

**SUMMONS  
(CITACION JUDICIAL)**

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

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

USGI dba UPLAND GROUP, a California Corporation; and DOES 1-50, Inclusive,

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

ANDREW J. HERNANDEZ, an individual(s), on behalf of himself and on behalf of all persons similarly situated,

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

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

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

The name and address of the court is:  
(El nombre y dirección de la corte es):  
Orange Superior Court, Civil Complex Center  
751 W. Santa Ana Blvd.  
Santa Ana, CA 92701

CASE NUMBER  
(NÚMERO) 30-2022-01250099-CU-OE-CXC

Judge Glenda Sanders

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: 03/15/2022 DAVID H. YAMASAKI, Clerk of the Court  
(Fecha)

Clerk, by Georgina Ramirez  
(Secretario) Georgina Ramirez - , 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):



**JCL LAW FIRM, APC**

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Assigned For All Purposes

Judge Glenda Sanders

CX-101

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Attorneys for Plaintiff ANDREW J. HERNANDEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF ORANGE**

ANDREW J. HERNANDEZ, an individual(s),  
on behalf of himself and on behalf of all persons  
similarly situated,

Plaintiff,

v.

USGI dba UPLAND GROUP, a California  
Corporation; and DOES 1-50, Inclusive,

Defendants.

Case No. **30-2022-01250099-CU-OE-CXC**

**REPRESENTATIVE ACTION  
COMPLAINT FOR:**

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

1 Plaintiff ANDREW J. HERNANDEZ (“PLAINTIFF”) an individual, in his representative  
2 capacity on behalf of himself, the State of California, and fellow current and former AGGRIEVED  
3 EMPLOYEES, defined *supra*, against Defendant USGI dba UPLAND GROUP (“DEFENDANT”),  
4 alleges on information and belief, except for his own acts and knowledge which are based on personal  
5 knowledge, the following:

6 **INTRODUCTION**

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

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

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

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

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





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

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

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

14 **JOINT EMPLOYER**

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

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

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

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



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

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

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

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

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

16 **JURISDICTION AND VENUE**

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

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

26 **THE CONDUCT**

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



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

16 **A. Meal Period Violations**

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



1 being accurately recorded and without compensation at the applicable minimum wage and overtime  
2 rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other AGGRIEVED  
3 EMPLOYEES for all time worked is evidenced by DEFENDANTS' business records.

4 27. From time-to-time during the PAGA PERIOD, as a result of their rigorous work  
5 requirements and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other AGGRIEVED  
6 EMPLOYEES were from time to time unable to take thirty (30) minute off-duty meal breaks and were  
7 not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED EMPLOYEES  
8 were required from time to time to perform work as ordered by DEFENDANTS for more than five (5)  
9 hours during some shifts without receiving a meal break. Further, DEFENDANTS from time to time  
10 failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period  
11 for some workdays in which these employees were required by DEFENDANTS to work ten (10) hours  
12 of work from time to time. The nature of the work performed by PLAINTIFF and other AGGRIEVED  
13 EMPLOYEES does not qualify for limited and narrowly construed "on-duty" meal period exception.  
14 When they were provided with meal periods, PLAINTIFF and other AGGRIEVED EMPLOYEES  
15 were, from time to time, required to remain on duty, and on call. Further, from time to time,  
16 PLAINTIFF and other AGGRIEVED EMPLOYEES were required to remain on duty, on call, and/or  
17 on the premises, and/or to carry cordless communication devices and respond to communications  
18 received on said devices during what was supposed to be their off-duty meal periods. PLAINTIFF and  
19 other AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation  
20 and in accordance with DEFENDANTS' strict corporate policy and practice.

21 **B. Rest Period Violations**

22 28. From time-to-time during the PAGA PERIOD, PLAINTIFF and other AGGRIEVED  
23 EMPLOYEES were also required from time to time to work in excess of four (4) hours without being  
24 provided ten (10) minute rest periods as a result of their rigorous work requirements and  
25 DEFENDANTS' inadequate staffing. Further, for the same reasons these employees were denied their  
26 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours  
27 from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of  
28 between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least





1 ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. When they were  
2 provided with rest breaks, PLAINTIFF and other AGGRIEVED EMPLOYEES were, from time to  
3 time, required to remain on duty and/or on call. PLAINTIFF and other AGGRIEVED EMPLOYEES  
4 were also not provided with one-hour wages *in lieu* thereof. Further, from time to time, PLAINTIFF  
5 and other AGGRIEVED EMPLOYEES were required to remain on duty, on call, and/or on the  
6 premises, and/or to carry cordless communication devices and respond to communications received on  
7 said devices during what was supposed to be their off-duty rest periods. As a result of their rigorous  
8 work schedules and DEFENDANTS' inadequate staffing, PLAINTIFF and other AGGRIEVED  
9 EMPLOYEES were from time to time denied their proper rest periods by DEFENDANTS and  
10 DEFENDANTS' managers.

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

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

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

25 31. The second component of PLAINTIFF'S and other AGGRIEVED EMPLOYEES'  
26 compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFF and  
27 other AGGRIEVED EMPLOYEES incentive wages based on their performance for DEFENDANTS.  
28



1 The non-discretionary bonus program provided all employees paid on an hourly basis with bonus  
2 compensation when the employees met the various performance goals set by DEFENDANTS.

3 32. Further, DEFENDANTS from time to time paid PLAINTIFF and other AGGRIEVED  
4 EMPLOYEES per diem compensation as a form of supplemental wages. The per diem compensation  
5 payments are identified as "Uniform Allow" in the wage statements issued by DEFENDANTS to  
6 PLAINTIFF and other AGGRIEVED EMPLOYEES. The payment of per diem compensation was  
7 required to be calculated into PLAINTIFF's and other AGGRIEVED EMPLOYEES' regular rate of  
8 pay. (See *Clarke v. AMN Services, LLC*, 987 F.3d 848 (9th Cir. 2021).)

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

26 34. In violation of the applicable sections of the California Labor Code and the requirements  
27 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company  
28 policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the



1 AGGRIEVED EMPLOYEES at the correct rate of pay for all overtime and double time worked, meal  
2 and rest period premiums, and sick pay. This uniform policy and practice of DEFENDANTS is  
3 intended to purposefully avoid the payment of the correct overtime and double time compensation,  
4 meal and rest period premiums, and sick pay as required by California law which allowed  
5 DEFENDANTS to illegally profit and gain an unfair advantage over competitors who complied with  
6 the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES  
7 against DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

8 **D. Unreimbursed Business Expenses**

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

19 36. In the course of their employment, DEFENDANTS required PLAINTIFF and other  
20 AGGRIEVED EMPLOYEES to use their personal cell phone to correspond and coordinate tasks with  
21 other employees as a result of and in furtherance of their job duties as employees for DEFENDANT. But  
22 for the use of their own personal cell phones, PLAINTIFF and the AGGRIEVED EMPLOYEES could  
23 not complete their essential job duties, including but not limited to, clocking in and out of their shifts,  
24 creating reports and sending and receiving work-related communications from DEFENDANTS.  
25 However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and other AGGRIEVED  
26 EMPLOYEES for their use of their personal cell phones. As a result, in the course of their employment  
27 with DEFENDANTS, the PLAINTIFF and other AGGRIEVED EMPLOYEES incurred unreimbursed  
28



1 business expenses, but were not limited to, costs related to the use of their personal cellular phones, all  
2 on behalf of and for the benefit of DEFENDANT.

3 **E. Wage Statement Violations**

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

12 35. From time to time during the PAGA PERIOD, when PLAINTIFF and other  
13 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurate missed meal and  
14 rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide  
15 PLAINTIFF and other AGGRIEVED EMPLOYEES with complete and accurate wage statements  
16 which failed to show, among other things, the total hours worked, the name and address of the legal  
17 entity that is the employer, and all applicable hourly rates in effect during the pay period and the  
18 corresponding amount of time worked at each hourly rate.

19 36. In addition to the violations described above, DEFENDANTS, from time to time, failed  
20 to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with wage statements that comply with  
21 Cal. Lab. Code § 226.

22 37. As a result, DEFENDANTS issued PLAINTIFF and the other AGGRIEVED  
23 EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS'  
24 violations are knowing and intentional, were not isolated or due to an unintentional payroll error due  
25 to clerical or inadvertent mistake.

26 **F. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

27 38. During the PAGA PERIOD, from time-to-time DEFENDANTS failed and continue to fail  
28 to accurately pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all hours worked.

1           39.     During the PAGA PERIOD, from time-to-time DEFENDANTS required PLAINTIFF and  
2 other members of the CALIFORNIA CLASS to perform work pre-shift and during a scheduled meal  
3 break while off the clock. This resulted in PLAINTIFF and other AGGRIEVED EMPLOYEES to have  
4 to work while off-the-clock.

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

7           41.     DEFENDANTS controlled the work schedules, duties, protocols, applications,  
8 assignments, and employment conditions of PLAINTIFF and the other DEFENDANTS were able to  
9 track the amount of time PLAINTIFF and the other AGGRIEVED EMPLOYEES spent working;  
10 however, DEFENDANTS failed to document, track, or pay PLAINTIFF and the other AGGRIEVED  
11 EMPLOYEES all wages earned and owed for all the work they performed, including pre-shift, and  
12 during meal period off-the-clock work.

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

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

20          44.     DEFENDANTS knew or should have known that PLAINTIFF and the other  
21 AGGRIEVED EMPLOYEES off-the-clock work was compensable under the law.

22          45.     As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due  
23 them for all hours worked at DEFENDANTS' direction, control and benefit for the time spent traveling  
24 between assigned job locations, performing work during days off, and working while clocked out for  
25 meal periods. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and the  
26 AGGRIEVED EMPLOYEES wages for all hours worked in accordance with applicable law is  
27 evidenced by DEFENDANTS' business records.

28     ///



1 **G. Unlawful Deductions**

2 46. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF and  
3 AGGRIEVED EMPLOYEES' pay in order to pay for uniforms that DEFENDANTS required  
4 PLAINTIFF and AGGRIEVED EMPLOYEES to wear without authorization to do so or notice to  
5 PLAINTIFF and the AGGRIEVED EMPLOYEES. As a result, DEFENDANTS violated Labor Code  
6 § 221.

7 47. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take off duty  
8 meal and rest breaks and was not fully relieved of duty for his rest and meal periods. PLAINTIFF was  
9 required to perform work as ordered by DEFENDANTS for more than five (5) hours during a shift  
10 without receiving an off-duty meal break. Further, DEFENDANTS failed to provide PLAINTIFF with  
11 a second off-duty meal period each workday in which he was required by DEFENDANT to work ten  
12 (10) hours of work. When DEFENDANTS provided PLAINTIFF with a rest and/or meal break, they  
13 required PLAINTIFF to remain on the premises, on-duty and on-call, for the rest and/or break.  
14 PLAINTIFF therefore forfeited meal and rest breaks without additional compensation and in  
15 accordance with DEFENDANTS' strict corporate policy and practice. Moreover, DEFENDANTS also  
16 provided PLAINTIFF with a paystub that failed to comply with Cal. Lab. Code § 226. Further,  
17 DEFENDANTS also failed to reimburse PLAINTIFF for required business expenses related to the use  
18 of his cell phone, on behalf of and in furtherance of her employment with DEFENDANTS. To date,  
19 DEFENDANTS have not fully paid PLAINTIFF the minimum, overtime and double time  
20 compensation still owed to her or any penalty wages owed to her under Cal. Lab. Code § 203. The  
21 amount in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

22 **FIRST CAUSE OF ACTION**

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

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

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

26 48. PLAINTIFF and the AGGRIEVED EMPLOYEES reallege and incorporate by this  
27 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

28 49. PAGA is a mechanism by which the State of California itself can enforce state labor laws

1 through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law  
2 enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law  
3 enforcement action designed to protect the public and not to benefit private parties. The purpose of the  
4 PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private  
5 attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified  
6 that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general  
7 to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA  
8 claims cannot be subject to arbitration.

9 50. PLAINTIFF brings this Representative Action on behalf of the State of California with  
10 respect to himself and all other current and former AGGRIEVED EMPLOYEES employed by  
11 DEFENDANTS during the PAGA PERIOD.

12 51. At all relevant times, for the reasons described herein, and others, PLAINTIFF and the  
13 AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANTS within the meaning of  
14 Labor Code Section 2699(c).

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

18 53. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code  
19 Section 2699.3. By certified letter, return receipt requested, dated January 4, 2022, PLAINTIFF gave  
20 written notice to the Labor and Workforce Development Agency ("LWDA") and to DEENDANTS of  
21 the specific provisions of the Labor Code alleged to have been violated, including the facts and theories  
22 to support the alleged violations.

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

28 55. To the extent that it applies, PLAINTIFF invokes the tolling permitted pursuant to the



1 California State Judicial Counsel amended Rule of Court, Emergency Rule Number 9, tolled the statute  
2 of limitation and statutes of repose from April 6, 2020 to either (a) August 3, 2020 for statutes of  
3 limitation and repose for civil causes of action that are 180 days or less, of (b) October 1, 2020 for  
4 statutes of limitation and repose for civil causes of action that exceed 180 days.

5 56. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the AGGRIEVED  
6 EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of Labor Code Section 201,  
7 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5,  
8 1194, 1197, 1197.1, 1197.14 1198, 1199, 2802, and 2804 in the following amounts:

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

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

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

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

28 e. For violations of Labor Code Section 2269(a), a civil penalty in the



1 amount of two hundred fifty dollars (\$250) per AGGRIEVED EMPLOYEE  
2 per violation in an initial citation and one thousand dollars (\$1,000) per  
3 AGGRIEVED EMPLOYEE for each subsequent violation [penalty per  
4 Labor Code Section 226.3];

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

8 g. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and  
9 1199, a civil penalty in the amount of one hundred dollars (\$100) per  
10 AGGRIEVED EMPLOYEE per pay period for the initial violation and two  
11 hundred dollars fifty (\$250) per AGGRIEVED EMPLOYEE per pay period  
12 for each subsequent violation [penalty per Labor Code Section].

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

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

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28 //

1 **PRAYER FOR RELIEF**

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


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

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

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

8  
9 Dated: March 14, 2022

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

10  
11 By:   
12 Jean-Claude Lapuyade  
13 Attorneys for PLAINTIFF

