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By [Signature], Deputy
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

DELVON BRAXTON, as an individual
and on behalf of all others similarly
situated,

Plaintiffs,

v.

GT'S LIVING FOODS, LLC, a Limited
Liability Company; and DOES 1 through
50, inclusive,

Defendants.

CASE NO. **20STCV13452**

CLASS ACTION COMPLAINT FOR:

- (1) VIOLATION OF CAL. LABOR CODE § 201-203;
- (2) VIOLATION OF LABOR CODE §§ 226.7 AND 512; AND
- (3) VIOLATION OF CAL. LABOR CODE § 226(a);
- (4) VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE §17200 ET SEQ.;
- (5) PENALTIES UNDER LABOR CODE § 2698 et seq. (PRIVATE ATTORNEY GENERAL ACT)

DEMAND EXCEEDS \$25,000.00

BY FAX

1 Plaintiff DELVON BRAXTON (“Plaintiff”) hereby submits this Class Action Complaint
2 (“Complaint”) against Defendant GT’S LIVING FOODS, LLC, a Limited Liability Company
3 (“GT”), and DOES 1-50 (hereinafter collectively referred to as “Defendants”), individually and
4 on behalf of a Class of all other similarly situated current and former employees of Defendants
5 for penalties and/or damages for violations of the California Labor Code, including without
6 limitation, failure to provide employees with accurate itemized wage statements and pay
7 employees their sick pay at their regular rate of pay, as follows:

8 **INTRODUCTION**

9 1. This class action is within the Court’s jurisdiction under California Labor Code
10 §§201-203, 226, 226.7 and 512 and the California Industrial Welfare Commission’s (“IWC”) Wage Orders.
11

12 2. This Complaint challenges systemic illegal employment practices resulting in
13 violations of the California Labor Code against employees of Defendants.

14 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants
15 jointly and severally have acted knowingly and intentionally by failing to provide accurate
16 itemized wage statements identifying all required information, including without limitation, the
17 correct overtime rate, and paying overtime at the correct rate of pay.

18 **JURISDICTION AND VENUE**

19 4. The Court has jurisdiction over the violations of the California Labor Code §§
20 201-203, 226, 226.7 and 512.

21 5. Venue is proper in Los Angeles County because Defendants maintain business
22 locations in this County and Plaintiff worked at Defendants’ premises located in this County.

23 **PARTIES**

24 6. On or about November 2015, Plaintiff began working for Defendants as a
25 maintenance supervisor at Defendants’ premises located in Vernon, California. Plaintiff was
26 terminated on February 12, 2020. During his employment, Plaintiff was paid various non-
27 discretionary incentive wages, including, but not limited to, graveyard pay. Plaintiff was also
28 paid wages for sick pay.

1 7. Defendants operates a distribution center in Vernon, California.

2 8. Plaintiff was and is a victim of the policies, practices, and customs of Defendants
3 complained of in this action in ways that have deprived Plaintiff of the rights guaranteed by
4 California Labor Code §§ 201-203, 226, 226.7 and 512.

5 9. Plaintiff is informed and believes, and based thereon alleges, that at all times
6 herein mentioned Defendants and DOES 1 through 50 are and were business entities,
7 individuals, and partnerships, licensed to do business and actually doing business in the State of
8 California.

9 10. As such, and based upon all the facts and circumstances incident to Defendants'
10 business in California, Defendants are subject to California Labor Code §§ 201-203, 226, 226.7
11 and 512.

12 11. Plaintiff does not know the true names or capacities, whether individual, partner
13 or corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason,
14 said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
15 complaint when the true names and capacities are known. Plaintiff is informed and believes, and
16 based thereon alleges, that each of said fictitious Defendants was responsible in some way for the
17 matters alleged herein and proximately caused Plaintiff and members of the general public and
18 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

19 12. At all times herein mentioned, each of said Defendants participated in the doing
20 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
21 Defendants, and each of them, were the agents, servants and employees of each of the other
22 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
23 acting within the course and scope of said agency and employment.

24 13. Plaintiff is informed and believes, and based thereon alleges, that at all times
25 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
26 joint venturer of, or working in concert with each of the other co- Defendants and was acting
27 within the course and scope of such agency, employment, joint venture, or concerted activity.
28 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting

1 Defendants.

2 14. At all times herein mentioned, Defendants, and each of them, were members of,
3 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
4 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

5 15. At all times herein mentioned, the acts and omissions of various Defendants, and
6 each of them, concurred and contributed to the various acts and omissions of each and all of the
7 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
8 herein mentioned, Defendants, and each of them, ratified each and every act or omission
9 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided
10 and abetted the acts and omissions of each and all of the other Defendants in proximately causing
11 the damages as herein alleged.

12 **CLASS ACTION ALLEGATIONS**

13 16. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
14 California Code of Civil Procedure § 382, of the following class:

- 15 a. All non-exempt California employees who were paid non-discretionary
16 incentive wages including, but not limited to, shift differential wages and
17 sick pay from Defendant and whose employment ended, either voluntarily
18 or involuntarily, at any time during the period of time from April 7, 2017,
19 through the present (the “Sick Pay Class”);
- 20 b. All non-exempt California employees who were paid non-discretionary
21 incentive wages including, but not limited to, shift differential wages and
22 meal and rest premiums from Defendant, at any time during the period of
23 time from April 7, 2017, through the present (the “Meal and Rest Class”);

24 17. **Numerosity and Ascertainability:** The members of the Class are so numerous
25 that joinder of all members would be impractical, if not impossible. The identity of the members
26 of the Class is readily ascertainable by review of the Defendants records, including payroll
27 records. Plaintiff is informed and believes, and based thereon alleges, that the Defendants failed
28 pay employees their sick pay at their proper regular rate of pay in violation of Labor Code §§

201-203, meal and rest premium wages at their proper regular rate of pay and to provide accurate itemized wage statements to employees in violation of Labor Code § 226.

18. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the class defined above. Plaintiff's attorneys are ready, willing and able to fully and adequately represent the class and the named Plaintiffs. Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in the past and currently have a number of wage-and-hour class actions pending in California courts.

19. Defendants uniformly administered a corporate policy, practice of failing to pay employees their sick pay at their proper regular rate of pay in violation of Labor Code §§ 201-203, meal and rest premium wages at their proper regular rate of pay and to provide accurate itemized wage statements to employees in violation of Labor Code § 226.

20. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst Plaintiffs and the claims of the Class concerning the Defendants failure to pay employees their sick pay at their proper regular rate of pay in violation of Labor Code §§ 201-203, meal and rest premium wages at their proper regular rate of pay and to provide accurate itemized wage statements to employees in violation of Labor Code § 226..

21. **Typicality:** The claims of the named Plaintiff are typical of the claims of all members of the Class in that Plaintiff has suffered the harm alleged in this Complaint in a similar and typical manner as the Class members. Plaintiff and the Class were not paid their sick pay at their proper regular rate of pay in violation of Labor Code §§ 201-203. Specifically, Plaintiff and Class members that worked graveyard shifts that entitled them to a higher rate of pay than non-graveyard shifts. However, when they were paid sick pay wages, they were only paid at the rate of pay for non-graveyard shifts. Similarly, Plaintiff and Class members were paid meal and rest premium wages at the non-graveyard rate of pay which is lower than their rate of pay for graveyard shifts. Further, based on the foregoing violations, Plaintiff and Class members were issued wage statements that contained the wrong gross wages, net wages, and rates of pay in violation of Labor Code § 226. Thus, Plaintiff is a member of the Class and has suffered the

1 alleged violations of California Labor Code §§ 201-203, and 226.

2 22. The California Labor Code and upon which Plaintiff bases these claims is broadly
3 remedial in nature. These laws and labor standards serve an important public interest in
4 establishing minimum working conditions and standards in California. These laws and labor
5 standards protect the average working employee from exploitation by employers who may seek
6 to take advantage of superior economic and bargaining power in setting onerous terms and
7 conditions of employment.

8 23. The nature of this action and the format of laws available to Plaintiff and
9 members of the Class identified herein make the class action format a particularly efficient and
10 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
11 file an individual lawsuit, the corporate Defendant would necessarily gain an unconscionable
12 advantage since it would be able to exploit and overwhelm the limited resources of the individual
13 Plaintiff with Defendants' vastly superior financial and legal resources. Requiring each Class
14 member to pursue an individual remedy would also discourage the assertion of lawful claims by
15 employees who would be disinclined to file an action against their former and/or current
16 employer for real and justifiable fear of retaliation and permanent damage to their careers at
17 subsequent employment.

18 24. The prosecution of separate actions by the individual class members, even if
19 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
20 to individual Class members against the Defendants and which would establish potentially
21 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
22 individual Class members which would, as a practical matter, be dispositive of the interest of the
23 other Class members not parties to the adjudications or which would substantially impair or
24 impede the ability of the Class members to protect their interests. Further, the claims of the
25 individual members of the Class are not sufficiently large to warrant vigorous individual
26 prosecution considering all of the concomitant costs and expenses.

27 25. Such a pattern, practice and uniform administration of corporate policy regarding
28 illegal employee compensation described herein is unlawful and creates an entitlement to
recovery by Plaintiffs and the Class identified herein, in a civil action any and all applicable

1 penalties and/or damages, reasonable attorneys' fees, and costs of suit according to the mandate
2 of California Labor Code §§ 218.5, 226 and 1194 and Code of Civil Procedure § 1021.5.

3 26. Proof of a common business practice or factual pattern, which the named
4 Plaintiffs experienced and are representative of, will establish the right of each of the members of
5 the Class to recovery on the causes of action alleged herein.

6 27. The Class is commonly entitled to a specific fund with respect to the
7 compensation illegally and unfairly retained by the Defendants. The Class is commonly entitled
8 to restitution of those funds being improperly withheld by the Defendants. This action is brought
9 for the benefit of the entire class and will result in the creation of a common fund.

10 **FIRST CAUSE OF ACTION**

11 **(FOR VIOLATION OF LABOR CODE §§ 201-203 FOR THE SICK PAY CLASS**
12 **AGAINST ALL DEFENDANTS)**

13 28. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 27 as
14 though fully set for herein.

15 29. Labor Code §246(l)(1) requires that nonexempt employees be paid sick time in
16 the same manner as the regular rate of pay for the workweek in which the employee uses paid
17 sick time, whether or not the employee actually works overtime in that workweek.

18 30. Labor Code §246(l)(2) requires that paid sick time for nonexempt employees be
19 calculated by dividing the employee's total wages, not including overtime premium pay, by the
20 employee's total hours worked in the full pay periods of the prior 90 days of employment.

21 31. Defendants violated Labor Code §246 by failing to pay sick pay at the regular rate
22 of pay. Specifically, employees who worked the graveyard shift received a rate of pay higher
23 than our base rate of pay. However, when we were paid sick leave wages, we were paid out at a
24 lower rate of pay than our regular rate of pay for graveyard.

25 32. For example, when Plaintiff's regular rate for a graveyard shift was \$37.05 per
26 hour, his sick pay was paid at \$36.05 per hour. When sick pay was paid, it was paid at his base
27 rate of pay rather than the regular rate of pay, as required under Labor Code §246.

28 33. As a pattern and practice, Defendants regularly failed to pay Plaintiff and other
members of the Class their correct wages and accordingly owe waiting time penalties pursuant to

1 Labor Code § 203. Further, Plaintiff is informed and believes and based thereon alleges that
2 such failure to pay sick pay at regular rate was willful, such that Plaintiff and Class Members
3 whose employment has separated are entitled to waiting time penalties pursuant to Labor Code
4 §§ 201-203.

5 **SECOND CAUSE OF ACTION**

6 **(FOR VIOLATION OF LABOR CODE § 201-203, 226.7 AND 512**

7 **FOR THE MEAL AND REST CLASS AGAINST ALL DEFENDANTS)**

8 34. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 33 as
9 though fully set for herein.

10 35. At all times relevant herein, DEFENDANTS failed to pay all earned meal and rest
11 break premium wages at the correct rate of pay when the Plaintiff and other members of the Class
12 earned non-discretionary incentives and were paid meal and rest break premium wages in the same
13 workweek. Specifically, during such workweeks, the meal and rest break premium wages were
14 paid at the base rate of pay, rather than the regular rate of pay as required by Labor Code § 226.7.

15 36. As a pattern and practice, DEFENDANTS regularly failed to pay Plaintiff and other
16 members of the Class their correct wages pursuant to Labor Code § 226.7 and accordingly owe
17 waiting time penalties pursuant to Labor Code § 203.

18 37. The conduct of DEFENDANTS and their agents and employees as described
19 herein was willfully done in violation of Plaintiff and other members of the Class' rights, and
20 done by managerial employees of DEFENDANTS

21 **THIRD CAUSE OF ACTION**

22 **(FOR VIOLATION OF LABOR CODE § 226(a)**

23 **AGAINST ALL DEFENDANTS)**

24 38. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 37 as
25 though fully set for herein.

26 39. The Defendants failed in its affirmative obligation to provide accurate itemized
27 wage statements in violation of Labor Code § 226(a). Specifically, the Defendants violated
28 Labor Code § 226(a)(2) by, among other actions, failing to itemized wage statements containing

1 all required information, including without limitation, the proper rates of pay for sick wages and
2 meal and rest penalties, and the accurate gross and net wages earned. Specifically, as a result of
3 the violations set forth above, the rates of pay for sick wages and meal and rest penalties
4 identified on the wage statements were inaccurate for Plaintiff and the Classes, as was the gross
5 and net wages earned. Plaintiff is informed and believes, and based thereon alleges, that that the
6 Defendants' violation of Section 226(a) is class-wide.

7 40. Such a pattern, practice and uniform administration of corporate policy as
8 described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Classes
9 identified herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226,
10 including interest thereon, attorneys' fees, and costs of suit according to the mandate of
11 California Labor Code § 226.

12 **FOURTH CAUSE OF ACTION**
13 **(FOR VIOLATIONS OF BUSINESS AND PROFESSIONS CODE § 17200 ET SEQ.**
14 **AGAINST ALL DEFENDANTS)**

15 41. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 40 as
16 though fully set for herein.

17 42. Defendants , and each of them, have engaged and continue to engage in unfair,
18 unlawful, and misleading business practices in California by practicing, employing and utilizing
19 the employment practices outlined above, inclusive, to wit, by failing to: (a) pay meal premium
20 wages at the proper rate of pay; (b) pay rest premium wages at the proper rate of pay, all in
21 violation of the Labor Code and IWC Wage Order No 4-2001.

22 43. Defendants' utilization of such unfair and unlawful business practices constitutes
23 unfair, unlawful competition and provides an unfair advantage over Defendants' competitors.

24 44. Plaintiff seeks full restitution of monies--including all proper overtime wages,
25 meal and rest break premium wages, as necessary and according to proof, to restore any and all
26 monies withheld, acquired and/or converted by the Defendants by means of the unfair practices
27 complained of herein.

28 45. The acts complained of herein occurred within the last four years preceding the
filing of the complaint in this action.

46. Plaintiff is informed and believes and based thereon alleges that at all times herein mentioned Defendants have engaged in unlawful, deceptive and unfair business practices, as proscribed by California Business and Professions Code § 17200 *et seq.*, including those set forth herein above thereby depriving Plaintiff and other members of the general public the minimum working conditions and standards due to them under the California laws and Industrial Welfare Commission wage orders as specifically described therein.

FIFTH CAUSE OF ACTION

PENALTIES UNDER LABOR CODE § 2698 *et seq.*

**(AGAINST ALL DEFENDANTS BY PLAINTIFF AND ON BEHALF OF THE
AGGRIEVED EMPLOYEES)**

47. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 46 as though fully set for herein.

48. On or about February 21, 2020, Plaintiff provided written notice to the California Labor & Workforce Development Agency (“LWDA”) and to Defendant of Defendant’s violation of California Labor Codes pursuant to Labor Code § 2698 *et seq.* (the Private Attorney General Act (“PAGA”)). The LWDA has not provided written notice within 60 calendar days of Plaintiff’s written notice as to whether the LWDA intends to investigate Plaintiff’s said allegations. As such, Plaintiff has complied with all notice and exhaustion requirements pursuant to PAGA.

49. Plaintiff brings this cause of action as a proxy for the State of California and in this capacity, seeks penalties on behalf of all Aggrieved Employees for DEFENDANT's violations of Labor Code §§ 201-203, 226, 226.7, 246 and 512.

50. Pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of all applicable civil penalties for Defendants' violation of Labor Code §§§§ 201-203, 226, 226.7, 246, 512, and 2698, *et seq.*

PRAYER FOR RELIEF

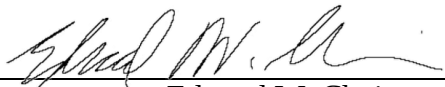
WHEREFORE, Plaintiff prays for judgment individually and all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. For an order certifying the proposed Class;

- 1 2. For an order appointing Plaintiff as the representative of the Class as described
2 herein;
- 3 3. For an order appointing counsel for Plaintiff as Class counsel;
- 4 4. Upon the First Cause of Action, for unpaid wages and/or penalties pursuant to
5 California Labor Code §§ 201-203, and for costs and attorneys' fees pursuant to Labor Code §§
6 218.5;
- 7 5. Upon the Second Cause of Action, for damages and penalties pursuant to statute
8 as set forth in California Labor Code §§ 201-203, and 226.7, according to proof;
- 9 6. Upon the Third Cause of Action, for damages and/or penalties pursuant to
10 California Labor Code § 226, and for costs and attorneys' fees;
- 11 7. Upon the Fourth Cause of Action, for restitution to Plaintiff and other similarly
12 effected members of the general public of all funds unlawfully acquired by Defendants by means
13 of any acts or practices declared by this Court to be in violation of Business and Professions Code
14 § 17200 *et seq.*;
- 15 8. Upon the Fifth Cause of Action, for civil penalties according to proof pursuant to
16 Labor Code § 2698 *et seq.*;
- 17 9. On all causes of action, for attorneys' fees and costs as provided by California
18 Labor Code §§218.5, 226 and 1194 and Code of Civil Procedure § 1021.5; and
- 19 10. For such other and further relief as the Court may deem just and proper.

20 DATED: April 3, 2020

LAW OFFICES OF CHOI & ASSOCIATES

21 By: 
22 Edward W. Choi
23 Attorneys for PLAINTIFF and the CLASS
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