labor Code Private Attorney
3 General Action of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on information and belief, except for
4 his own acts and knowledge which are based on personal knowledge, the following:

5 **INTRODUCTION**

6 1. PLAINTIFF brings this action against PAQ, INC., dba FOOD 4 LESS and/or RANCHO
7 SAN MIGUEL MARKETS (“DEFENDANT” or “DEFENDANTS”) seeking only to recover PAGA
8 civil penalties for himself, and on behalf of all current and former aggrieved employees that worked
9 for DEFENDANTS. PLAINTIFF does **not seek to recover anything other than penalties as**
10 **permitted by California Labor Code § 2699.** To the extent that statutory violations are mentioned
11 for wage violations, PLAINTIFF does not seek underlying general and/or special damages for those
12 violations in this action, but simply the civil penalties permitted by California Labor Code § 2699.
13 Notwithstanding, PLAINTIFF is not abandoning his right to pursue his individual claims for, *inter alia*,
14 Defendant’s alleged wage violations, and/or general or special damages arising from those violations,
15 and he fully intends to, at a future date, pursue claims for those individual claims and damages.

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

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

23 **THE PARTIES**

24 4. Defendant PAQ, INC., dba FOOD 4 LESS and/or RANCHO SAN MIGUEL MARKETS
25 (“DEFENDANT”) is a California Corporation that at all relevant times mentioned herein conducted
26 and continues to conduct substantial business in the state of California, county of San Joaquin, City of
27 Lodi, owning, operating and managing 18 grocery stores throughout the state of California.
28

1 5. The true names and capacities, whether individual, corporate, subsidiary, partnership,
2 associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to
3 PLAINTIFF who therefore sues these defendants by such fictitious names pursuant to Cal. Civ. Proc.
4 Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and
5 capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and
6 believes, and based upon that information and belief allege, that the Defendants named in this
7 Complaint, including DOES 1 through 50, inclusive (hereinafter collectively “DEFENDANTS”), are
8 responsible in some manner for one or more of the events and happenings that proximately caused the
9 injuries and damages hereinafter alleged.

10 6. The agents, servants and/or employees of the DEFENDANTS and each of them acting on
11 behalf of the DEFENDANT acted within the course and scope of his, her or its authority as the agent,
12 servant and/or employee of the DEFENDANT, and personally participated in the conduct alleged
13 herein on behalf of the DEFENDANT with respect to the conduct alleged herein. Consequently, the
14 acts of each of the DEFENDANTS are legally attributable to the other and all DEFENDANTS are
15 jointly and severally liable to PLAINTIFF and those similarly situated, for the loss sustained as a
16 proximate result of the conduct of the DEFENDANTS’ agents, servants and/or employees.

17 7. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of
18 PLAINTIFF’s employer, within the meaning of California Labor Code § 558, who violated or caused
19 to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
20 hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to
21 civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

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

1 9. PLAINTIFF was employed by DEFENDANTS at its Stockton and Lodi, California
2 locations, as a non-exempt employee, paid on an hourly basis, entitled overtime pay and legally
3 compliant meal and rest periods from April of 2019 to September of 2021.

4 10. PLAINTIFF, and such persons that may be added from time to time who satisfy the
5 requirements and exhaust the administrative procedures under the Private Attorney General Act, bring
6 this Representative Action on behalf of the State of California with respect to himself and all individuals
7 who are or previously were employed by DEFENDANT as non-exempt employees in California (the
8 "AGGRIEVED EMPLOYEES") during the time period of November 16, 2020 until the present (the
9 "PAGA PERIOD").

10 11. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently or
11 formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative action
12 pursuant to Labor Code § 2699, *et seq.* seeking penalties for DEFENDANT'S violation of California
13 Labor Code §§ 201, 202, 203, 204, 210, 226.7, 510, 512, 558, 1102.5, 1194, 1197, 1197.1, 1198 1198.5
14 & 2802, and the applicable Wage Order. Based upon the foregoing, PLAINTIFF and all AGGRIEVED
15 EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

16 12. The true names and capacities, whether individual, corporate, subsidiary, partnership,
17 associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to
18 PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to Cal. Civ. Proc.
19 Code § 474. PLAINTIFF will seek leave to amend this Second Amended Complaint to allege the true
20 names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is
21 informed and believes, and based upon that information and belief alleges, that the Defendants named
22 in this Complaint, including DOES 1 through 50, inclusive, are responsible in some manner for one or
23 more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

24 13. The agents, servants and/or employees of the Defendants and each of them acting on
25 behalf of the Defendants acted within the course and scope of his, her or its authority as the agent,
26 servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on
27 behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each
28 Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally

1 liable to PLAINTIFF and the other AGGRIEVED EMPLOYEES, for the loss sustained as a proximate
2 result of the conduct of the Defendants' agents, servants and/or employees.

3 **JURISDICTION AND VENUE**

4 14. This Court has jurisdiction over this Action pursuant to California Code of Civil
5 Procedure, Section 410.10.

6 15. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
7 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times maintained
8 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
9 committed the wrongful conduct herein alleged in this County against AGGRIEVED EMPLOYEES.

10 **THE CONDUCT**

11 16. In violation of the applicable sections of the California Labor Code and the requirements
12 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
13 policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally
14 complaint meal and rest period, failed to accurately compensate PLAINTIFF and the other
15 AGGRIEVED EMPLOYEES for missed meal and rest periods, failed to pay PLAINTIFF and the other
16 AGGRIEVED EMPLOYEES for all time worked, and failed to issue to PLAINTIFF and the
17 AGGRIEVED EMPLOYEES with accurate itemized wage statements showing, among other things,
18 all applicable hourly rates in effect during the pay periods and the corresponding amount of time
19 worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to
20 purposefully avoid the accurate and full payment for all time worked as required by California law
21 which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who
22 comply with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED
23 EMPLOYEES against DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

24 **A. Meal Period Violations**

25 17. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
26 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning the
27 time during which an employee is subject to the control of an employer, including all the time the
28 employee is suffered or permitted to work. From time-to-time during the PAGA PERIOD, as a result

1 of their overburdened work requirements and inadequate staffing, DEFENDANTS required
2 PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them for all the time they were
3 under DEFENDANTS' control. Specifically, DEFENDANTS required PLAINTIFF to work while
4 clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from
5 time-to-time interrupted by work assignments while clocked out for what should have been
6 PLAINTIFF's off-duty meal break. As a result, the PLAINTIFF and other AGGRIEVED
7 EMPLOYEES forfeited minimum wage and overtime wages by regularly working without their time
8 being accurately recorded and without compensation at the applicable minimum wage and overtime
9 rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other AGGRIEVED
10 EMPLOYEES for all time worked is evidenced by DEFENDANTS' business records.

11 18. From time-to-time during the PAGA PERIOD, as a result of their rigorous work schedules
12 and inadequate staffing, PLAINTIFF and other AGGRIEVED EMPLOYEES were from time-to-time
13 unable to take thirty (30) minute off duty meal breaks and were not fully relieved of duty for their meal
14 periods. PLAINTIFF and other AGGRIEVED EMPLOYEES were required from time-to-time to
15 perform work as ordered by DEFENDANTS for more than five (5) hours during some shifts without
16 receiving a meal break. Further, DEFENDANTS from time to time failed to provide PLAINTIFF and
17 AGGRIEVED EMPLOYEES with a second off-duty meal period for some workdays in which these
18 employees were required by DEFENDANTS to work ten (10) hours of work from time to time. The
19 nature of the work performed by the PLAINTIFF and other AGGRIEVED EMPLOYEES does not
20 qualify for limited and narrowly construed "on-duty" meal period exception. PLAINTIFF and other
21 AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation and in
22 accordance with DEFENDANTS' strict corporate policy and practice.

23 **B. Rest Period Violations**

24 19. Pursuant to the Industrial Welfare Commission Wage Orders and the California Labor
25 Codes, an employer shall authorize and permit all employees to take a rest periods, which so far as
26 practical shall be in the middle of each work period. Generally, an employer must provide ten (10)
27 minutes of paid rest for every four hours or major fraction thereof. If an employer fails to provide an
28

1 employee a rest period, the employer shall pay the employee one (1) hour of pay at the employee's
2 regular rate of compensation for each workday that the rest period is not provided.

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

16 **C. Labor Code Section 2802 Violations**

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

27 22. In the course of their employment, PLAINTIFF and other AGGRIEVED EMPLOYEES
28 as a business expense, were required by DEFENDANTS to purchase their own tools as a result of and

1 in furtherance of their job duties as employees for DEFENDANTS but were not reimbursed or
2 indemnified by DEFENDANTS for the cost associated with the purchase of their own tools for
3 DEFENDANTS' benefit. Specifically, PLAINTIFF was required by DEFENDANTS to use his
4 personal tools in order to perform his duties. As a result, in the course of their employment with
5 DEFENDANTS the PLAINTIFF and other AGGRIEVED EMPLOYEES incurred unreimbursed
6 business expenses which included, but were not limited to, costs related to the purchase of their own
7 tools, all on behalf of and for the benefit of DEFENDANTS.

8 **D. Wage Statement Violations**

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

17 24. From time to time during the PAGA PERIOD, when PLAINTIFF and other
18 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurate missed meal and
19 rest period premiums, or were paid overtime in the same pay period where they earned a non-
20 discretionary incentive award, DEFENDANTS also failed to provide PLAINTIFF and the other
21 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to show,
22 among other things, all applicable hourly rates in effect during the pay period and the corresponding
23 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal
24 and rest periods, and the name and address of the legal entity that is the employer of PLAINTIFF and
25 the other AGGRIEVED EMPLOYEES.

26 25. Additionally, from time-to-time during the PAGA PERIOD, DEFENDANTS violated
27 California Labor Code Section 226(a)(2) by failing to provide an accurate amount of total hours worked
28 by Plaintiff and other AGGRIEVED EMPLOYEES. Specifically, DEFENDANTS included items,

1 including but not limited to “Sick Pay” to the total hours worked. However, sick pay is not considered
2 total hours worked for the purposes of California Labor Code Section 226(a)(2).

3 26. As a result, DEFENDANTS issued PLAINTIFF and the other AGGRIEVED
4 EMPLOYEES with wage statements that violate Cal. Lab. Code § 226.

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

6 27. During the PAGA PERIOD, from time-to-time DEFENDANTS failed and continue to fail
7 to accurately pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all hours worked.
8 Specifically, DEFENDANT from time-to-time required PLAINTIFF and the other AGGRIEVED
9 EMPLOYEES to perform off-the-clock work. Notwithstanding, from time-to-time DEFENDANTS
10 failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES necessary wages for performing
11 work at DEFENDANTS’ direction, request and benefit, while off-the clock pre-shift, post-shift, on
12 days off and during meal periods.

13 28. During the PAGA PERIOD, from time-to-time DEFENDANTS required PLAINTIFF and
14 other AGGRIEVED EMPLOYEES to perform pre-shift work, including but not limited to, arriving
15 approximately 30 minutes before his shift was supposed to start to prepare his station for the start of
16 his shift. In order to prepare his station, Plaintiff had to put on his apron and food handling gear, set the
17 trash cans, set up the machines needed to process the meats including blades and saws, and cleaning
18 his station all prior to the start of his shift.

19 29. During the PAGA PERIOD, from time-to-time DEFENDANTS required PLAINTIFF and
20 other AGGRIEVED EMPLOYEES to perform post-shift work. Defendant would schedule Plaintiff and
21 other AGGRIEVED EMPLOYEES 7.5 hour shifts to avoid paying their employees overtime. However,
22 when their shifts ended, PLAINTIFF and other AGGRIEVED EMPLOYEES would be asked to stay
23 after clocking out and assist the remaining employees with their job duties.

24 30. DEFENDANTS directed and directly benefited from the uncompensated off-the-clock
25 work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

26 31. DEFENDANTS controlled the work schedules, duties, protocols, applications,
27 assignments and employment conditions of PLAINTIFF and the other AGGRIEVED EMPLOYEES.
28

1 32. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
2 AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document, track, or
3 pay PLAINTIFF and the other AGGRIEVED EMPLOYEES all wages earned and owed for all the work
4 they performed, including off-the-clock work.

5 33. PLAINTIFF and the other AGGRIEVED EMPLOYEES were non-exempt employees,
6 subject to the requirements of the California Labor Code.

7 34. DEFENDANTS' policies and practices deprived PLAINTIFF and the other AGGRIEVED
8 EMPLOYEES of all minimum, regular and overtime wages owed for the off-the-clock work activities
9 and their required meal periods. Because PLAINTIFF and the other AGGRIEVED EMPLOYEES
10 typically worked over 40 hours in a workweek, and more than eight (8) hours per day, DEFENDANTS'
11 policies and practices also deprived them of overtime pay.

12 35. DEFENDANTS knew or should have known that PLAINTIFF and the other AGGRIEVED
13 EMPLOYEES off-the-clock work was compensable under the law.

14 36. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due
15 them for all hours worked at DEFENDANTS' direction, control and benefit for the time spent answering
16 work related questions on days off, outside of work hours, pre-shift, post-shift and during meal
17 periods. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and the AGGRIEVED
18 EMPLOYEES wages for all hours worked in accordance with applicable law is evidenced by
19 DEFENDANTS' business records.

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

22 37. From time-to-time during the PAGA PERIOD, DEFENDANTS failed and continue to fail
23 to accurately calculate and pay PLAINTIFF and the AGGRIEVED EMPLOYEES for their overtime
24 hours worked, meal and rest period premiums, and sick pay. As a result, PLAINTIFF and the
25 AGGRIEVED EMPLOYEES members forfeited wages due them for working overtime without
26 compensation at the correct overtime rates, meal and rest period premiums, and sick pay rates.
27 DEFENDANTS' uniform policy and practice to not pay the AGGRIEVED EMPLOYEES the correct
28

1 rate for all overtime worked, meal and rest period premiums, and sick pay in accordance with applicable
2 law is evidenced by DEFENDANTS' business records.

3 38. State law provides that employees must be paid overtime at one-and-one-half times their
4 "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES were compensated at an
5 hourly rate plus incentive pay that was tied to specific elements of an employee's performance.

6 39. The second component of PLAINTIFF'S and other AGGRIEVED EMPLOYEES'
7 compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFF and
8 other AGGRIEVED EMPLOYEES incentive wages based on their performance for DEFENDANTS.
9 The non-discretionary bonus program provided all employees paid on an hourly basis with bonus and/or
10 commission compensation when the employees met the various performance goals set by
11 DEFENDANTS.

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

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

11 **FIRST CAUSE OF ACTION**

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

13 **[Cal. Lab. Code §§ 2698 et seq.]**

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

15 42. PLAINTIFF realleges and incorporate by this reference, as though fully set forth herein, the
16 prior paragraphs of this Complaint.

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

26 44. PLAINTIFF, and such persons that may be added from time to time who satisfy the
27 requirements and exhaust the administrative procedures under the Private Attorney General Act, bring
28 this Representative Action on behalf of the State of California with respect to himself and all individuals

1 who are or previously were employed by DEFENDANT as non-exempt employees in California during
2 the time period of November 16, 2020 until the present (the "AGGRIEVED EMPLOYEES").

3 45. On November 16, 2021, PLAINTIFF gave written notice by certified mail to the Labor
4 and Workforce Development Agency (the "Agency") and the employer of the specific provisions
5 of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached
6 hereto and incorporated by this reference herein. The statutory waiting period for PLAINTIFF to add
7 these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF
8 may now commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of
9 the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

10 46. The policies, acts and practices heretofore described were and are an unlawful business
11 act or practice because Defendant (a) failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES
12 minimum wages and overtime wages, (b) failed to provide PLAINTIFFS and other AGGRIEVED
13 EMPLOYEES legally required meal and rest breaks, (c) failed to provide accurate itemized wage
14 statements, and (d) failed to reimburse for mandatory expenses, all in violation of the applicable Labor
15 Code sections listed in Labor Code §2699.5, including but not limited to Labor Code §§ 201, 202, 203,
16 204, 210, 226.7, 510, 512, 558, 1102.5, 1194, 1197, 1197.1, 1198 1198.5 & 2802, and the applicable
17 Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of such conduct.
18 PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney
19 General Act of 2004 as the representative of the State of California for the illegal conduct perpetrated
20 on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

21 47. Some or all of the conduct and violations alleged herein occurred during the PAGA
22 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF
23 during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected other
24 AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519; See
25 also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an
26 “aggrieved employee”—a person affected by **at least one** Labor Code violation committed by an
27 employer—to **pursue penalties for all the Labor Code violations committed by that employer.**”],
28 Emphasis added, reh'g denied (June 13, 2018).)

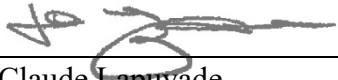
1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANTS, jointly and
3 severally, as follows:

- 4 1. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
5 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General
6 Act of 2004; and
7 b. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.
8

9 Dated: January 21, 2022

Respectfully Submitted,
JCL LAW FIRM, APC

11 By: 
12 Jean-Claude Lapuyade
13 Attorneys for PLAINTIFF

14 **DEMAND FOR JURY TRIAL**

15 PLAINTIFF demands a jury trial on all issues triable to a jury.
16

17 Dated: January 21, 2022

Respectfully Submitted,
JCL LAW FIRM, APC

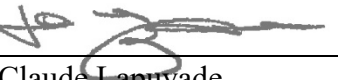
19 By: 
20 Jean-Claude Lapuyade
21 Attorneys for PLAINTIFF
22
23
24
25
26
27
28

EXHIBIT 1



5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
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Jean-Claude Lapuyade, Esq.
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November 16, 2021

Via Online Filing to LWDA and Certified Mail to Defendant
Labor and Workforce Development Agency
Online Filing

PAQ, INC.

c/o Michael Molinar
8014 Lower Sacramento Rd., Suite I
Stockton, CA 95210

Sent Via Certified Mail & Return Receipt No. 7021 0350 0000 8465 3370

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

This office represents JESSE GALINDO (“Plaintiff”) and other aggrieved employees in a proposed lawsuit action against PAQ, INC., dba FOOD 4 LESS and/or RANCHO SAN MIGUEL MARKETS (“Defendant”). This office intends to file the enclosed PAGA Action Complaint on behalf of Plaintiff and other aggrieved employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Plaintiff was employed by Defendant in California from April of 2019 to September of 2021. Plaintiff was paid on an hourly basis and entitled to legally required meal and rest periods. At all times during his employment, Defendant failed to, among other things, provide Plaintiff, and other aggrieved employees, with all legally mandated off-duty meal and rest periods.

As a consequence, Plaintiff contends that Defendant failed to fully compensate him and other aggrieved employees, for all earned wages and failed to provide California-compliant meal and rest breaks and accurate wage statements. Accordingly, Plaintiff contends that Defendant’s conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt and exempt employees who worked for Defendant during the relevant claim period.

A true and correct copy of the proposed Complaint for by Plaintiff against Defendants is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendant. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendant is on notice that Plaintiff continues his investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

If the agency needs any further information, please do not hesitate to ask. The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiff and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Very truly yours,
JCL LAW FIRM, APC



Jean-Claude Lapuyade, Esq.

Enclosure (1)

1 **JCL LAW FIRM, APC**

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shani@zakaylaw.com

11 jackland@zakaylaw.com

12 Attorneys for Plaintiff JESSE GALINDO

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **IN AND FOR THE COUNTY OF SAN JOAQUIN**

15 JESSE GALINDO, an individual, on behalf of
16 himself, and on behalf of all persons similarly
17 situated,

18 Plaintiffs,

19 vs.

20 PAQ, INC., DBA FOOD 4 LESS and/or
21 RANCHO SAN MIGUEL MARKETS; and
DOES 1 through 50, Inclusive;

22 Defendants.

Case No.

**REPRESENTATIVE ACTION COMPLAINT
FOR:**

1. VIOLATIONS OF THE PRIVATE
ATTORNEY GENERAL ACT PURSUANT
TO LABOR CODE SECTIONS 2698, et seq.

DEMAND FOR JURY TRIAL

1 Plaintiff JESSE GALINDO (“PLAINTIFF”) on behalf of the people of the State of California and
2 as “aggrieved employees” acting as a private attorney general under the Labor Code Private Attorney
3 General Action of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on information and belief, except for
4 his own acts and knowledge which are based on personal knowledge, the following:

5 **INTRODUCTION**

6 1. PLAINTIFF brings this action against PAQ, INC., dba FOOD 4 LESS and/or RANCHO
7 SAN MIGUEL MARKETS (“DEFENDANT” or “DEFENDANTS”) seeking only to recover PAGA
8 civil penalties for himself, and on behalf of all current and former aggrieved employees that worked
9 for DEFENDANTS. PLAINTIFF does **not seek to recover anything other than penalties as**
10 **permitted by California Labor Code § 2699.** To the extent that statutory violations are mentioned
11 for wage violations, PLAINTIFF does not seek underlying general and/or special damages for those
12 violations in this action, but simply the civil penalties permitted by California Labor Code § 2699.
13 Notwithstanding, PLAINTIFF is not abandoning his right to pursue his individual claims for, *inter alia*,
14 Defendant’s alleged wage violations, and/or general or special damages arising from those violations,
15 and he fully intends to, at a future date, pursue claims for those individual claims and damages.

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

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

23 **THE PARTIES**

24 4. Defendant PAQ, INC., dba FOOD 4 LESS and/or RANCHO SAN MIGUEL MARKETS
25 (“DEFENDANT”) is a California Corporation that at all relevant times mentioned herein conducted
26 and continues to conduct substantial business in the state of California, county of San Joaquin, City of
27 Lodi, owning, operating and managing 18 grocery stores throughout the state of California.

1 5. The true names and capacities, whether individual, corporate, subsidiary, partnership,
2 associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to
3 PLAINTIFF who therefore sues these defendants by such fictitious names pursuant to Cal. Civ. Proc.
4 Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and
5 capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and
6 believes, and based upon that information and belief allege, that the Defendants named in this
7 Complaint, including DOES 1 through 50, inclusive (hereinafter collectively “DEFENDANTS”), are
8 responsible in some manner for one or more of the events and happenings that proximately caused the
9 injuries and damages hereinafter alleged.

10 6. The agents, servants and/or employees of the DEFENDANTS and each of them acting on
11 behalf of the DEFENDANT acted within the course and scope of his, her or its authority as the agent,
12 servant and/or employee of the DEFENDANT, and personally participated in the conduct alleged
13 herein on behalf of the DEFENDANT with respect to the conduct alleged herein. Consequently, the
14 acts of each of the DEFENDANTS are legally attributable to the other and all DEFENDANTS are
15 jointly and severally liable to PLAINTIFF and those similarly situated, for the loss sustained as a
16 proximate result of the conduct of the DEFENDANTS’ agents, servants and/or employees.

17 7. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of
18 PLAINTIFF’s employer, within the meaning of California Labor Code § 558, who violated or caused
19 to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
20 hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to
21 civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

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

1 9. PLAINTIFF was employed by DEFENDANTS at its Stockton and Lodi, California
2 locations, as a non-exempt employee, paid on an hourly basis, entitled overtime pay and legally
3 compliant meal and rest periods from April of 2019 to September of 2021.

4 10. PLAINTIFF, and such persons that may be added from time to time who satisfy the
5 requirements and exhaust the administrative procedures under the Private Attorney General Act, bring
6 this Representative Action on behalf of the State of California with respect to himself and all individuals
7 who are or previously were employed by DEFENDANT as non-exempt employees in California (the
8 "AGGRIEVED EMPLOYEES") during the time period of November 16, 2020 until the present (the
9 "PAGA PERIOD").

10 11. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently or
11 formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative action
12 pursuant to Labor Code § 2699, *et seq.* seeking penalties for DEFENDANT'S violation of California
13 Labor Code §§ 201, 202, 203, 204, 210, 226.7, 510, 512, 558, 1102.5, 1194, 1197, 1197.1, 1198 1198.5
14 & 2802, and the applicable Wage Order. Based upon the foregoing, PLAINTIFF and all AGGRIEVED
15 EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

16 12. The true names and capacities, whether individual, corporate, subsidiary, partnership,
17 associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to
18 PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to Cal. Civ. Proc.
19 Code § 474. PLAINTIFF will seek leave to amend this Second Amended Complaint to allege the true
20 names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is
21 informed and believes, and based upon that information and belief alleges, that the Defendants named
22 in this Complaint, including DOES 1 through 50, inclusive, are responsible in some manner for one or
23 more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

24 13. The agents, servants and/or employees of the Defendants and each of them acting on
25 behalf of the Defendants acted within the course and scope of his, her or its authority as the agent,
26 servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on
27 behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each
28 Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally

1 liable to PLAINTIFF and the other AGGRIEVED EMPLOYEES, for the loss sustained as a proximate
2 result of the conduct of the Defendants' agents, servants and/or employees.

3 **JURISDICTION AND VENUE**

4 14. This Court has jurisdiction over this Action pursuant to California Code of Civil
5 Procedure, Section 410.10.

6 15. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
7 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times maintained
8 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
9 committed the wrongful conduct herein alleged in this County against AGGRIEVED EMPLOYEES.

10 **THE CONDUCT**

11 16. In violation of the applicable sections of the California Labor Code and the requirements
12 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
13 policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally
14 complaint meal and rest period, failed to accurately compensate PLAINTIFF and the other
15 AGGRIEVED EMPLOYEES for missed meal and rest periods, failed to pay PLAINTIFF and the other
16 AGGRIEVED EMPLOYEES for all time worked, and failed to issue to PLAINTIFF and the
17 AGGRIEVED EMPLOYEES with accurate itemized wage statements showing, among other things,
18 all applicable hourly rates in effect during the pay periods and the corresponding amount of time
19 worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to
20 purposefully avoid the accurate and full payment for all time worked as required by California law
21 which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who
22 comply with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED
23 EMPLOYEES against DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

24 **A. Meal Period Violations**

25 17. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
26 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning the
27 time during which an employee is subject to the control of an employer, including all the time the
28 employee is suffered or permitted to work. From time-to-time during the PAGA PERIOD, as a result

1 of their overburdened work requirements and inadequate staffing, DEFENDANTS required
2 PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them for all the time they were
3 under DEFENDANTS' control. Specifically, DEFENDANTS required PLAINTIFF to work while
4 clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from
5 time-to-time interrupted by work assignments while clocked out for what should have been
6 PLAINTIFF's off-duty meal break. As a result, the PLAINTIFF and other AGGRIEVED
7 EMPLOYEES forfeited minimum wage and overtime wages by regularly working without their time
8 being accurately recorded and without compensation at the applicable minimum wage and overtime
9 rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other AGGRIEVED
10 EMPLOYEES for all time worked is evidenced by DEFENDANTS' business records.

11 18. From time-to-time during the PAGA PERIOD, as a result of their rigorous work schedules
12 and inadequate staffing, PLAINTIFF and other AGGRIEVED EMPLOYEES were from time-to-time
13 unable to take thirty (30) minute off duty meal breaks and were not fully relieved of duty for their meal
14 periods. PLAINTIFF and other AGGRIEVED EMPLOYEES were required from time-to-time to
15 perform work as ordered by DEFENDANTS for more than five (5) hours during some shifts without
16 receiving a meal break. Further, DEFENDANTS from time to time failed to provide PLAINTIFF and
17 AGGRIEVED EMPLOYEES with a second off-duty meal period for some workdays in which these
18 employees were required by DEFENDANTS to work ten (10) hours of work from time to time. The
19 nature of the work performed by the PLAINTIFF and other AGGRIEVED EMPLOYEES does not
20 qualify for limited and narrowly construed "on-duty" meal period exception. PLAINTIFF and other
21 AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation and in
22 accordance with DEFENDANTS' strict corporate policy and practice.

23 **B. Rest Period Violations**

24 19. Pursuant to the Industrial Welfare Commission Wage Orders and the California Labor
25 Codes, an employer shall authorize and permit all employees to take a rest periods, which so far as
26 practical shall be in the middle of each work period. Generally, an employer must provide ten (10)
27 minutes of paid rest for every four hours or major fraction thereof. If an employer fails to provide an
28

1 employee a rest period, the employer shall pay the employee one (1) hour of pay at the employee's
2 regular rate of compensation for each workday that the rest period is not provided.

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

16 **C. Labor Code Section 2802 Violations**

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

27 22. In the course of their employment, PLAINTIFF and other AGGRIEVED EMPLOYEES
28 as a business expense, were required by DEFENDANTS to purchase their own tools as a result of and

1 in furtherance of their job duties as employees for DEFENDANTS but were not reimbursed or
2 indemnified by DEFENDANTS for the cost associated with the purchase of their own tools for
3 DEFENDANTS' benefit. Specifically, PLAINTIFF was required by DEFENDANTS to use his
4 personal tools in order to perform his duties. As a result, in the course of their employment with
5 DEFENDANTS the PLAINTIFF and other AGGRIEVED EMPLOYEES incurred unreimbursed
6 business expenses which included, but were not limited to, costs related to the purchase of their own
7 tools, all on behalf of and for the benefit of DEFENDANTS.

8 **D. Wage Statement Violations**

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

17 24. From time to time during the PAGA PERIOD, when PLAINTIFF and other
18 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurate missed meal and
19 rest period premiums, or were paid overtime in the same pay period where they earned a non-
20 discretionary incentive award, DEFENDANTS also failed to provide PLAINTIFF and the other
21 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to show,
22 among other things, all applicable hourly rates in effect during the pay period and the corresponding
23 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal
24 and rest periods, and the name and address of the legal entity that is the employer of PLAINTIFF and
25 the other AGGRIEVED EMPLOYEES.

26 25. Additionally, from time-to-time during the PAGA PERIOD, DEFENDANTS violated
27 California Labor Code Section 226(a)(2) by failing to provide an accurate amount of total hours worked
28 by Plaintiff and other AGGRIEVED EMPLOYEES. Specifically, DEFENDANTS included items,

1 including but not limited to “Sick Pay” to the total hours worked. However, sick pay is not considered
2 total hours worked for the purposes of California Labor Code Section 226(a)(2).

3 26. As a result, DEFENDANTS issued PLAINTIFF and the other AGGRIEVED
4 EMPLOYEES with wage statements that violate Cal. Lab. Code § 226.

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

6 27. During the PAGA PERIOD, from time-to-time DEFENDANTS failed and continue to fail
7 to accurately pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all hours worked.
8 Specifically, DEFENDANT from time-to-time required PLAINTIFF and the other AGGRIEVED
9 EMPLOYEES to perform off-the-clock work. Notwithstanding, from time-to-time DEFENDANTS
10 failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES necessary wages for performing
11 work at DEFENDANTS’ direction, request and benefit, while off-the clock pre-shift, post-shift, on
12 days off and during meal periods.

13 28. During the PAGA PERIOD, from time-to-time DEFENDANTS required PLAINTIFF and
14 other AGGRIEVED EMPLOYEES to perform pre-shift work, including but not limited to, arriving
15 approximately 30 minutes before his shift was supposed to start to prepare his station for the start of
16 his shift. In order to prepare his station, Plaintiff had to put on his apron and food handling gear, set the
17 trash cans, set up the machines needed to process the meats including blades and saws, and cleaning
18 his station all prior to the start of his shift.

19 29. During the PAGA PERIOD, from time-to-time DEFENDANTS required PLAINTIFF and
20 other AGGRIEVED EMPLOYEES to perform post-shift work. Defendant would schedule Plaintiff and
21 other AGGRIEVED EMPLOYEES 7.5 hour shifts to avoid paying their employees overtime. However,
22 when their shifts ended, PLAINTIFF and other AGGRIEVED EMPLOYEES would be asked to stay
23 after clocking out and assist the remaining employees with their job duties.

24 30. DEFENDANTS directed and directly benefited from the uncompensated off-the-clock
25 work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

26 31. DEFENDANTS controlled the work schedules, duties, protocols, applications,
27 assignments and employment conditions of PLAINTIFF and the other AGGRIEVED EMPLOYEES.
28

1 32. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
2 AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document, track, or
3 pay PLAINTIFF and the other AGGRIEVED EMPLOYEES all wages earned and owed for all the work
4 they performed, including off-the-clock work.

5 33. PLAINTIFF and the other AGGRIEVED EMPLOYEES were non-exempt employees,
6 subject to the requirements of the California Labor Code.

7 34. DEFENDANTS' policies and practices deprived PLAINTIFF and the other AGGRIEVED
8 EMPLOYEES of all minimum, regular and overtime wages owed for the off-the-clock work activities
9 and their required meal periods. Because PLAINTIFF and the other AGGRIEVED EMPLOYEES
10 typically worked over 40 hours in a workweek, and more than eight (8) hours per day, DEFENDANTS'
11 policies and practices also deprived them of overtime pay.

12 35. DEFENDANTS knew or should have known that PLAINTIFF and the other AGGRIEVED
13 EMPLOYEES off-the-clock work was compensable under the law.

14 36. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due
15 them for all hours worked at DEFENDANTS' direction, control and benefit for the time spent answering
16 work related questions on days off, outside of work hours, pre-shift, post-shift and during meal
17 periods. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and the AGGRIEVED
18 EMPLOYEES wages for all hours worked in accordance with applicable law is evidenced by
19 DEFENDANTS' business records.

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

22 37. From time-to-time during the PAGA PERIOD, DEFENDANTS failed and continue to fail
23 to accurately calculate and pay PLAINTIFF and the AGGRIEVED EMPLOYEES for their overtime
24 hours worked, meal and rest period premiums, and sick pay. As a result, PLAINTIFF and the
25 AGGRIEVED EMPLOYEES members forfeited wages due them for working overtime without
26 compensation at the correct overtime rates, meal and rest period premiums, and sick pay rates.
27 DEFENDANTS' uniform policy and practice to not pay the AGGRIEVED EMPLOYEES the correct
28

1 rate for all overtime worked, meal and rest period premiums, and sick pay in accordance with applicable
2 law is evidenced by DEFENDANTS' business records.

3 38. State law provides that employees must be paid overtime at one-and-one-half times their
4 "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES were compensated at an
5 hourly rate plus incentive pay that was tied to specific elements of an employee's performance.

6 39. The second component of PLAINTIFF'S and other AGGRIEVED EMPLOYEES'
7 compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFF and
8 other AGGRIEVED EMPLOYEES incentive wages based on their performance for DEFENDANTS.
9 The non-discretionary bonus program provided all employees paid on an hourly basis with bonus and/or
10 commission compensation when the employees met the various performance goals set by
11 DEFENDANTS.

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

1 who are or previously were employed by DEFENDANT as non-exempt employees in California during
2 the time period of November 16, 2020 until the present (the "AGGRIEVED EMPLOYEES").

3 45. On November 16, 2021, PLAINTIFF gave written notice by certified mail to the Labor
4 and Workforce Development Agency (the "Agency") and the employer of the specific provisions
5 of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached
6 hereto and incorporated by this reference herein. The statutory waiting period for PLAINTIFF to add
7 these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF
8 may now commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of
9 the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

10 46. The policies, acts and practices heretofore described were and are an unlawful business
11 act or practice because Defendant (a) failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES
12 minimum wages and overtime wages, (b) failed to provide PLAINTIFFS and other AGGRIEVED
13 EMPLOYEES legally required meal and rest breaks, (c) failed to provide accurate itemized wage
14 statements, and (d) failed to reimburse for mandatory expenses, all in violation of the applicable Labor
15 Code sections listed in Labor Code §2699.5, including but not limited to Labor Code §§ 201, 202, 203,
16 204, 210, 226.7, 510, 512, 558, 1102.5, 1194, 1197, 1197.1, 1198 1198.5 & 2802, and the applicable
17 Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of such conduct.
18 PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney
19 General Act of 2004 as the representative of the State of California for the illegal conduct perpetrated
20 on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

21 47. Some or all of the conduct and violations alleged herein occurred during the PAGA
22 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF
23 during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected other
24 AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519; See
25 also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an
26 “aggrieved employee”—a person affected by **at least one** Labor Code violation committed by an
27 employer—to **pursue penalties for all the Labor Code violations committed by that employer.**”],
28 Emphasis added, reh'g denied (June 13, 2018).)


1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANTS, jointly and
3 severally, as follows:

- 4 1. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
5 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General
6 Act of 2004; and
7 b. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.
8

9 Dated: November 16, 2021

Respectfully Submitted,
JCL LAW FIRM, APC

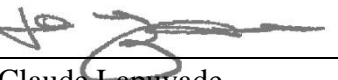
11 By: 
12 Jean-Claude Lapuyade
13 Attorneys for PLAINTIFF

14 **DEMAND FOR JURY TRIAL**

15 PLAINTIFF demands a jury trial on all issues triable to a jury.
16

17 Dated: November 16, 2021

Respectfully Submitted,
JCL LAW FIRM, APC

19 By: 
20 Jean-Claude Lapuyade
21 Attorneys for PLAINTIFF
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