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County of Santa Clara
20CV373672
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on behalf of herself and all others similarly
situated and aggrieved

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

OLIMPIA MEZA PELAYO, on behalf of
herself and all others similarly situated and
aggrieved,

Plaintiffs,

v.

DAVID AND ESPERANZA CHAVEZ
FAMILY LIMITED PARTNERSHIP d.b.a.
CHAVEZ SUPERMARKET, a California
limited liability partnership; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: **20CV373672**

CLASS ACTION COMPLAINT FOR:

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT VIOLATIONS;
7. FAILURE TO INDEMNIFY;
8. UNFAIR COMPETITION;
9. PENALTIES PER LABOR CODE § 210;
10. PENALTIES PER LABOR CODE § 226.3
11. VIOLATION OF LABOR CODE § 558;
12. VIOLATION OF LABOR CODE § 1197.1; and
13. PENALTIES PER LABOR CODE § 2699

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

COMES NOW plaintiff OLIMPIA MEZA PELAYO ("Plaintiff"), on behalf of Plaintiff and all others similarly situated, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, and a Representative Action pursuant to Labor Code section 2698, *et seq.*, against DAVID AND ESPERANZA CHAVEZ FAMILY LIMITED PARTNERSHIP doing business as CHAVEZ SUPERMARKET, and any of its respective subsidiaries or affiliated companies within the State of California ("CHAVEZ" and, with DOES 1 through 100, as further defined below, "Defendants") on behalf of Plaintiff and all other current and former non-exempt California employees employed by or formerly employed by Defendants ("Class Members").

PARTIES

A. Plaintiff

2. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to, cooking, cleaning, and stocking. Plaintiff is informed and believes that Plaintiff worked for Defendants from approximately December of 2016 through approximately January of 2020.

B. Defendants

3. Plaintiff is informed and believes and based thereon alleges that defendant CHAVEZ is, and at all times relevant hereto was, a limited liability partnership organized and existing under and by virtue of the laws of the State of California and doing business in the County of Santa Clara, State of California.

4. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes and based thereon alleges that each of the defendants designated herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.

1 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
2 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is
3 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent
4 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
5 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
6 other defendants. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall
7 include CHAVEZ and any of their parent, subsidiary, or affiliated companies within the State of
8 California, as well as DOES 1 through 100 identified herein.

9 **JOINT LIABILITY ALLEGATIONS**

10 5. Plaintiff is informed and believes and based thereon alleges that all the times
11 mentioned herein, each of the Defendants was the agent, principal, employee, employer,
12 representative, joint venture or co-conspirator of each of the other defendants, either actually or
13 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
14 employment, joint venture, and conspiracy.

15 6. All of the acts and conduct described herein of each and every corporate defendant
16 was duly authorized, ordered, and directed by the respective and collective defendant corporate
17 employers, and the officers and management-level employees of said corporate employers. In
18 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
19 their said employees, agents, and representatives, and each of them; and upon completion of the
20 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
21 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
22 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
23 aforementioned corporate employees, agents and representatives.

24 7. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
25 thereon alleges that Defendants, and each of them, are joint employers.

26 **JURISDICTION**

27 8. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
28 of Civil Procedure section 410.10.

1 9. Venue is proper in Santa Clara County, California pursuant to Code of Civil
2 Procedure sections 392, et seq. because, among other things, Santa Clara County is where the causes
3 of action complained of herein arose; the county in which the employment relationship began; the
4 county in which performance of the employment contract, or part of it, between Plaintiff and
5 Defendants was due to be performed; the county in which the employment contract, or part of it,
6 between Plaintiff and Defendants was actually performed. Moreover, the unlawful acts alleged
7 herein have a direct effect on Plaintiff and Class Members in Santa Clara County, and because
8 Defendants employ numerous Class Members and aggrieved employees in Santa Clara County.

9 10. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by
10 Defendants during the applicable statutory period and suffered one or more of the Labor Code
11 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term “civil
12 penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code
13 Private Attorneys General Act of 2004, codified at Labor Code section 2698, et seq. (“PAGA”) plus
14 reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current and former
15 employees of Defendants during the Civil Penalty Period.

16 11. Specifically, Plaintiff seeks to recover PAGA civil penalties through a representative
17 action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*
18 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the
19 PAGA allegations described herein is not required.

20 12. During the period beginning one (1) year preceding the provision of notice to the
21 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
22 Defendants violated, *inter alia*, Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7,
23 227.3, 246, et seq., 432, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198.5, 2699, 2802, and 2810.5,
24 among others.

25 13. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
26 such as Plaintiff, on behalf of Plaintiff and all other aggrieved current and former employees within
27 the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures
28 specified in Labor Code section 2699.3.

14. Plaintiff has complied with the procedures for bringing suit specified in Labor Code section 2699.3. On or around August 19, 2020, Plaintiff gave written notice to the Labor and Workforce Development Agency (“LWDA”) and to Defendants of the specified provisions of the Labor Code alleged to have been violated by it. The LWDA did not provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65) calendar days of the August 19, 2020 postmarked date of the herein-described notice sent by Plaintiff to the LWDA and Defendants.

FACTUAL BACKGROUND

15. For at least four (4) years prior to the filing of this action and continuing to the present, Defendants have failed to pay all overtime wages due to Plaintiff and Class Members, or some of them, in violation of California state wage and hour laws as a result of, without limitation, Plaintiff and Class Members working over eight (8) hours per day, forty (40) hours per week, and seven consecutive work days in a work week without being properly compensated for hours worked in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours worked on the seventh consecutive work day in a work week by, among other things, failing to accurately track and/or pay for all hours actually worked at the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock; requiring employees to clock out for rest periods; detrimental rounding of employee time entries, editing and/or manipulation of time entries to show less hours than actually worked; and for paying straight pay instead of overtime pay.

16. For at least four (4) years prior to the filing of this Action and continuing to the present, Defendants have, at times, failed to pay all minimum wages due to Plaintiff and Class Members, or some of them, in violation of California state wage and hour laws as a result of, among other things, failing to accurately track and/or pay for all hours actually worked: engaging, suffering, or permitting employees to work off the clock; to clock out for rest periods; and detrimental rounding of employee time entries, editing and/or manipulation of time entries to show less hours than actually worked.

17. For at least four (4) years prior to the filing of this Action and continuing to the present, Defendants have failed to provide Plaintiff and Class Members, or some of them, full,

1 timely thirty (30) minute uninterrupted meal period for days on which they worked more than five
2 (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on which
3 they worked in excess of ten (10) hours in a work day, and failing to provide compensation for such
4 unprovided meal periods as required by California wage and hour laws.

5 18. For at least four (4) years prior to the filing of this action and continuing to the
6 present, Defendants have failed to authorize and permit Plaintiff and Class Members, or some of
7 them, to take rest periods of at least ten (10) minutes per four (4) hours worked or major fraction
8 thereof and failed to provide compensation for such unprovided rest periods as required by
9 California wage and hour laws.

10 19. For at least three (3) years prior to the filing of this action and continuing to the
11 present, Defendants have failed to pay Plaintiff and Class Members, or some of them, the full
12 amount of their wages owed to them upon termination and/or resignation as required by Labor Code
13 sections 201 and 202.

14 20. For at least one (1) year prior to the filing of this Action and continuing to the present,
15 Defendants have, at times, failed to furnish Plaintiff and Class Members, or some of them, with
16 itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages
17 earned; all applicable hourly rates in effect during the pay period and the corresponding number of
18 hours worked at each hourly rate; the name of the employee and only the last four digits of his or
19 her social security number; and other such information as required by Labor Code section 226,
20 subdivision (a). As a result thereof, Defendants have further failed to furnish employees with an
21 accurate calculation of gross and gross wages earned, as well as gross and net wages paid.

22 21. For at least three (3) years prior to the filing of this action and continuing to the
23 present, Defendants have, at times, failed to indemnify Class Members, or some of them, for the
24 costs incurred in purchasing required slip-resistant shoes and for the separate laundering of
25 mandatory work uniforms.

26 22. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, pursuant to
27 Business and Professions Code sections 17200 through 17208, also seeks (an) injunction(s)
28 prohibiting Defendants from further violating the Labor Code and requiring the establishment of

1 appropriate and effective means to prevent further violations, as well as all monies owed but
2 withheld and retained by Defendants to which Plaintiff and Class Members are entitled, as well as
3 restitution of amounts owed.

4 23. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, brings this action
5 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 210, 226,
6 226.3, 226.7, 432, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 2699, 2802, 2810.3, 2810.5, and
7 California Code of Regulations, Title 8, section 11050, seeking, without limitation, overtime wages,
8 minimum wages, payment of premium wages for missed meal and rest periods, waiting time
9 penalties, wage statement penalties, failure to indemnify work-related expenses, other such
10 provisions of California law, and reasonable attorneys' fees and costs.

11 **CLASS ACTION ALLEGATIONS**

12 24. Plaintiff brings this action on behalf of Plaintiff and Class Members as a class action
13 pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class of all current
14 and former non-exempt employees of Defendants within the State of California at any time
15 commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that notice
16 of the class action is provided to the class (collectively referred to as "Class Members").

17 25. Plaintiff reserves the right under California Rule of Court rule 3.765, subdivision (b)
18 to amend or modify the class description with greater specificity, further divide the defined class
19 into subclasses, and to further specify or limit the issues for which certification is sought.

20 26. This action has been brought and may properly be maintained as a class action under
21 the provisions of Code of Civil Procedure section 382 because there is a well-defined community
22 of interest in the litigation and the proposed Class is easily ascertainable.

23 **A. Numerosity**

24 27. The potential Class Members as defined are so numerous that joinder of all the
25 members of the Class is impracticable. While the precise number of Class Members has not been
26 determined yet, Plaintiff is informed and believes that there are at least seventy-five (75) Class
27 Members employed by Defendants within the State of California.

28 / / /

1 28. Accounting for employee turnover during the relevant periods necessarily increases
2 this number. Plaintiff alleges Defendants' employment records would provide information as to the
3 number and location of all Class Members. Joinder of all members of the proposed Class is not
4 practicable.

5 **B. Commonality**

6 29. There are questions of law and fact common to Class Members. These common
7 questions include, but are not limited to:

- 8 A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all hours
9 worked at a proper overtime rate of pay?
- 10 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay
11 for all other time worked at the employee's regular rate of pay and a rate of pay that
12 is greater than the applicable minimum wage?
- 13 C. Are Class Members entitled to liquidated damages under Labor Code section 1194.2
14 for Defendants' failure to pay minimum wages for all hours worked?
- 15 D. Did Defendants violate Labor Code section 512 by not providing Class Members
16 with compliant meal periods?
- 17 E. Did Defendants violate Labor Code section 226.7 by not providing Class Members
18 with additional wages for missed or interrupted meal periods?
- 19 F. Did Defendants violate applicable Wage Orders by not authorizing or permitting
20 Class Members to take compliant rest periods?
- 21 G. Did Defendants violate Labor Code section 226.7 by not providing Class Members
22 with additional wages for missed rest periods?
- 23 H. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
24 Members upon termination or resignation all wages earned?
- 25 I. Are Defendants liable to Class Members for waiting time penalties under Labor Code
26 section 203?
- 27 J. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
28 Class Members with accurate wage statements?

1 K. Did Defendants fail to indemnify Class Members for all necessary expenditures or
2 losses incurred in direct consequence of the discharge of their duties or by obedience
3 to the directions of Defendants as required under Labor Code section 2802?

4 L. Did Defendants violate the Unfair Competition Law, Business and Professions Code
5 section 17200, *et seq.*, by their unlawful practices as alleged herein?

6 M. Are Class Members entitled to restitution of wages under Business and Professions
7 Code section 17203?

8 N. Are Class Members entitled to costs and attorneys' fees?

9 O. Are Class Members entitled to interest?

10 **C. Typicality**

11 30. The claims of Plaintiff herein alleged are typical of those claims which could be
12 alleged by any Class Members, and the relief sought is typical of the relief which would be sought
13 by each Class Member in separate actions. Plaintiff and Class Members sustained injuries and
14 damages arising out of and caused by Defendants' common course of conduct in violation of laws
15 and regulations that have the force and effect of law and statutes as alleged herein.

16 **D. Adequacy of Representation**

17 31. Plaintiff will fairly and adequately represent and protect the interest of Class
18 Members. Counsel who represents Plaintiff is competent and experienced in litigating wage and
19 hour class actions.

20 **E. Superiority of Class Action**

21 32. A class action is superior to other available means for the fair and efficient
22 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
23 questions of law and fact common to Class Members predominate over any questions affecting only
24 individual Class Members. Class Members, as further described therein, have been damaged and
25 are entitled to recovery by reason of Defendants' policies and/or practices that have resulted in the
26 violation of the Labor Code at times, as set out herein.

27 / / /

28 / / /

33. Class action treatment will allow Class Members to litigate their claims in a manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

FIRST CAUSE OF ACTION

(Failure to Pay Overtime Wages – Against All Defendants)

34. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

35. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as applicable Wage Orders.

36. At all times relevant to this Complaint, Labor Code section 510 was in effect and provided: “(a) Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of forty hours in any one workweek . . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.”

37. At all times relevant to this Complaint, Labor Code section 510 further provided that “[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay.”

38. Four (4) years prior to the filing of the Complaint in this Action through the present, Plaintiff and Class Members, at times, worked for Defendants during shifts that consisted of more than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7) consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a result of, including but not limited to, Defendants failing to accurately track and/or pay for all hours actually worked at the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees to suffer under Defendants' control to complete pre-shift tasks before clocking in; to clock out for rest periods;

1 detrimental rounding of employee time entries, editing and/or manipulation of time entries to show
2 less hours than actually worked; and for paying straight pay instead of overtime pay to the detriment
3 of Plaintiff and Class Members.

4 39. Accordingly, by requiring Plaintiff and Class Members to, at times, work greater
5 than eight (8) hours per workday, forty (40) hours per workweek, and/or seven (7) straight workdays
6 without properly compensating overtime wages at the proper overtime rate of pay, Defendants, on
7 occasion, willfully violated the provisions of the Labor Code, among others, sections 510, 1194, and
8 applicable IWC Wage Orders, and California law.

9 40. As a result of the unlawful acts of Defendants, Plaintiff and Class Members have
10 been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery,
11 plus interest and penalties thereon, attorneys' fees and costs, pursuant to Labor Code section 1194
12 and 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil Code section 3287.

13 **SECOND CAUSE OF ACTION**

14 **(Failure to Pay Minimum Wages – Against All Defendants)**

15 41. Plaintiff realleges and incorporates by reference all of the allegations contained in
16 the preceding paragraphs as though fully set forth hereat.

17 42. At all relevant times, Plaintiff and Class Members were employees or former
18 employees of Defendants covered by Labor Code sections 1197, 1199 and applicable Wage Orders.

19 43. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiff and
20 Class Members were entitled to receive minimum wages for all hours worked or otherwise under
21 Defendants' control.

22 44. For four (4) years prior to the filing of the Complaint in this Action through the
23 present, Defendants, at times, failed to accurately track and/or pay for all hours actually worked;
24 engaged, suffered, or permitted employees to work off the clock, including, without limitation, by
25 requiring employees to suffer under Defendants' control to complete pre-shift tasks before clocking
26 in; to clock out for rest periods; detrimental rounding of employee time entries, editing and/or
27 manipulation of time entries to show less hours than actually worked, to the detriment of Plaintiff
28 and Class Members.

45. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages for all hours worked or otherwise due.

46. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover the full amount of unpaid minimum wages, interest and penalties thereon, liquidated damages, reasonable attorneys' fees and costs of suit.

THIRD CAUSE OF ACTION

(Failure to Provide Meal Periods – Against All Defendants)

47. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

48. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendants covered by Labor Code section 512 and applicable Wage Orders.

49. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer shall employ an employee for a work period of more than five (5) hours without a timely meal break of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties. Furthermore, no employer shall employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second timely meal period of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties.

50. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee with a meal period as provided in the applicable Wage Order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

51. For four (4) years prior to the filing of the Complaint in this Action through the present, Plaintiff and Class Members were not provided complete, timely 30-minute, duty-free uninterrupted meal periods every five hours of work without waiving the right to take them, as permitted. Moreover Defendants failed to provide one (1) additional hour of pay at the Class Member's regular rate of compensation on the occasions that Class Members were not provided

1 compliant meal periods.

2 52. By their failure to provide Plaintiff and Class Members compliant meal periods as
3 contemplated by Labor Code section 512, among other California authorities, and failing, at times,
4 to provide compensation for such unprovided meal periods, as alleged above, Defendants willfully
5 violated the provisions of Labor Code section 512 and applicable Wage Orders.

6 53. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
7 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay
8 owed for missed, untimely, interrupted, incomplete and/or on-duty meal periods.

9 54. Plaintiff and Class Members are entitled to recover the full amount of their unpaid
10 additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus
11 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,
12 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

13 **FOURTH CAUSE OF ACTION**

14 **(Failure to Provide Rest Periods – Against All Defendants)**

15 55. Plaintiff realleges and incorporates by reference all of the allegations contained in
16 the preceding paragraphs as though fully set forth hereat.

17 56. At all relevant times, Plaintiff and Class Members were employees or former
18 employees of Defendants covered by applicable Wage Orders.

19 57. California law and applicable Wage Orders require that employers “authorize and
20 permit” employees to take ten (10) minute rest periods in about the middle of each four (4) hour
21 work period “or major fraction thereof.” Accordingly, employees who work shifts of three and-a-
22 half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who
23 work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20) minutes
24 of paid rest period, and employees who work shifts of more than ten (10) hours must be provided
25 thirty (30) minutes of paid rest period.

26 58. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
27 with a meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare
28 Commission, the employer shall pay the employee one (1) additional hour of pay at the employee's

1 regular rate of compensation for each work day that the rest period is not provided.

2 59. For four (4) years prior to the filing of the Complaint in this Action through the
3 present, Plaintiff and Class Members were not authorized or permitted to take complete, timely 30-
4 minute, duty-free uninterrupted rest periods every four (4) hours of work or major fraction thereof.
5 Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the Class
6 Member's regular rate of compensation on the occasions that Class Members were not authorized
7 or permitted to take compliant rest periods.

8 60. By their failure, at times, to authorize and permit Plaintiff and Class Members to take
9 rest periods contemplated by California law, and one (1) additional hour of pay at the employee's
10 regular rate of compensation for such unprovided rest periods, as alleged above, Defendants
11 willfully violated the provisions of Labor Code section 226.7 and applicable Wage Orders.

12 61. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
13 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay
14 owed for rest periods that they were not authorized or permitted to take.

15 62. Plaintiff and Class Members are entitled to recover the full amount of their unpaid
16 additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus
17 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,
18 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

19 **FIFTH CAUSE OF ACTION**

20 **(Failure to Pay All Wages Due Upon Termination – Against All Defendants)**

21 63. Plaintiff realleges and incorporates by reference all of the allegations contained in
22 the preceding paragraphs as though fully set forth hereat.

23 64. At all relevant times, Plaintiff and Class Members were employees or former
24 employees of Defendants covered by Labor Code sections 201, 202 and 203, as well as applicable
25 Wage Orders.

26 65. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members were
27 entitled upon termination to timely payment of all wages earned and unpaid prior to termination.
28 Discharged Class Members were entitled to payment of all wages earned and unpaid prior to

1 discharge immediately upon termination. Class Members who resigned were entitled to payment
2 of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation
3 or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and
4 unpaid at the time of resignation.

5 66. Plaintiff is informed and believes, and based thereon alleges, that in the three (3)
6 years before the filing of the Complaint in this Action through the present, Defendants, due to the
7 failure, at times, to provide overtime wages mentioned above, failed to pay Plaintiff and Class
8 Members all wages earned prior to resignation or termination in accordance with Labor Code
9 sections 201 or 202.

10 67. Plaintiff is informed and believes Defendants' failure to pay Plaintiff and Class
11 Members all wages earned prior to termination or resignation in accordance with Labor Code
12 sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiff
13 and Class Members at the time of termination in accordance with Labor Code sections 201 and 202,
14 but intentionally adopted policies or practices incompatible with the requirements of Labor Code
15 sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to termination
16 or resignation..

17 68. Pursuant to Labor Code section 203, Plaintiff and Class Members are entitled to
18 waiting time penalties from the date their earned and unpaid wages were due. upon termination or
19 resignation, until paid, up to a maximum of thirty (30) days.

20 69. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
21 suffered damages in an amount subject to proof, to the extent they were not paid for all wages earned
22 prior to termination or resignation.

23 70. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
24 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
25 waiting time penalties, interest, and their costs of suit, as well.

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1 **SIXTH CAUSE OF ACTION**

2 **(Failure to Provide Accurate Wage Statements – Against All Defendants)**

3 71. Plaintiff realleges and incorporates by reference all of the allegations contained in
4 the preceding paragraphs as though fully set forth hereat.

5 72. At all relevant times, Plaintiff and Class Members were employees or former
6 employees of Defendants covered by Labor Code section 226, as well as applicable Wage Orders.

7 73. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and Class Members
8 were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
9 statement that accurately reflects, among other things, gross wages earned; total hours worked; net
10 wages earned; and all applicable hourly rates in effect during the pay period and the corresponding
11 number of hours worked at each hourly rate, among other things.

12 74. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year
13 before the filing of the Complaint in this Action through the present, Defendants failed to comply
14 with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their
15 failure, at times, to furnish Plaintiff and Class Members with accurate itemized statements that
16 accurately reflect, among other things, gross wages earned; total hours worked; net wages earned;
17 and all applicable hourly rates in effect during the pay period and the corresponding number of hours
18 worked at each hourly rate; the name of the employee and only the last four digits of his or her social
19 security number, among other things.

20 75. Defendants' failure to provide Plaintiff and Class Members with accurate wage
21 statements was knowing, intentional, and willful. Defendants had the ability to provide Plaintiff
22 and the other Class Members with accurate wage statements, but, at times, willfully provided wage
23 statements that Defendants knew were not accurate.

24 76. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
25 suffered injury. The absence of accurate information on Class Members' wage statements at times
26 has delayed timely challenge to Defendants' unlawful pay practices; requires discovery and
27 mathematical computations to determine the amount of wages owed; causes difficulty and expense
28 in attempting to reconstruct time and pay records; and led to submission of inaccurate information

1 about wages and amounts deducted from wages to state and federal governmental agencies, among
2 other things.

3 77. Pursuant to Labor Code section 226, subdivision (e), Plaintiff and Class Members
4 are entitled to recover \$50 for the initial pay period during the period in which violation of Labor
5 Code section 226 occurred and \$100 for each violation of Labor Code section 226 in a subsequent
6 pay period, not to exceed an aggregate \$4,000.00 per employee.

7 78. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
8 Procedure section 1032, Civil Code section 3287, Plaintiff and Class Members are entitled to
9 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable
10 attorneys' fees, and costs of suit.

11 **SEVENTH CAUSE OF ACTION**

12 **(Violation of Labor Code § 2802 – Against All Defendants)**

13 79. Plaintiff realleges and incorporates by reference all of the allegations contained in
14 the preceding paragraphs as though fully set forth hereat.

15 80. At all relevant times, Plaintiff and Class Members were employees or former
16 employees of Defendants covered by Labor Code section 2802 and applicable Wage Orders.

17 81. Labor Code section 2802, subdivision (a) provides that “an employer shall indemnify
18 his or her employee for all necessary expenditures or losses incurred by the employee in direct
19 consequence of the discharge of his or her duties . . .”

20 82. For three (3) years prior to the filing of the Complaint in this Action through the
21 present, Defendants required Plaintiff and Class Members, or some of them, to incur, at times,
22 necessary expenditures or losses in direct consequence of the discharge of their duties or at the
23 obedience to the directions of Defendants that included, without limitation: purchasing required slip-
24 resistant shoes and separate laundering of mandatory work uniforms.

25 83. During that time period, Plaintiff is informed and believes, and based thereon alleges
26 that Defendants failed and refused, and still fail and refuse, at times, to reimburse Plaintiff and Class
27 Members for those losses and/or expenditures.

28 / / /

84. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have suffered damages in an amount subject to proof, to the extent they were not reimbursed for the herein-described losses and/or expenditures.

85. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover reimbursement for their herein-described losses and/or expenditures, reasonable attorneys' fees and costs of suit.

EIGHTH CAUSE OF ACTION

(Unfair Competition – Against All Defendants)

86. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

87. Plaintiff is informed and believes and based thereon alleges that the unlawful conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business and Professions Code section 17200. Due to their unlawful business practices in violation of the Labor Code, Defendants have gained a competitive advantage over other comparable companies doing business in the State of California that comply with their obligations to compensate employees in accordance with the Labor Code.

88. As a result of Defendants' unfair competition as alleged herein, Plaintiff and Class Members have suffered injury in fact and lost money or property.

89. Pursuant to Business and Professions Code section 17203, Plaintiff and Class Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor Code and requiring the establishment of appropriate and effective means to prevent further violations, as well as restitution of all wages and other monies owed to them under the Labor Code, including interest thereon, in which they had a property interest and which Defendants nevertheless failed to pay them and instead withheld and retained for themselves. Restitution of the money owed to Plaintiff and Class Members is necessary to prevent Defendants from becoming unjustly enriched by their failure to comply with the Labor Code.

/ / /

1 90. Plaintiff and Class Members are entitled to costs of suit under Code of Civil
2 Procedure section 1032 and interest under Civil Code section 3287.

3 **NINTH CAUSE OF ACTION**

4 **(Civil Penalties Under Labor Code § 210 – Against All Defendants)**

5 91. Plaintiff realleges and incorporates by reference all of the allegations contained in
6 the preceding paragraphs as though fully set forth hereat.

7 92. At all relevant times herein, Labor Code section 204, requires and required that:
8 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
9 between the 16th and 26th day of the month during which the labor was performed, and labor
10 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
11 between the 1st and 10th day of the following month.”

12 93. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
13 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
14 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
15 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
16 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
17 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
18 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

19 94. At all relevant times herein, Defendants have had a consistent policy or practice of,
20 failing to pay Plaintiff and aggrieved employees during their employment on a timely basis as per
21 Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other aggrieved
22 employees or former employees she seeks to represent are entitled to recover civil penalties for
23 Defendants’ violations of Labor Code section 204, in the amount of one hundred dollars (\$100) for
24 each aggrieved employee or former employee for each initial violation per employee, and two
25 hundred dollars (\$200) for each aggrieved employee or former employee for each subsequent
26 violation in connection with each payment that was made in violation of Labor Code section 204.

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1 **TENTH CAUSE OF ACTION**

2 **(Civil Penalties Under Labor Code § 226.3 – Against All Defendants)**

3 95. Plaintiff realleges and incorporates by reference all of the allegations contained in
4 the preceding paragraphs as though fully set forth hereat.

5 96. Defendants have had a consistent policy or practice of failing to comply with Labor
6 Code section 226, subdivision (a) by intentionally failing to furnish employees with itemized wage
7 statements that accurately reflect gross wages earned; total hours worked by the employee; all
8 deductions; net wages earned; the inclusive dates of the period for which the employee is paid; all
9 applicable hourly rates in effect during the pay period and the corresponding number of hours
10 worked at each hourly rate by the employee; and other such information as required by Labor Code
11 section 226, subdivision (a).

12 97. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a)
13 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
14 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
15 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
16 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

17 98. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in
18 this section are in addition to any other penalty provided by law.”

19 99. Plaintiff is informed and believes and based thereon alleges that Defendants failed
20 and continue to fail to furnish non-exempt employees, including, without limitation, Plaintiff, with
21 itemized wage statements that accurately reflect gross wages earned; total hours worked by the
22 employee; all deductions; net wages earned; the inclusive dates of the period for which the employee
23 is paid; all applicable hourly rates in effect during the pay period and the corresponding number of
24 hours worked at each hourly rate by the employee; and other such information, as required by Labor
25 Code section 226, subdivision (a) and 226.2.

26 100. Pursuant to Labor Code section 226.3, Plaintiff and other aggrieved employees or
27 former employees Plaintiff seeks to represent are entitled to recover civil penalties for Defendants’
28 violation of Labor Code section 226, subdivision (a) in the amount of two hundred fifty dollars

1 (\$250) for each aggrieved employee or former employee per pay period for the initial violation, and
2 one thousand dollars (\$1,000) for each aggrieved employee or former employee per pay period for
3 each subsequent violation.

4 **ELEVENTH CAUSE OF ACTION**

5 **(Violation of Labor Code § 558 – Against All Defendants)**

6 101. Plaintiff realleges and incorporates by reference all of the allegations contained in
7 the preceding paragraphs as though fully set forth hereat.

8 102. Pursuant to Labor Code section 558, subdivision (a): “Any employer or other person
9 acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating
10 hours and days of work in any order of the Industrial Welfare Commission” shall be subject to a
11 civil penalty as follows:

12 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for
13 each pay period for which the employee was underpaid in addition to an amount
14 sufficient to recover underpaid wages;

15 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
16 employee for each pay period for which the employee was underpaid in addition
17 to an amount sufficient to recover underpaid wages;

18 (3) Wages recovered pursuant to this section shall be paid to the affected employee.”

19 103. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
20 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
21 causing Plaintiff and other aggrieved employees not to: be paid overtime wages and minimum
22 wages; receive meal and rest periods or compensation in lieu thereof; and be paid timely wages
23 during their employment and after their employment separation.

24 104. As a direct and proximate result of Defendants’ conduct, Plaintiff and other
25 aggrieved employees are entitled to recover directly from Defendants civil penalties pursuant to
26 Labor Code section 558 in amounts to be determined at trial.

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1 **TWELFTH CAUSE OF ACTION**

2 **(Violation of Labor Code § 1197.1 – Against All Defendants)**

3 105. Plaintiff realleges and incorporates by reference all of the allegations contained in
4 the preceding paragraphs as though fully set forth hereat.

5 106. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other
6 person acting either individually or as an officer, agent, or employee of another person, who pays
7 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
8 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
9 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
10 Section 203 as follows: For any initial violation that is intentionally committed, one hundred dollars
11 (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This
12 amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages
13 pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

14 (1) For any initial violation that is intentionally committed, one hundred dollars
15 (\$100) for each underpaid employee for each pay period for which the employee
16 is underpaid. This amount shall be in addition to an amount sufficient to recover
17 underpaid wages, liquidated damages pursuant to Section 1194.2, and any
18 applicable penalties imposed pursuant to Section 203.

19 (2) For each subsequent violation for the same specific offense, two hundred fifty
20 dollars (\$250) for each underpaid employee for each pay period for which the
21 employee is underpaid regardless of whether the initial violation is intentionally
22 committed. This amount shall be in addition to an amount sufficient to recover
23 underpaid wages, liquidated damages pursuant to Section 1194.2, and any
24 applicable penalties imposed pursuant to Section 203.

25 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to
26 Section 203, recovered pursuant to this section shall be paid to the affected
27 employee.”

28 / / /

1 107. Plaintiff believes, and thereupon alleges, that Defendants, and each of them, made
2 the decision that Plaintiff would not be paid their due minimum wages as required due to, among
3 other things, Defendants, failing to accurately track and/or pay for all hours actually worked;
4 detrimental manipulation of time entries (including limiting shift hours regardless of shift length);
5 engaging, suffering, or permitting employees to work off the clock, including, without limitation,
6 by requiring employees to complete pre-shift tasks before clocking in (including having to wait in
7 line to clock in); and or paying overtime wages at the regular or otherwise improper rates of pay, to
8 the detriment of Plaintiff and other aggrieved employees.

9 108. As a direct and proximate result of Defendants' conduct, Plaintiff is entitled to
10 recover directly from Defendants, civil penalties, as set forth above, pursuant to Labor Code section
11 1197.1.

12 **THIRTEENTH CAUSE OF ACTION**

13 **(Civil Penalties Under Labor Code § 2699 – Against All Defendants)**

14 109. Plaintiff realleges and incorporates by reference all of the allegations contained in
15 the preceding paragraphs as though fully set forth hereat.

16 110. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
17 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
18 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
19 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
20 action brought by an aggrieved employee on behalf of himself or herself and other current or former
21 employees pursuant to the procedures specified in Labor Code section 2699.3.

22 111. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor
23 Code except those for which a civil penalty is specifically provided, the established civil penalty for
24 a violation of those provisions is as follows: if, at the time of the alleged violation, the person
25 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
26 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
27 employee per pay period for each subsequent violation.

28 / / /

1 112. Plaintiff is informed and believes and based thereon alleges that Defendants, and
2 each of them, violated the Labor Code sections described herein, including, without limitation, for
3 the failure to: pay overtime wages and minimum wages; provide meal and rest periods or
4 compensation in lieu thereof; provide accurate, itemized wage statements; pay timely wages during
5 employment and after employment separation; provide employees the opportunity to inspect
6 employment records; failure to reimburse for employment related expenses; provide and pay for
7 sick leave; and provide notice as required under Labor Code section 2810.5 entitling Plaintiff and
8 other aggrieved employees to civil penalties for each of these Labor Code violations in the amounts
9 set forth in Labor Code section 2699, subdivision (f).

10 113. Moreover, Plaintiff and other aggrieved current and former employees within the
11 State of California whom she seeks to represent are entitled to an award of reasonable attorneys'
12 fees and costs in connection with their herein-described claims for civil penalties.

13 **DEMAND FOR JURY TRIAL**

14 114. Plaintiff demands a trial by jury on all causes of action contained herein.

15 **PRAYER**

16 WHEREFORE, on behalf of herself and all others similarly situated and aggrieved, Plaintiff
17 prays for judgment against Defendants as follows:

- 18 A. An order certifying this case as a Class Action;
- 19 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's
20 counsel as class counsel;
- 21 C. Damages for all wages earned and owed, including minimum and overtime wages
22 under Labor Code sections 510, 1194, 1197 and 1199;
- 23 D. Liquidated damages pursuant to Labor Code section 1194.2;
- 24 E. Damages for unpaid premium wages from missed meal and rest periods under,
25 among other Labor Code sections, 512 and 226.7;
- 26 F. Penalties for inaccurate wage statements under Labor Code section 226,
27 subdivision (e);
- 28 G. Waiting time penalties under Labor Code section 203 and;

- 1 H. Damages under Labor Code sections 2802;
- 2 I. Preliminary and permanent injunctions prohibiting Defendants from further
- 3 violating the California Labor Code and requiring the establishment of appropriate
- 4 and effective means to prevent future violations;
- 5 J. Restitution of wages and benefits due which were acquired by means of any unfair
- 6 business practice, according to proof;
- 7 K. An award for civil penalties pursuant to Labor Code sections 210, 226.3, 558, 1197.1,
- 8 and 2699;
- 9 K. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
- 10 210, 226.3, 558, 1197.1, and 2699;
- 11 L. Prejudgment and post-judgment interest at the maximum rate allowed by law;
- 12 M. For attorneys' fees in prosecuting this action;
- 13 N. For costs of suit incurred herein; and
- 14 O. For such other and further relief as the Court deems just and proper.
- 15

16 Dated: December 1, 2020

BIBIYAN LAW GROUP, P.C.

17
18 BY: 

19 DIEGO AVILES

20 Attorneys for Plaintiff OLIMPIA MEZA PELAYO on
21 behalf of herself and all others similarly situated and
22 aggrieved
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