

SUMMONS
(CITACION JUDICIAL)

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

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

GENERAL MOTORS LLC, a Delaware limited liability company;
GENERAL MOTORS COMPANY, a Delaware corporation; and Does 1
through 50, Inclusive;

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

DARAKA BANKS, an individual, on behalf of himself, and on behalf of
all persons similarly situated,

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

MAR 19 2022

BY Jovanna Leandro
JOVANNA LEANDRO, 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 pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

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

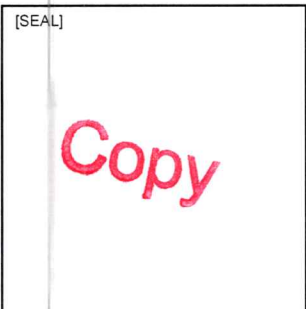
The name and address of the court is:
(El nombre y dirección de la corte es):
San Bernardino Superior Court - Civil Division
247 West Third Street
San Bernardino, CA 92415

CASE NUMBER
(Número del Caso) **CIVSB 2204203**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Jean-Claude Lapuyade, Esq. SBN: 248676 Tel: (619) 599-8292 Fax: (619) 599-8291
JCL Law Firm, APC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: **MAR 19 2022** Clerk, by Jovanna Leandro, Deputy
(Fecha) *(Secretario)* *(Adjunto)*

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



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of *(specify)*:
- on behalf of *(specify)*:
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other *(specify)*:
- by personal delivery on *(date)*:

VIA FAX

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21 Attorneys for Plaintiff DAKARA BANKS

22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

23 **IN AND FOR THE COUNTY OF SAN BERNARDINO**

24 DARAKA BANKS, an individual, on behalf of
25 himself, and on behalf of all persons similarly
26 situated,

27 Plaintiffs,

28 vs.

GENERAL MOTORS LLC, a Delaware limited
liability company; GENERAL MOTORS
COMPANY, a Delaware corporation; and Does
1 through 50, Inclusive;

Defendants.

Case No. **CIV SB 2204203**

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

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

DEMAND FOR JURY TRIAL

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

FEB 24 2022

BY Jovanna Leandro
JOVANNA LEANDRO, DEPUTY

VIA FAX

1 Plaintiff DARAKA BANKS (“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 GENERAL MOTORS LLC (“Defendant General Motors LLC”)
4 and GENERAL MOTORS COMPANY (“Defendant General Motors Company”), alleges on
5 information and belief, except for his own acts and knowledge which are based on personal knowledge,
6 the following:

7 **INTRODUCTION**

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

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

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

- 16 a. Failure to provide compliant meal and rest periods;
- 17 b. Failure to allow employees to take duty-free rest periods;
- 18 c. Failure to pay all minimum, regular and overtime wages;
- 19 d. Failure to correctly calculate the regular rate of pay;
- 20 e. Failure to maintain true and accurate records;
- 21 f. Failure to provide accurate itemized wage statements; and
- 22 g. Failure to timely pay wages due during, and upon termination of employment.

23 4. PLAINTIFF brings this representative action against DEFENDANT on behalf of himself
24 and all other aggrieved employees of DEFENDANT in California seeking all civil penalties and unpaid
25 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



THE PARTIES

1
2 6. Defendant GENERAL MOTORS LLC (“Defendant General Motors LLC”) is a Delaware
3 limited liability company that at all relevant times mentioned herein conducted and continues to
4 conduct substantial business in the State of California

5 7. Defendant GENERAL MOTORS COMPANY (“Defendant General Motors Company”)
6 is a Delaware corporation that at all relevant time mentioned herein conducted and continues to conduct
7 substantial business in the State of California.

8 8. Defendant General Motors LLC and Defendant General Motors Company were the joint
9 employers of PLAINTIFF as evidenced by the contracts signed and by the company the PLAINTIFF
10 performed work for respectively, and are therefore jointly responsible as employers for the conduct
11 alleged herein and collectively referred to herein as “DEFENDANTS” and/or “DEFENDANT.”

12 9. PLAINTIFF was employed by DEFENDANT as a non-exempt employee, paid on an
13 hourly basis and entitled to certain bonuses, overtime pay and legally complaint meal and rest periods
14 since May 2019.

15 10. PLAINTIFF brings this action in his representative capacity on behalf of the State of
16 California and on behalf of all individuals who are or previously were employed by DEFENDANT in
17 California who suffered one or more Labor Code violations enumerated in Labor Code §§ 2698 *et seq.*
18 (hereinafter “AGGRIEVED EMPLOYEES”) and who worked for DEFENDANTS between December
19 17, 2020 and the present (“PAGA PERIOD”).

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

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

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



1 the true names and capacities of these fictitiously named defendants when their true names are
2 ascertained. PLAINTIFF is informed and believes, and on that basis alleges, that each of the fictitious
3 defendants have participated in the acts alleged in this Complaint.

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

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

15 JOINT EMPLOYER

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

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

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

26 19. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have held that
27 a corporate employer’s owners, officers and directors, are subject to civil penalties for the employer’s
28 failure to pay appropriate wages to its employees, and, since liability under either 558 or 1197.1 does

1 not depend on a finding of an alter ego, no alter ego allegations or findings are necessary. *Atempa v.*
2 *Pedrazzani*, (2018) 27 Cal.App.5th 809; see generally *Ochoa-Hernandez v. Cjaders Food, Inc.* (2009
3 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203 Cal.App.4th 1112, 1145-1146.

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

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

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

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

17 **JURISDICTION AND VENUE**

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

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

27 **THE CONDUCT**

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

15 **A. Meal Period Violations**

16 27. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
17 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning the
18 time during which an employee is subject to the control of an employer, including all the time the
19 employee is suffered or permitted to work. From time-to-time during the PAGA PERIOD,
20 DEFENDANTS required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them
21 for all the time they were under DEFENDANTS' control. Specifically, as a result of PLAINTIFF's
22 demanding work requirements and DEFENDANTS' understaffing, DEFENDANTS required
23 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty meal
24 break. PLAINTIFF was from time to time interrupted by work assignments while clocked out for what
25 should have been PLAINTIFF's off-duty meal break. Indeed, there were rarely days where
26 PLAINTIFF and other AGGRIEVED EMPLOYEES would even receive a partial lunch. Further,
27 PLAINTIFF and other AGGRIEVED EMPLOYEES were required to return to work early from their
28 meal breaks in order to abide by DEFENDANTS' policy that its employees are to resume their work

1 exactly within thirty (30) minutes after their meal breaks began. As such, PLAINTIFF and other
2 AGGRIEVED EMPLOYEES were required to forfeit full thirty (30) minute meal breaks. As a result,
3 the PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum wage and overtime wages
4 by regularly working without their time being accurately recorded and without compensation at the
5 applicable minimum wage and overtime rates. DEFENDANTS' uniform policy and practice not to pay
6 PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked is evidenced by
7 DEFENDANTS' business records.

8 **B. Rest Period Violations**

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

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

24 29. From time-to-time during the PAA PERIOD, DEFENDANTS failed and continue to fail
25 to accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for their
26 overtime and double time hours worked, meal and rest period premiums, and sick pay. As a result,
27 PLAINTIFF and the other AGGRIEVED EMPLOYEES members forfeited wages due them for
28 working overtime without compensation at the correct overtime and double time rates, meal and rest

1 period premiums, and sick pay rates. DEFENDANTS' uniform policy and practice to not pay the
2 AGGRIEVED EMPLOYEES the correct rate for all overtime and double time worked, meal and rest
3 period premiums, and sick pay in accordance with applicable law is evidenced by DEFENDANTS'
4 business records.

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

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

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

1 was in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable under Cal. Labor
2 Code Sections 201, 202, 203 and/or 204.

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

13 **D. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

14 24. During the PAGA PERIOD, from time-to-time DEFENDANTS failed and continue to fail
15 to accurately pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all hours worked. Specifically,
16 DEFENDANT from time-to-time required PLAINTIFF and the other AGGRIEVED EMPLOYEES to
17 perform off-the-clock work. Notwithstanding, from time-to-time DEFENDANTS failed to pay
18 PLAINTIFF and other AGGRIEVED EMPLOYEES necessary wages for attending for performing
19 work at DEFENDANTS' direction, request and benefit, while off-the clock pre-shift and during meal
20 periods.

21 25. During the PAGA PERIOD, from time-to-time DEFENDANTS required PLAINTIFF and
22 other AGGRIEVED EMPLOYEES to perform pre-shift work, including but not limited to, submitting
23 to Covid-19 health screenings and temperature checks.

24 26. During the PAGA PERIOD, from time-to-time DEFENDANTS required PLAINTIFF and
25 other AGGRIEVED EMPLOYEES to remain available for work-related communications while off-the-
26 clock.

27 27. DEFENDANTS directed and directly benefited from the uncompensated off-the-clock
28 work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

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

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

7 30. PLAINTIFF and the other AGGRIEVED EMPLOYEES were non-exempt employees,
8 subject to the requirements of the California Labor Code.

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

14 32. DEFENDANTS knew or should have known that PLAINTIFF and the other AGGRIEVED
15 EMPLOYEES off-the-clock work was compensable under the law.

16 33. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due
17 them for all hours worked at DEFENDANTS' direction, control and benefit for the time spent submitting
18 to Covid-19 health screenings and temperature checks. DEFENDANTS' uniform policy and practice to
19 not pay PLAINTIFF and the AGGRIEVED EMPLOYEES wages for all hours worked in accordance
20 with applicable law is evidenced by DEFENDANTS' business records.

21 **E. Wage Statement Violations**

22 34. California Labor Code Section 226 requires an employer to furnish its employees an
23 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the
24 number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages
25 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
26 employee and only the last four digits of the employee's social security number or an employee
27 identification number other than a social security number, (8) the name and address of the legal entity
28

1 that is the employer and, (9) all applicable hourly rates in effect during the pay period and the
2 corresponding number of hours worked at each hourly rate by the employee.

3 35. From time to time during the PAGA PERIOD, when PLAINTIFF and other
4 AGGRIEVED EMPLOYEES missed meal and rest breaks, were paid inaccurate missed meal and rest
5 period premiums, were paid overtime in the same pay period where they earned a bonus, or were not
6 paid for all hours worked, DEFENDANTS also failed to provide PLAINTIFF and the other
7 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to show,
8 among other things, all applicable hourly rates in effect during the pay period and the corresponding
9 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal
10 and rest periods.

11 36. In addition to the violations described above, DEFENDANTS, from time to time, failed
12 to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with wage statements that comply with
13 Cal. Lab. Code § 226, and specifically DEFENDANTS failed to include the correct total number of
14 hours worked on the wage statements.

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

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

1 have not fully paid PLAINTIFF the minimum, overtime and double time compensation still owed to
2 her or any penalty wages owed to her under Cal. Lab. Code § 203. The amount in controversy for
3 PLAINTIFF individually does not exceed the sum or value of \$75,000.

4 **FIRST CAUSE OF ACTION**

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

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

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

8 39. PLAINTIFF and the AGGRIEVED EMPLOYEES reallege and incorporate by this
9 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

19 41. PLAINTIFF brings this Representative Action on behalf of the State of California with
20 respect to himself and all other current and former AGGRIEVED EMPLOYEES employed by
21 DEFENDANTS during the PAGA PERIOD.

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

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

28 44. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code

1 Section 2699.3. By certified letter, return receipt requested, dated December 17, 2021, PLAINTIFF
2 gave written notice to the Labor and Workforce Development Agency (“LWDA”) and to DEENDANTS
3 of the specific provisions of the Labor Code alleged to have been violated, including the facts and
4 theories to support the alleged violations.

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

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

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

19 a. For violation of Labor Code Sections 201, 202, 203, and 204, one
20 hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period
21 for the initial violation and two hundred dollars (\$200) for AGGIEVED
22 EMPLOYEE per pay period for each subsequent violation [penalty per
23 Labor Code Section 2699(f)(2)];

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

28 c. For violations of Labor Code Sections 204, a civil penalty in the



1 amount of one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE
2 for any initial violation and two hundred dollars (\$200) for AGGIEVED
3 EMPLOYEE for each subsequent violation [penalty per Labor Code
4 Section 210];

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

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

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

18 g. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and
19 1199, a civil penalty in the amount of one hundred dollars (\$100) per
20 AGGRIEVED EMPLOYEE per pay period for the initial violation and two
21 hundred dollars fifty (\$250) per AGGIEVED EMPLOYEE per pay period
22 for each subsequent violation [penalty per Labor Code Section].

23 48. For all provisions of the Labor Code for which civil penalty is not specifically provided,
24 Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred dollars (\$100) for each
25 AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars (\$200) for
26 each AGGRIEVED EMPLOYEE per pay period for each subsequent violation. PLAINTIFF and the
27 AGGRIEVED EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in
28 connection with their claims for civil penalties pursuant to Labor Code Section 2699(g)(1).

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

8 **PRAYER FOR RELIEF**

9 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANT as follows:

10 (a) For reasonable attorney’s fees and costs of suit to the extent permitted by law, including
11 pursuant to Labor Code § 2699, *et seq.*;

12 (b) For civil penalties to the extent permitted by law pursuant to the Labor Code under the
13 Private Attorneys General Act; and

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

15 Dated: February 22, 2022

16 Respectfully Submitted,
17 JCL LAW FIRM, A.P.C.


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

21 **DEMAND FOR JURY TRIAL**

22 PLAINTIFF demands a jury trial on all issues triable to a jury.

23 Dated: February 22, 2022

24 Respectfully Submitted,
25 JCL LAW FIRM, A.P.C.

26 By: 
27 Jean-Claude Lapuyade
28 Attorneys for PLAINTIFF

