

RIGHETTI GLUGOSKI, P.C.
MATTHEW RIGHETTI (State Bar No. 121012)
JOHN GLUGOSKI (State Bar No. 191551)
456 Montgomery Street, Suite 1400
San Francisco, California 94104
Telephone: (415) 983-0900
Facsimile: (415) 397-9005

Attorneys for Plaintiffs

AEGIS LAW FIRM, PC
KASHIF HAQUE, State Bar No. 218672
SAMUEL A. WONG, State Bar No. 217104
JESSICA L. CAMPBELL, State Bar No. 280626
9800 Irvine Center Drive, Suite 100
Irvine, California 92618
Telephone: (949) 379-6250
Facsimile: (949) 379-6251

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – CENTRAL DISTRICT

JANA MESTANEK, on her own behalf and
on behalf of all others similarly situated,

Plaintiffs,

vs.

SUNFLOWER FARMERS MARKETS,
LLC, a Delaware limited liability company;
and DOES 1 through 10, inclusive,

Defendants.

Case No.: BC495260

FIRST AMENDED COMPLAINT FOR:

1. Violation of the Private Attorneys General Act (California Labor Code §§ 2698, *et seq.*); and

1 Plaintiff JANA MESTANEK (“Plaintiff” or “MESTANEK”), individually and on behalf of
2 all others similarly situated, alleges against Defendant SUNFLOWER FARMERS MARKETS,
3 LLC. and DOES 1 through 10, inclusive (collectively, “Defendants”) as follows:

4 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

5 1. Plaintiff brings this representative action against Defendants on behalf of herself
6 individually and similarly situated aggrieved non-exempt employees employed by Defendants
7 throughout California.

8 2. Defendants own and operate a network of specialty grocery stores in five states
9 throughout the country selling fresh foods, produce, healthy foods, vitamins and supplements.

10 3. Through this action, Plaintiff is alleging that Defendants have engaged in a
11 systematic pattern of wage and hour violations under the California Labor Code and Industrial
12 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate
13 unfair competition.

14 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have
15 increased their profits by violating state wage and hour laws by, among other things:

- 16 (a) Taking unlawful deductions;
17 (b) Failing to reimburse for business-related expenses;
18 (c) Failing to pay all wages due upon separation of employment; and
19 (d) Failing to provide accurate itemized wage statements.

20 5. Plaintiff brings this lawsuit seeking monetary and injunctive relief against
21 Defendants on behalf of herself and all others similarly situated in California to recover, among
22 other things, penalties, interest, attorney’s fees, costs and expenses pursuant to California Labor
23 Code Section 2698 et seq. predicated on alleged violations of various Labor Code sections
24 including 201, 202, 203, 221, 224, 226, 2698, et seq. and 2802.

25 **JURISDICTION AND VENUE**

26 6. The monetary damages and restitution sought by Plaintiff exceeds the minimal
27 jurisdictional limits of the Superior Court and will be established according to proof at trial.

28 7. This Court has jurisdiction over this action pursuant to the California Constitution,

1 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
2 given by statutes to other courts. The statutes under which this action is brought do not specify any
3 other basis for jurisdiction.

4 8. This Court has jurisdiction over all Defendants because, upon information and
5 belief, each party is either a citizen of California, has sufficient minimum contacts in California or
6 otherwise intentionally avails itself of the California market so as to render the exercise of
7 jurisdiction over it by the California courts consistent with traditional notions of fair play and
8 substantial justice.

9 9. Venue is proper in this Court because, upon information and belief, one or more of
10 the named Defendants resides, transacts business or has offices in this county and the acts and
11 omissions alleged herein took place in this county.

12 **THE PARTIES**

13 10. Plaintiff JANA MESTANEK is, and at all relevant times herein, has been an
14 individual residing in California.

15 11. Plaintiff is informed and believes, and thereon alleges, that SUNFLOWER
16 FARMERS MARKETS, LLC was and is a Delaware limited liability company doing business in
17 California and, at all times hereinafter mentioned, was an employer as defined in and subject to the
18 Labor Code and IWC Wage Orders, whose employees are engaged throughout this county and the
19 State of California.

20 12. Plaintiff is unaware of the true names or capacities of the Defendants sued herein
21 under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the
22 Complaint and serve such fictitiously named Defendants once their names and capacities become
23 known.

24 13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 are
25 the partners, agents, owners, shareholders, managers or employees of Defendants at all relevant
26 times.

27 14. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts
28 and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES 1

1 through 10, acting as the agent or alter ego for the other, with legal authority to act on the other's
2 behalf. The acts of any and all Defendants were in accordance with, and represent, the official
3 policy of Defendants.

4 15. At all relevant times, Defendants, and each of them, acted within the scope of such
5 agency or employment, or ratified each and every act or omission complained of herein. At all
6 relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and
7 all the other Defendants in proximately causing the damages herein alleged.

8 16. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants
9 is in some manner intentionally, negligently or otherwise responsible for the acts, omissions,
10 occurrences and transactions alleged herein.

11 **GENERAL ALLEGATIONS**

12
13 17. Pursuant to Labor Code §§ 2698, *et seq.*, any provision of the Labor Code that
14 provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
15 Agency ("LWDA") or any of its departments, divisions, commissions, boards, agencies or
16 employees for violation of the code may, as an alternative, be recovered through a civil action
17 brought by an aggrieved employee on behalf of herself and other current or former employees
18 pursuant to the procedures specified in Labor Code § 2699.3

19 18. At all relevant times mentioned herein, Defendants employed Plaintiff and other
20 persons as non-exempt hourly employees.

21 19. Defendants employed Plaintiff in a non-exempt, hourly paid position at Defendants'
22 Orange County, California business location from approximately January 23, 2012 until June 15,
23 2012 as a clerk. Plaintiff's job duties included, among other things, providing customer service,
24 stocking and rotating merchandise and facing product according to department procedure,
25 maintaining back-stock areas according to department standards, assisting with training other staff
26 as needed and handling closing duties.

27 20. Defendants continue to employ non-exempt hourly employees within California.
28

1 21. Plaintiff is informed and believes, and thereon alleges, that at all times herein
2 mentioned, Defendants were advised by skilled lawyers, employees and other professionals who
3 were knowledgeable about California wage and hour laws, employment and personnel practices
4 and the requirements of California law.

5 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that they could not lawfully collect or receive any part of wages previously
7 paid to Plaintiff and the aggrieved employees without the express written authorization of Plaintiff
8 and aggrieved employees. In violation of the Labor Code, Plaintiff and aggrieved employees
9 experienced unlawful wage deductions.

10 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and aggrieved employees were entitled to receive full
12 reimbursement for all business-related expenses and costs they incurred during the course and
13 scope of their employment. In violation of the Labor Code, Plaintiff and aggrieved employees did
14 not receive full reimbursement for all applicable business-related expenses and costs they incurred.

15 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and former aggrieved employees were entitled to timely payment
17 of wages upon separation of employment. In violation of the Labor Code, Plaintiff and former
18 aggrieved employees were not reimbursed for unlawfully deducted wages, within permissible time
19 periods.

20 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and aggrieved employees were entitled to receive itemized wage
22 statements that accurately showed all deductions in accordance with California law. In violation of
23 the Labor Code, Plaintiff and aggrieved employees were not provided with accurate itemized wage
24 statements.

25 26. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
26 herein, Defendants knew or should have known that they had a duty to compensate Plaintiff and
27 aggrieved employees, and that Defendants had the financial ability to pay such compensation but
28 willfully, knowingly and intentionally failed to do so all in order to increase Defendants' profits.

1 **UNLAWFUL DEDUCTIONS**

2 (Violation of California Labor Code §§ 221 and 224; Violation of IWC Wage Order §9)
3 (Alleged by Plaintiff Individually and On Behalf of All Other Aggrieved Employees,
4 Against All Defendants)

5 27. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 26,
6 inclusive, as though fully set forth herein.

7 28. Labor Code § 221 provides that it is unlawful for any employer to collect or receive
8 from an employee any part of wages theretofore paid by said employer to said employee.

9 29. Labor Code § 224 provides that it is unlawful to withhold a portion of the
10 employee's wages if "a deduction is expressly authorized in writing by the employee."

11 30. Section 9 of the applicable IWC Wage Order states that when uniforms are required
12 by the employer to be worn by the employee as a condition of employment, such uniforms shall be
13 provided and maintained by the employer.

14 31. Defendants required all of its non-exempt hourly employees to dress in appropriate
15 attire for the performance of their job. The "Guidelines to Sprouts Policies" provides as follows:
16 "Sprouts provides employees with 2 uniform shirts upon hire, then 2 new shirts each anniversary
17 year. You may purchase a Sprouts sweatshirt or jacket."

18 32. Defendants employed systematic policies and practices to order these uniforms for
19 Plaintiff and aggrieved employees , which resulted in deductions of a portion of Plaintiff and
20 aggrieved employees' wages previously paid to them. Specifically, Defendants used management
21 employees to instruct Plaintiff and aggrieved employees to order uniforms from a flier and price
22 sheet and then Defendants unlawfully deducted the cost of these uniforms from their paychecks.
23 For example, Plaintiff had "Uniforms" listed as a line-item deduction on her paystubs in the
24 amounts of \$14.95 and \$19.95, for a total Uniform deduction of \$34.90. The specific amounts of
25 such deductions were not expressly authorized in writing by Plaintiff or aggrieved employees.
26 Defendants have failed to reimburse Plaintiff and aggrieved employees for these unlawfully
27 deducted wages.

28 33. Defendants' conduct as alleged herein violates Labor Code §§ 221 and 224.

FAILURE TO REIMBURSE FOR BUSINESS EXPENSES

(Violation of California Labor Code § 2802; Violation of IWC Wage Order § 9)

(Alleged by Plaintiff Individually and On Behalf of All Other Aggrieved Employees,
Against All Defendants)

34. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 33, inclusive, as though fully set forth herein.

35. Labor Code § 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.

36. Defendants required all of their non-exempt hourly employees to dress in appropriate attire for the performance of their job. The “Guidelines to Sprouts Policies” provides as follows: “Sprouts provides employees with 2 uniform shirts upon hire, then 2 new shirts each anniversary year. Slip resistant shoes must be worn for safety reasons.”

37. During the relevant time period, Defendants required all of their non-exempt hourly aggrieved employees to purchase uniforms and non-slip shoes for the performance of their job.

38. Defendants failed to reimburse Plaintiff and aggrieved employees for their uniform and shoe expenses, even though Defendants required uniforms and slip resistant shoes to be worn as a condition of employment.

39. As a result of Defendants’ knowing and intentional failure to comply with Labor Code § 2802.

FAILURE TO PAY ALL WAGES UPON SEPARATION OF EMPLOYMENT

(Violations of California Labor Code §§ 201, 202 and 203)

(Alleged by Plaintiff Individually and On Behalf of All Others Similarly Situated,
Against All Defendants)

40. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 39, inclusive, as though fully set forth herein.

41. Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his employment, his wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours

1 previous notice of his intention to quit, in which case the employee is entitled to his wages at the
2 time of quitting.

3 42. During the relevant time period, Defendants willfully failed to pay all wages
4 without deductions and reimburse Plaintiff and former aggrieved employees for their business-
5 related expenses either at the time of discharge or within seventy-two (72) hours of their leaving
6 Defendants' employ.

7 43. Defendants' failure to pay Plaintiff and former aggrieved employees all their earned
8 wages at the time of discharge or within seventy-two (72) hours of their leaving Defendants'
9 employ is in violation of Labor Code §§ 201 and 202.

10 44. Labor Code § 203 provides that if an employer willfully fails to pay wages owed
11 immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202, then
12 the wages of the employee shall continue as a penalty from the due date at the same rate until paid
13 or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

14 45. Plaintiff and former aggrieved employees are entitled to recover from Defendants
15 the statutory penalty which is defined as Plaintiff and former aggrieved employees' regular daily
16 wages for each day they were not paid, at their regular hourly rate of pay, up to a thirty (30) day
17 maximum pursuant to Labor Code § 203.

18 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

(Violation of California Labor Code § 226)

19 (Alleged by Plaintiff Individually and On Behalf of All Others Similarly Situated,
20 Against All Defendants)

21 46. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 45,
22 inclusive, as though fully set forth herein.

23 47. Labor Code § 226(a) requires employers to furnish their employees with an accurate
24 itemized wage statement that shows gross wages earned, total hours worked, all deductions, net
25 wages earned, the inclusive dates of the period for which the employee is paid, the name of the
26 employee and the portion of his or her social security number as required by law, the name and
27 address of the legal entity that is the employer and all applicable hourly rates in effect during the
28 pay period and the corresponding number of hours worked at each hourly rate by the employee.

48. During the relevant time period, Defendants have knowingly and intentionally failed to provide Plaintiff and aggrieved employees with the above-described writing through actions alleged herein. The deficiencies include, among other things, the failure to accurately list the gross and net wages earned and all deductions.

49. As a result of Defendants' knowing and intentional failure to comply with Labor Code § 226(a), Plaintiff and aggrieved employees' have suffered injury and damage to their statutorily protected rights.

50. In addition, because Defendants failed to accurately list all deductions, Plaintiff has had to file this lawsuit and perform computations in order to analyze whether in fact Plaintiff was paid correctly and the extent of the underpayment, thereby causing Plaintiff to incur expenses and lost time. Plaintiff would not have had to engage in these efforts and incur these costs had Defendants accurately listed all wages and deductions on her paystubs.

FIRST CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

(Violation of California Labor Code §§ 2698, *et seq.*)

(Alleged by Plaintiff Individually and On Behalf of All Other Aggrieved Employees,
Against All Defendants)

51. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 50, inclusive, as though fully set forth herein.

52. Pursuant to Labor Code §§ 2698, *et seq.*, any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”) or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

61. Defendants' conduct violates numerous Labor Code sections including, but not limited to, the following:

(a) Violation of Labor Code §§ 221 and 224 for unlawful deductions taken from Plaintiff and other aggrieved employees' paychecks as herein alleged;

- 1 (b) Violation of Labor Code § 2802 for failure to reimburse Plaintiff and other
2 aggrieved employees for all necessary business-related expenses and costs as
3 herein alleged;
- 4 (c) Violation of Labor Code §§ 201, 202 and 203 for failure to pay all earned
5 wages owed to Plaintiff and other aggrieved employees upon separation of
6 employment as herein alleged; and
- 7 (d) Violation of Labor Code § 226 for failure to provide accurate itemized wage
8 statements to Plaintiff and other aggrieved employees as herein alleged.

9 53. Plaintiff is an “aggrieved employee” because she was employed by the alleged
10 violator and had one or more of the alleged violations committed against her, and therefore is
11 properly suited to represent the interests of all other aggrieved employees.

12 54. On September 24, 2012, Plaintiff sent written notice, via certified mail, to the
13 LWDA and Defendants regarding the specific provisions of the Labor Code that were violated,
14 including the facts and theories to support the alleged violations.

15 55. Pursuant to Labor Code § 2699.3(a)(2)(A), the LWDA shall notify the employer and
16 aggrieved employee by certified mail that it does not intend to investigate the alleged violations
17 within 30 calendar days of the postmark date of said notice being received. Upon receipt of that
18 notice, or if no notice is provided within 33 calendar days of the postmark date of the notice given,
19 the aggrieved employee may commence a civil action under section 2699.

20 56. The LWDA has failed to provide notice within 33 calendar days of the September
21 24, 2012 postmark date. Therefore, Plaintiff has exhausted her administrative remedies and seeks
22 recovery of penalties on behalf of herself and all other similarly aggrieved employees pursuant to
23 the Labor Code.

24 57. Labor Code §§ 2698, *et seq.* imposes upon Defendants, a penalty of one hundred
25 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
26 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent
27 violation in which Defendants violated the Labor Code.

58. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff and all other aggrieved employees are entitled to recover civil penalties against Defendants, in addition to other remedies, for violations of Labor Code §§ 201, 202, 203, 221, 224, 226 and 2802.

59. For bringing this action, Plaintiff is entitled to attorney's fees and costs incurred herein.

PRAYER FOR RELIEF

Plaintiff, on her own behalf and on behalf of all others similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For civil penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;

2. For reasonable attorney's fees, costs of suit and interest to the extent permitted by law, including pursuant to Code of Civil Procedure § 1021.5;

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

Dated: _____ **RIGHETTI GLUGOSKI, P.C.**

By: _____
Matthew Righetti
John Glugoski
Attorneys for Plaintiff