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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

BY FAX

JOSE CORTEZ, as an aggrieved employee
pursuant to the Private Attorneys General
Act ("PAGA"), on behalf of the State of
California and other aggrieved employees,

Plaintiff,

vs.

B & V ENTERPRISES, INC., a California
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: **20STCV44113**

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

- (1) Claim for Civil Penalties for Violations
of California Labor Code, Pursuant to
PAGA, §§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiff Jose Cortez, as an aggrieved employee and on behalf of the State of California
2 and all other aggrieved employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698 *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on September 9, 2020, until judgment (“non-party Aggrieved
14 Employees”). Plaintiff’s share of civil penalties sought in this action does not exceed
15 \$75,000.

16 2. This Court has jurisdiction over this action pursuant to the California
17 Constitution, Article VI, section 10. The statute under which this action is brought does not
18 specify any other basis for jurisdiction.

19 3. This Court has jurisdiction over all Defendants because, on information and
20 belief, Defendants are either citizens of California, have sufficient minimum contacts in
21 California, or otherwise intentionally avail themselves of the California market so as to render
22 the exercise of jurisdiction over them by the California courts consistent with traditional
23 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
24 in this action given that the State of California, as the real party in interest in this action, is not
25 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
26 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
27 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
28 in this action, and that diversity jurisdiction cannot be established when Plaintiff’s share of the

1 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

2 4. Venue is proper in this Court, because Defendants filed a Statement of
3 Information form with the California Secretary of State designating a principal place of
4 business in Los Angeles, County of Los Angeles, in accordance with California Corporations
5 Code section 2105(a)(3). Venue is also proper in this Court because Defendants employ
6 persons in this county, and thus a substantial portion of the transactions and occurrences
7 related to this action occurred in this county.

8 5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private
9 Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private
10 attorneys general their current or former employers for various civil penalties for violations of
11 various provisions in the California Labor Code.

12 THE PARTIES

13 6. Plaintiff Jose Cortez is a resident of Stanton, in Orange County, California.
14 Defendants employed Plaintiff as an hourly paid, non-exempt Courtesy Clerk from
15 approximately September 2019 to March 2020. Plaintiff worked for Defendants at their Super
16 King Market location in Anaheim, California. During his employment, Plaintiff typically
17 worked six (6) hours or more per day, six (6) days per week. At the time his employment
18 ended, Plaintiff earned approximately \$13.00 per hour. His job duties included, without
19 limitation, collecting shopping carts from the parking lot, returning shopping carts to their
20 station, and assisting customers by taking groceries to their vehicles.

21 7. On information and belief, Defendants required some employees, including
22 Plaintiff, to execute a dispute resolution policy and/or arbitration agreement at the time of
23 their hire or during their employment. On further information and belief, Defendants’ dispute
24 resolution policy and/or arbitration agreement was and is both procedurally and substantively
25 unconscionable. Specifically, Defendants presented new hires with an Employee
26 Acknowledgement and Arbitration Agreement (“Arbitration Agreement”) during the
27 onboarding process, which had to be reviewed and signed immediately. In fact, upon
28 information and belief, the Arbitration Agreement was one of several documents presented to

1 new employees for signature during the orientation process, including Meal and Rest Period
2 Policy Acknowledgement Form, Attendance Policy Acknowledgement Form, and Dress Code
3 Policy Acknowledgement Form, among other documents. Also, employees did not have a
4 meaningful opportunity to negotiate the terms of the Arbitration Agreement. Rather, it was
5 provided to Defendants' employees for them to sign on a take-it or leave-it basis at the time
6 they were hired, along with other on-boarding documents. Further, Defendants did not set
7 forth in the agreement or otherwise provide employees with the rules which will govern the
8 arbitration, instead forcing employees to seek this information out on their own.

9 8. B & V ENTERPRISES, INC. was and is, upon information and belief, a
10 California corporation, and at all times hereinafter mentioned, an employer whose employees
11 are engaged throughout this county and the State of California.

12 9. Plaintiff is unaware of the true names or capacities of the Defendants sued
13 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
14 amend the complaint and serve such fictitiously named Defendants once their names and
15 capacities become known.

16 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
17 were the partners, agents, owners, or managers of B & V ENTERPRISES, INC. at all relevant
18 times.

19 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the
20 acts and omissions alleged herein was performed by, or is attributable to, B & V
21 ENTERPRISES, INC. and/or DOES 1 through 10 (collectively, "Defendants" or "SUPER
22 KING MARKETS"), each acting as the agent, employee, alter ego, and/or joint venturer of, or
23 working in concert with, each of the other co-Defendants and was acting within the course and
24 scope of such agency, employment, joint venture, or concerted activity with legal authority to
25 act on the others' behalf. The acts of any and all Defendants were in accordance with, and
26 represent, the official policy of Defendants.

27 12. At all relevant times, Defendants, and each of them, ratified each and every act
28 or omission complained of herein. At all relevant times, Defendants, and each of them, aided

1 and abetted the acts and omissions of each and all the other Defendants in proximately causing
2 the damages herein alleged.

3 13. Plaintiff is informed and believes, and thereon alleges, that each of said
4 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
5 omissions, occurrences, and transactions alleged herein.

6 **PAGA REPRESENTATIVE ALLEGATIONS**

7 14. Defendants own and operate a chain of Super King Markets grocery stores
8 offering products from around the world, including Middle Eastern, European, Asian, Latin,
9 and domestic brands. There are approximately seven (7) grocery store locations located in
10 California. Upon information and belief, Defendants maintain a single, centralized Human
11 Resources (“HR”) department at their corporate headquarters in Los Angeles, California,
12 which is responsible for the recruiting and hiring of new employees, and communicating and
13 implementing Defendants’ company-wide policies, including timekeeping policies and meal
14 and rest period policies, to employees throughout California.

15 15. In particular, Plaintiff and other non-party Aggrieved Employees, on
16 information and belief, received the same standardized documents and/or written policies.
17 Upon information and belief, the usage of standardized documents and/or written policies,
18 including new-hire documents, indicate that Defendants dictated policies at the corporate level
19 and implemented them company-wide, regardless of their employees’ assigned locations or
20 positions. Upon information and belief, Defendants set forth uniform policies and procedures
21 in several documents provided at an employee’s time of hire.

22 16. Upon information and belief, Defendants maintain a centralized Payroll
23 department at their corporate headquarters in Los Angeles, California, which processes payroll
24 for all non-exempt, hourly paid employees working for Defendants at their various locations
25 and jobsites in California, including Plaintiff and other non-party Aggrieved Employees.
26 Based upon information and belief, Defendants issue the same formatted wage statements to
27 all non-exempt, hourly paid employees in California, irrespective of their work locations.
28 Upon information and belief, Defendants process payroll for departing employees in the same

manner throughout the State of California, regardless of the manner in which each employee's employment ends.

17. Defendants continue to employ non-exempt or hourly paid employees in California.

18. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants were advised by skilled lawyers and other professionals, employees and advisors knowledgeable about California labor and wage law, employment and personnel practices, and about the requirements of California law.

19. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other non-party Aggrieved Employees were not paid for all hours worked because all hours worked were not recorded.

20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to receive certain wages for overtime compensation and that they were not receiving certain wages for overtime compensation.

21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to receive at least minimum wages for compensation and that they were not receiving at least minimum wages for work that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at least minimum wages for work done off-the-clock.

22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to meal periods in accordance with the Labor Code or payment of one (1) additional hour of pay at their regular rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and other non-party Aggrieved Employees were not provided with all meal periods or payment of one (1) additional hour of pay at their regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal

1 period.

2 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
4 rest periods in accordance with the Labor Code and applicable IWC Wage Order or payment
5 of one (1) additional hour of pay at their regular rates of pay when they were not authorized
6 and permitted to take a compliant rest period. In violation of the California Labor Code,
7 Plaintiff and other non-party Aggrieved Employees were not authorized and permitted to take
8 compliant rest periods, nor did Defendants provide Plaintiff and other non-party Aggrieved
9 Employees with payment of one (1) additional hour of pay at their regular rates of pay when
10 they were not authorized and permitted to take a compliant rest period.

11 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
13 recovery periods in accordance with the Labor Code and applicable General Industry Safety
14 Order or payment of one (1) additional hour of pay at their regular rates of pay when they
15 were not provided a compliant recovery period. In violation of the California Labor Code,
16 Plaintiff and other non-party Aggrieved Employees were not provided compliant recovery
17 periods, nor did Defendants provide Plaintiff and other non-party Aggrieved Employees with
18 payment of one (1) additional hour of pay at their regular rates of pay when they were not
19 provided a compliant recovery period.

20 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
22 receive complete and accurate wage statements in accordance with California law. In
23 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees
24 were not provided complete and accurate wage statements.

25 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that they had a duty to maintain accurate and complete payroll records in
27 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
28 and intentionally failed to do so.

1 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
3 timely payment of all wages earned upon termination of employment. In violation of the
4 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
5 payment of all wages due, including, but not limited to, overtime wages; minimum wages;
6 and/or meal, rest, and recovery period premiums, within permissible time periods.

7 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
9 timely payment of wages during their employment. In violation of the California Labor Code,
10 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
11 including, but not limited to, overtime wages; minimum wages; and/or meal, rest, and
12 recovery period premiums, within permissible time periods.

13 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
15 receive their full wages due without having to execute a release of claims.

16 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that they were not permitted to compel or coerce Plaintiff and other non-
18 party Aggrieved Employees to patronize their business in the purchase of anything of value,
19 but did in fact require Plaintiff and other non-party Aggrieved Employees to purchase various
20 items, including uniforms, from Defendants.

21 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
23 suitable seating and/or were entitled to sit when it did not interfere with the performance of
24 their duties and also have seats nearby to use during a lull in tasks that do require moving
25 about or standing.

26 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
28 receive reimbursement for all business-related expenses and costs they incurred during the

1 course and scope of their employment and that they did not receive reimbursement of
2 applicable business-related expenses and costs incurred.

3 33. Plaintiff is informed and believes, and thereon alleges, that at all times herein
4 mentioned, Defendants knew or should have known that they had a duty to compensate
5 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants
6 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
7 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees
8 that they were properly denied wages, all in order to increase Defendants' profits.

9 34. At all times herein set forth, PAGA provides that any provision of law under
10 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
11 assessed and collected by the LWDA for violations of the California Labor Code and
12 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
13 civil action brought on behalf of themselves and other current or former employees pursuant
14 to procedures outlined in California Labor Code section 2699.3.

15 35. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
16 person who was employed by the alleged violator and against whom one or more of the
17 alleged violations was committed."

18 36. Plaintiff and other current and former employees of Defendants are "aggrieved
19 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
20 or former employees and one or more of the alleged violations were committed against them.

21 37. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
22 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
23 following requirements have been met:

- 24 (a) The aggrieved employee shall give written notice by online filing
25 (hereinafter "Employee's Notice") to the LWDA and by certified mail
26 to the employer of the specific provisions of the California Labor Code
27 alleged to have been violated, including the facts and theories to support
28 the alleged violations.

- 1 (b) An aggrieved employee's notice filed with the LWDA pursuant to
2 2699.3(a) and any employer response to that notice shall be
3 accompanied by a filing fee of seventy-five dollars (\$75).
- 4 (c) The LWDA shall provide notice (hereinafter "LWDA Notice") to the
5 employer and the aggrieved employee by certified mail that it does not
6 intend to investigate the alleged violation within sixty (60) calendar
7 days of the postmark date of the Employee's Notice. Upon receipt of
8 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
9 five (65) calendar days of the postmark date of the Employee's Notice,
10 the aggrieved employee may commence a civil action pursuant to
11 California Labor Code section 2699 to recover civil penalties in addition
12 to any other penalties to which the employee may be entitled.

13 38. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
14 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
15 provision other than those listed in Section 2699.5 after the following requirements have been
16 met:

- 17 (a) The aggrieved employee or representative shall give written notice by
18 online filing to the LWDA and by certified mail to the employer of the
19 specific provisions of the California Labor Code alleged to have been
20 violated (other than those listed in Section 2699.5), including the facts
21 and theories to support the alleged violation.
- 22 (b) An aggrieved employee's notice filed with the LWDA pursuant to
23 2699.3(c) and any employer response to that notice shall be
24 accompanied by a filing fee of seventy-five dollars (\$75).
- 25 (c) The employer may cure the alleged violation within thirty-three (33)
26 calendar days of the postmark date of the notice. The employer shall
27 give written notice by certified mail within that period of time to the
28 aggrieved employee or representative and the agency if the alleged

1 violation is cured, including a description of actions taken, and no civil
2 action pursuant to Section 2699 may commence. If the alleged violation
3 is not cured within the 33-day period, the employee may commence a
4 civil action pursuant to Section 2699.

5 39. On September 9, 2020, Plaintiff provided written notice by online filing to the
6 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
7 Code alleged to have been violated, including facts and theories to support the alleged
8 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
9 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
10 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
11 Plaintiff PAGA Case Number LWDA-CM-805563-20. A true and correct copy of Plaintiff's
12 written notice to the LWDA and Defendants dated September 9, 2020, is attached hereto as
13 "Exhibit 1."

14 40. As of the filing date of this complaint, over 65 days have passed since Plaintiff
15 sent the initial LWDA Notice described above, and the LWDA has not responded that it
16 intends to investigate Plaintiff's claims, and Defendants have not cured the violations.

17 41. Thus, Plaintiff has satisfied the administrative prerequisites under California
18 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
19 violations of California Labor Code sections 201, 202, 203, 204, 206.5, 226(a), 226.7, 450,
20 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

21 42. Labor Code section 558(a) provides "[a]ny employer or other person acting on
22 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
23 provision regulating hours and days of work in any order of the Industrial Welfare
24 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
25 dollars (\$50) for each underpaid employee for each pay period for which the employee was
26 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
27 underpaid employee for each pay period for which the employee was underpaid. . . ." Labor
28 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition

1 to any other civil or criminal penalty provided by law.” Plaintiff, acting in the public interest
2 as a private attorney general, seeks assessment and collection of civil penalties under Labor
3 Code section 558 for himself, all other non-party Aggrieved Employees, and the State of
4 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198,
5 and the applicable IWC wage order. Plaintiff, acting in the public interest as a private
6 attorney general, does not seek the recovery of unpaid wages under Labor Code section 558
7 from Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the
8 applicable IWC wage order.

9 43. Defendants, at all times relevant to this complaint, were employers or persons
10 acting on behalf of an employer(s) who violated Plaintiff’s and other non-party Aggrieved
11 Employees’ rights by violating various sections of the California Labor Code as set forth
12 above.

13 44. As set forth below, Defendants have violated numerous provisions of both the
14 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
15 Order.

16 45. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
17 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a
18 private attorney general, seeks assessment and collection of civil penalties for himself, all
19 other non-party Aggrieved Employees, and the State of California against Defendants for
20 violations of California Labor Code sections 201, 202, 203, 204, 206.5, 226(a), 226.7, 450,
21 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

22 **FIRST CAUSE OF ACTION**

23 **For Civil Penalties, Pursuant to California Labor Code §§ 2698, *et seq.***

24 **(Against all Defendants)**

25 46. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
26 and every allegation set forth above.

27 47. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
28 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code

1 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 206.5,
2 226(a), 226.7, 450, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section
3 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for
4 violations of those Labor Code sections not found in section 2699.5, including sections 516
5 and 1182.12.

6 48. Defendants' conduct, as alleged herein, violates numerous sections of the
7 California Labor Code, including, but not limited to, the following:

- 8 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
9 wage order for Defendants' failure to compensate Plaintiff and other
10 non-party Aggrieved Employees with all required overtime pay, as set
11 forth below;
- 12 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1198, and the
13 applicable IWC wage order for Defendants' failure to compensate
14 Plaintiff and other non-party Aggrieved Employees with at least
15 minimum wages for all hours worked as set forth below;
- 16 (c) Violation of Labor Code sections 226.7, 512(a), 516, 1198, and the
17 applicable IWC wage order for Defendants' failure to provide Plaintiff
18 and other non-party Aggrieved Employees with meal periods, as set
19 forth below;
- 20 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
21 IWC wage order for Defendants' failure to authorize and permit
22 Plaintiff and other non-party Aggrieved Employees to take rest periods,
23 as set forth below;
- 24 (e) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
25 General Industry Safety Order for Defendants' failure to provide
26 Plaintiff and other non-party Aggrieved Employees with recovery
27 periods, as set forth below;
- 28 (f) Violation of Labor Code sections 226(a), 1198, and the applicable IWC

1 wage order for failure to provide accurate and complete wage statements
2 to Plaintiff and other non-party Aggrieved Employees, as set forth
3 below;

4 (g) Violation of Labor Code sections 1174(d), 1198, and the applicable
5 IWC wage order for failure to maintain payroll records as set forth
6 below;

7 (h) Violation of Labor Code section 204 for failure to pay all earned wages
8 during employment as set forth below;

9 (i) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
10 earned wages upon termination as set forth below;

11 (j) Violation of Labor Code section 206.5 for requiring Plaintiff and other
12 non-party Aggrieved Employees to execute a release of claims as a
13 condition to receiving wages due to them, as set forth below;

14 (k) Violation of California Labor Code section 450 for Defendants'
15 compelling and/or coercing Plaintiff and other non-party Aggrieved
16 Employees to patronize Defendants' business, as set forth below;

17 (l) Violation of Labor Code section 1198 for failing to provide suitable
18 seating to Plaintiff and other non-party Aggrieved Employees, as set
19 forth below; and

20 (m) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
21 and other non-party Aggrieved Employees for all business expenses
22 necessarily incurred, as set forth below.

23 **FAILURE TO PAY OVERTIME**

24 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

25 49. Labor Code section 1198 makes it illegal to employ an employee under
26 conditions of labor that are prohibited by the applicable wage order. California Labor Code
27 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
28 be the . . . standard conditions of labor for employees. The employment of any employee . . .

1 under conditions of labor prohibited by the order is unlawful.”

2 50. California Labor Code section 1198 and the applicable IWC Wage Order
3 provide that it is unlawful to employ persons without compensating them at a rate of pay
4 either time-and-one-half or two-times that person’s regular rate of pay, depending on the
5 number of hours worked by the person on a daily or weekly basis.

6 51. Specifically, the applicable IWC Wage Order provides that Defendants are and
7 were required to pay Plaintiff and other non-party Aggrieved Employees working more than
8 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
9 one-half (1½) for all hours worked in excess of eight (8) hours in a day or more than forty (40)
10 hours in a workweek.

11 52. The applicable IWC Wage Order further provides that Defendants are and were
12 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
13 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
14 An employee’s regular rate of pay includes all remuneration for employment paid to, or on
15 behalf of, the employee, including nondiscretionary bonuses and incentive pay.

16 53. California Labor Code section 510 codifies the right to overtime compensation
17 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
18 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
19 seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate
20 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
21 in a day on the seventh (7th) day of work.

22 54. During the relevant time period, Defendants willfully failed to pay all overtime
23 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
24 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
25 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
26 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
27 not recorded.

28 55. During the relevant period, Defendants had, and continue to have, a company-

1 wide policy and/or practice of understaffing their store locations. Defendants' company-wide
2 understaffing of their locations led to a failure to provide Plaintiff and other non-party
3 Aggrieved Employees with adequate meal period coverage. In conjunction with the lack of
4 meal period coverage, Defendants required Plaintiff and other non-party Aggrieved
5 Employees to remain on the store premises for their meal periods. Because Plaintiff and other
6 non-party Aggrieved Employees were restricted from leaving the premises during meal
7 periods, they were denied the ability to use their meal periods freely for their own purposes.
8 Thus, Defendants effectively maintained control over Plaintiff and other non-party Aggrieved
9 Employees during meal periods. As a result, Plaintiff and other non-party Aggrieved
10 Employees missed meal periods and/or had their meal periods interrupted, but were not
11 compensated for this time.

12 56. Additionally, during the relevant period, Defendants had a company-wide
13 practice and/or policy of requiring Plaintiff and other non-party Aggrieved Employees to
14 continue to perform work-related tasks while off-the-clock, such as assisting customers in
15 carrying their groceries to their cars. For example, 2-3 times per week, Plaintiff was directed
16 by his supervisor to continue these work-related tasks after he had clocked out, which took 5-
17 15 minutes per instance. Thus, Defendants failed to track this time spent working before or
18 after scheduled shifts, and Plaintiff and other non-party Aggrieved Employees received no
19 compensation for this time.

20 57. Defendants knew or should have known that, as a result of these company-wide
21 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
22 their assigned duties during meal periods and while off-the-clock, and were suffered or
23 permitted to perform work for which they were not paid. Because Plaintiff and other non-
24 party Aggrieved Employees occasionally worked shifts of eight (8) hours a day or more or
25 forty (40) hours a week or more, some of this off-the-clock work qualified for overtime
26 premium pay. Therefore, Plaintiff and other non-party Aggrieved Employees were not paid
27 overtime wages for all of the overtime hours they actually worked.

28 58. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees

1 the balance of overtime compensation as required by California law, violates the provisions of
2 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
3 Employees are entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
4 2699(a), (f), and (g).

5 **FAILURE TO PAY MINIMUM WAGES**

6 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

7 59. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
8 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
9 to be paid to employees, and the payment of a wage less than the minimum so fixed is
10 unlawful. Compensable work time is defined by the applicable wage order as “the time
11 during which an employee is subject to the control of an employer, and includes all the time
12 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code.
13 Regs. tit. 8, § 11070(2)(G) (defining “Hours Worked”).

14 60. As set forth above, during the relevant time period, due to Defendants’
15 company-wide policies of understaffing, resultant lack of meal period coverage, and
16 requirement that employees to stay on the store premises during meal periods, Plaintiff and
17 other non-party Aggrieved Employees were forced to forego meal periods and/or had their
18 meal periods interrupted by work. Also, as stated, Defendants required that Plaintiff and other
19 non-party Aggrieved Employees perform work off-the-clock before and after their scheduled
20 shifts, including assisting customers with their groceries.

21 61. Defendants also had, and continue to have, a company-wide policy and/or
22 practice of requiring Plaintiff and other non-party Aggrieved Employees to travel to attend
23 mandatory training or meetings while off-the-clock. For example, Plaintiff was required to
24 drive his own vehicle from Orange County to Los Angeles for more than an hour roundtrip for
25 a mandatory training at Defendants’ corporate headquarters, located at 791 S. Mission Road,
26 in Los Angeles, California, but was not paid for the time he spent traveling to and from the
27 meeting.

28 62. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff

1 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
2 not qualify for overtime premium payment, Defendants did not pay at least minimum wages
3 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
4 1194, 1197, and 1198.

5 63. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
6 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
7 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
8 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

9 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**
10 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

11 64. At all relevant times herein set forth, the applicable IWC Wage Order(s) and
12 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff and
13 non-party Aggrieved Employees' employment by Defendants.

14 65. At all relevant times herein set forth, California Labor Code section 512(a)
15 provides that an employer may not require, cause, or permit an employee to work for a period
16 of more than five (5) hours per day without providing the employee with a meal period of not
17 less than thirty (30) minutes, except that if the total work period per day of the employee is
18 not more than six (6) hours, the meal period may be waived by mutual consent of both the
19 employer and the employee. Under California law, first meal periods must start after no more
20 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
21 2012).

22 66. At all relevant times herein set forth, California Labor Code section 226.7,
23 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
24 meal period mandated by an applicable order of the IWC.

25 67. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198,
26 and the applicable IWC Wage Order also require employers to provide a second meal period
27 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay
28 an employee one (1) additional hour of pay at the employee's regular rate, except that if the

1 total hours worked is no more than twelve (12) hours, the second meal period may be waived
2 by mutual consent of the employer and the employee only if the first meal period was not
3 waived.

4 68. As stated, Defendants have, and continue to have, a uniform policy and/or
5 practice of understaffing, which resulted in a lack of meal period coverage and prevented
6 Plaintiff and other non-party Aggrieved Employees from taking all timely, uninterrupted meal
7 periods to which they were entitled. In addition, as stated, Defendants had a practice of
8 requiring that Plaintiff and other non-party Aggrieved Employees remain on the store
9 premises during unpaid meal periods, which further caused Plaintiff and other non-party
10 Aggrieved Employees to not be relieved of their duties for compliant meal periods. For
11 example, once per month, Plaintiff would have his meal periods interrupted by his supervisor
12 directing him to help customers needing assistance carrying groceries to their vehicles. As a
13 further example, once per month, Plaintiff missed his meal periods entirely due to the lack of
14 meal period coverage when he worked alone because another employee had called out sick.
15 As a result of Defendants' practices and/or policies, Plaintiff and other non-party Aggrieved
16 Employees were forced to work in excess of five (5) hours before taking a meal period and, at
17 times, had their meal periods interrupted, and/or had to forgo their meal periods altogether.

18 69. Moreover, Defendants did not provide other non-party Aggrieved Employees
19 with second 30-minute meal periods on days that they worked in excess of ten (10) hours in
20 one day. Other non-party Aggrieved Employees worked shifts in excess of ten (10) hours
21 without receiving an uninterrupted second 30-minute meal period. Plaintiff and other non-
22 party Aggrieved Employees did not sign valid meal period waivers on days that they were
23 entitled to meal periods and were not relieved of all duties.

24 70. Defendants knew or should have known that as a result of their company-wide
25 policies and/or practices, that Plaintiff and other non-party Aggrieved Employees were not
26 actually relieved of all duties to take timely, uninterrupted meal periods. Defendants further
27 knew or should have known that it did not pay Plaintiff and other non-party Aggrieved
28 Employees meal period premium wages when meal periods were missed, late, short, and/or

1 interrupted.

2 71. Defendants also have engaged in a company-wide practice and/or policy of not
3 paying meal period premiums owed when compliant meal periods are not provided. Because
4 of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees have not
5 received premium pay for missed, interrupted, or late meal periods.

6 72. Thus, Defendants failed to provide Plaintiff and other non-party Aggrieved
7 Employees compliant meal periods and failed to pay the full meal period premiums due.
8 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
9 sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved Employees are
10 entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and
11 (g).

12 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

13 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

14 73. At all relevant times herein set forth, the applicable IWC Wage Order and
15 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and other
16 non-party Aggrieved Employees' employment by Defendants.

17 74. At all relevant times, the applicable IWC Wage Order provides that "[e]very
18 employer shall authorize and permit all employees to take rest periods, which insofar as
19 practicable shall be in the middle of each work period" and that the "rest period time shall be
20 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
21 hours or major fraction thereof" unless the total daily work time is less than three and one-half
22 (3½) hours.

23 75. At all relevant times, California Labor Code section 226.7 provides that no
24 employer shall require an employee to work during any rest period mandated by an applicable
25 order of the California IWC. To comply with its obligation to authorize and permit rest
26 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
27 employer must "relinquish any control over how employees spend their break time, and
28 relieve their employees of all duties—including the obligation that an employee remain on

1 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
2 *Inc.*, 2 Cal. 5th 257, 269-270 (2016).

3 76. Pursuant to the applicable IWC Wage Order and California Labor Code section
4 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from
5 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
6 required rest period was not authorized and permitted.

7 77. During the relevant time period, Defendants regularly failed to authorize and
8 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest
9 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
10 Defendants’ company-wide policies and practices, including understaffing and the resultant
11 lack of rest period coverage, prevented Plaintiff and other non-party Aggrieved Employees
12 from being relieved of all duty to take compliant rest periods. Defendants also failed to
13 adhere to a schedule of rest periods, which, coupled with Defendants’ failure to provide
14 adequate rest period coverage, further led to Plaintiff and other non-party Aggrieved
15 Employees not being authorized and permitted to take rest periods.

16 78. Furthermore, Defendants maintained and implemented a company-wide on-
17 premises rest period policy, which mandated that Plaintiff and other non-party Aggrieved
18 Employees remain on the work premises during their rest periods. Defendants’ company-
19 wide on-premises rest period policy prevented Plaintiff and other non-party Aggrieved
20 Employees from being relieved of all duties for rest periods and caused them to perform work
21 during rest periods.

22 79. As a result of Defendants’ practices and policies, Plaintiff and other non-party
23 Aggrieved Employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
24 excess of 10 hours without receiving all ten (10) minute rest periods to which they were
25 entitled. For example, throughout his employment, once a week, Plaintiff’s rest periods were
26 cut short or interrupted by his supervisor asking him to return to work to assist customers in
27 carrying their groceries to their vehicles.

28 80. Defendants also have engaged in a company-wide practice and/or policy of not

1 paying all rest period premiums owed when compliant rest periods are not authorized or
2 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
3 Employees have not received premium pay for all missed rest periods.

4 81. Defendants' conduct violates the applicable IWC Wage Order and California
5 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved
6 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
7 558 and/or 2699(a), (f), and (g).

8 **FAILURE TO PROVIDE HEAT RECOVERY PERIODS**
9 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198, AND**
10 **CODE OF REGULATIONS TITLE 8, SECTION 3395**

11 82. At all relevant times herein set forth, the applicable General Industry Safety
12 Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's
13 and other non-party Aggrieved Employees' employment by Defendants.

14 83. At all relevant times, California Labor Code section 226.7(a) defines "recovery
15 period" to mean a cooldown period afforded an employee to prevent heat illness. California
16 Labor Code section 226.7 provides that no employer shall require an employee to work during
17 any recovery period mandated by an applicable order of the California IWC, the Occupational
18 Safety and Health Standards Board, or the Division of Occupational Safety and Health. The
19 applicable General Industry Safety Order provides that "[w]hen the outdoor temperature in the
20 work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more
21 areas with shade at all times while employees are present that are either open to the air or
22 provided with ventilation or cooling." Cal. Code of Reg., Title 8, § 3395(d)(1). Furthermore,
23 "[t]he amount of shade present shall be at least enough to accommodate the number of
24 employees on recovery or rest periods, so that they can sit in a normal posture fully in the
25 shade without having to be in physical contact with each other." *Id.* "Employees shall be
26 allowed and encouraged to take a preventative cool-down rest in the shade when they feel the
27 need to do so to protect themselves from overheating. Such access to shade shall be permitted
28 at all times." *Id.* Pursuant to California Labor Code section 226.7(c), Plaintiff and other non-

1 party Aggrieved Employees are entitled to recover from Defendants one (1) additional hour of
2 pay at their regular rates of pay for each work day that a recovery period was not provided.

3 84. During the relevant time period, Defendants violated California Labor Code
4 section 226.7 and California Code of Regulations, Title 8, section 3395(d), because
5 Defendants failed to provide Plaintiff and other non-party Aggrieved Employees with
6 recovery periods. For example, Plaintiff was not permitted to take recovery periods in a
7 shaded area while working outside, in the grocery store parking lot.

8 85. Defendants also have engaged in a company-wide practice and/or policy of not
9 paying all recovery period premiums owed when compliant recovery periods are not provided.
10 As a result, Defendants denied Plaintiff and other non-party Aggrieved Employees recovery
11 periods and failed to pay them recovery period premium wages due, in violation of Labor
12 Code section 226.7 and the applicable General Industry Safety Order.

13 86. Defendants failed to provide all recovery periods in violation of the applicable
14 General Industry Safety Order and California Labor Code sections 226.7, 516, and 1198.
15 Plaintiff and other non-party Aggrieved Employees are entitled to civil penalties pursuant to
16 Labor Code sections 558 and/or 2699(a), (f), and (g).

17 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
18 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

19 87. At all relevant times herein, California Labor Code section 226(a) provides that
20 every employer shall furnish each of his or her employees an accurate and complete itemized
21 wage statement in writing, including, but not limited to, the name and address of the legal
22 entity that is the employer, the inclusive dates of the pay period, total hours worked, and all
23 applicable rates of pay.

24 88. During the relevant time period, Defendants have knowingly and intentionally
25 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
26 inaccurate wage statements. For example, Defendants issued uniform wage statements to
27 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
28 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during

1 the pay period, including overtime rates of pay, and the corresponding number of hours
2 worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2),
3 226(a)(5), and 226(a)(9).

4 89. Because Defendants did not record the time Plaintiff and other non-party
5 Aggrieved Employees spent working off-the-clock, Defendants did not list the correct amount
6 of gross wages and net wages earned by Plaintiff and other non-party Aggrieved Employees in
7 compliance with section 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to
8 accurately list the total number of hours worked by Plaintiff and other non-party Aggrieved
9 Employees in violation of section 226(a)(2), and failed to list the applicable hourly rates of
10 pay in effect during the pay period and corresponding accurate number of work hours worked
11 at each hourly rate in violation of section 226(a)(9).

12 90. The wage statement deficiencies also include, without limitation, failing to list
13 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
14 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
15 only the last four digits of his or her social security number or an employee identification
16 number other than a social security number; failing to list the name and address of the legal
17 entity that is the employer; failing to list the inclusive dates of the period for which aggrieved
18 employees were paid; and/or failing to state all hours worked as a result of not recording or
19 stating hours worked off-the-clock.

20 91. California Labor Code section 1198 provides that the maximum hours of work
21 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
22 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
23 employment of any employees for longer hours than those fixed by the order or under
24 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
25 Wage Order, employers are required to keep accurate time records showing when the
26 employee begins and ends each work period and meal period. During the relevant time
27 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
28 and meal period start and stop times for Plaintiff and other non-party Aggrieved Employees,

1 in violation of section 1198. Furthermore, in light of Defendants' failure to provide other
2 non-party Aggrieved Employees with second 30-minute meal periods to which they were
3 entitled, Defendants kept no records of meal start and end times for second meal periods.

4 92. California Labor Code section 1174(d) provides that "[e]very person employing
5 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
6 employed and the ages of all minors" and "[k]eep, at a central location in the state or at the
7 plants or establishments at which employees are employed, payroll records showing the hours
8 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
9 applicable piece rate paid to, employees employed at the respective plants or
10 establishments. . . ." At all relevant times, and in violation of Labor Code section 1174(d),
11 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-
12 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto
13 as a result of failing to record the off-the-clock hours that they worked.

14 93. Because Defendants' violations of 226(a) and 1174(d) were committed against
15 Plaintiff and other non-party Aggrieved Employees, Plaintiff and other non-party Aggrieved
16 Employees are entitled to recover civil penalties pursuant to Labor Code sections 226.3,
17 1174.5, and/or 2699(a), (f), and (g).

18 **FAILURE TO PAY WAGES DURING EMPLOYMENT**
19 **VIOLATION OF LABOR CODE SECTION 204**

20 94. At all relevant times herein set forth, California Labor Code section 204
21 requires that all wages earned by any person in any employment between the 1st and the 15th
22 days, inclusive, of any calendar month, other than those wages due upon termination of an
23 employee, are due and payable between the 16th and the 26th day of the month during which
24 the labor was performed. Labor Code section 204 further provides that all wages earned by
25 any person in any employment between the 16th and the last day, inclusive, of any calendar
26 month, other than those wages due upon termination of an employee, are due and payable
27 between the 1st and the 10th day of the following month.

28 95. At all relevant times herein, California Labor Code section 204 also requires

1 that all wages earned for labor in excess of the normal work period shall be paid no later than
2 the payday for the next regular payroll period. Alternatively, at all relevant times herein,
3 Labor Code section 204 provides that the requirements of this section are deemed satisfied by
4 the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
5 more than seven (7) calendar days following the close of the payroll period.

6 96. During the relevant time period, Defendants willfully failed to pay Plaintiff and
7 other non-party Aggrieved Employees all wages due to them within any time period specified
8 by California Labor Code section 204 including, but not limited to, overtime wages; minimum
9 wages; and/or meal, rest, and recovery period premium wages.

10 97. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
11 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

12 **FAILURE TO PAY WAGES UPON TERMINATION**

13 **VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

14 98. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
15 that if an employer discharges an employee, the wages earned and unpaid at the time of
16 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
17 her employment, his or her wages shall become due and payable not later than seventy-two
18 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
19 his or her intention to quit, in which case the employee is entitled to his or her wages at the
20 time of quitting.

21 99. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved
22 Employees who are no longer employed by Defendants the earned and unpaid wages set forth
23 above, including but not limited to, overtime wages; minimum wages; and/or meal, rest, and
24 recovery period premium wages, either at the time of discharge, or within seventy-two (72)
25 hours of their leaving Defendants' employ.

26 100. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
27 who are no longer employed by Defendants their wages earned and unpaid at the time of
28 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates

1 Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are
2 therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or
3 2699(a), (f), and (g).

4 **UNLAWFUL REQUIREMENT FOR RELEASE OF CLAIMS AS A CONDITION TO**
5 **RECEIVING WAGES**
6 **VIOLATION OF LABOR CODE SECTION 206.5**

7 101. California Labor Code section 206.5 prohibits employers from requiring
8 employees to execute releases of a claim or right “on account of wages due, or to become due,
9 or made as an advance on wages to be earned, unless payment of those wages has been made.
10 A release required or executed in violation of the provisions of this section shall be null and
11 void as between the employer and the employee.”

12 102. During the relevant time period, Defendants required Plaintiff and other non-
13 party Aggrieved Employees to release their claims for unpaid wages as a condition to
14 receiving their paychecks. For example, on information and belief, Defendants required
15 Plaintiff and other non-party Aggrieved Employees to sign verifications at the end of each
16 shift, stating that they had taken all meal and rest periods, regardless if they were provided
17 with a compliant meal period or permitted or authorized to take a compliant rest period.
18 Defendants compelled Plaintiff and other non-party Aggrieved Employees to sign this false
19 verification when they, in fact, had not received all earned and unpaid wages, including
20 overtime wages; minimum wages; and/or meal, rest, and recovery period premium wages.

21 103. Defendants’ policy and practice of requiring Plaintiff and other non-party
22 Aggrieved Employees to release their claims for unpaid wages as a condition to receiving
23 their paychecks is in violation of California Labor Code section 206.5. Plaintiff and other
24 non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to
25 Labor Code sections 2699(a), (f), and (g).

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1 **COMPELLING PATRONIZATION**

2 **VIOLATION OF LABOR CODE SECTION 450**

3 104. California Labor Code section 450 provides that an employer may not “compel
4 or coerce any employee, or applicant for employment, to patronize his or her employer, or any
5 other person, in the purchase of anything of value.” An employer violates section 450 by
6 forcing an employee to patronize the employer’s business in the purchase of a company-
7 provided good.

8 105. During the relevant time period, Defendants had a company-wide policy of
9 requiring employees to purchase uniform items directly from the company. Upon information
10 and belief, Plaintiff and other non-party Aggrieved Employees were required to pay for uniform
11 items, including shirts, aprons, hats, and/or nametags bearing Defendants’ logo. For example,
12 Plaintiff was required to wear a hat for work, as part of his uniform, but was not provided one;
13 he ultimately purchased two (2) hats from Defendants for \$8.00 each.

14 106. Defendants’ conduct of compelling and/or coercing Plaintiff and other non-party
15 Aggrieved Employees to purchase goods from them is in violation of California Labor Code
16 section 450. Plaintiff and other non-party Aggrieved Employees are entitled to recover civil
17 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

18 **FAILURE TO PROVIDE SUITABLE SEATING**

19 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
20 **REGULATIONS, TITLE 8, SECTION 11070(14)(A)**

21 107. At all relevant times herein, California Labor Code section 1198 makes it
22 illegal to employ an employee under conditions of labor that are prohibited by the applicable
23 wage order. California Labor Code section 1198 requires that “. . . the standard conditions of
24 labor fixed by the commission shall be the . . . standard conditions of labor for employees.
25 The employment of any employee . . . under conditions of labor prohibited by the order is
26 unlawful.”

27 108. California Code of Regulations, Title 8, section 11070(14)(A) provides that
28 “[a]ll working employees shall be provided with suitable seats when the nature of the work

1 reasonably permits the use of seats.”

2 109. Plaintiff alleges that Defendants’ grocery stores are generally similar in their
3 layout and design and there was, and continues to be, space behind cash wraps to allow for the
4 presence and use of a seat or stool by other non-party Aggrieved Employees (with reasonable
5 or no modification to these work areas) during the performance of their work duties.
6 Defendants could have provided other non-party Aggrieved Employees with a seat or stool at
7 their cash wraps, but instead denied them seating and forced other non-party Aggrieved
8 Employees to stand throughout the day.

9 110. Other non-party Aggrieved Employees spent a substantial portion of their day
10 behind or at these cash wraps. The nature of the work of an employee performing cashier
11 duties can reasonably be accomplished from a seated position. However, Defendants
12 systematically, and on a company-wide basis, did not provide seats or stools at or near each
13 cash wraps, forcing other non-party Aggrieved Employees to stand throughout their work
14 shifts.

15 111. During the relevant time period, Defendants violated California Labor Code
16 section 1198 and California Code of Regulations, Title 8, section 11070(14)(A), because other
17 non-party Aggrieved Employees were not allowed to sit, even when it would not have
18 interfered with the performance of their duties, nor were they provided with suitable seats.
19 Other non-party Aggrieved Employees were assigned cashier duties, which were performed
20 from and connected to a cash wrap, and could have been performed from a seated position.
21 Other non-party Aggrieved Employees could have handled transactions at the cash registers
22 and provided customer service, while seated without interference to their ability to complete
23 these duties.

24 112. Defendants could have placed seats or stools at each cash wrap for use by other
25 non-party Aggrieved Employees with reasonable or no modification to these work areas.
26 However, on a company-wide basis, Defendants did not provide seats or stools at cash wraps.
27 Defendants’ management did not inform other non-party Aggrieved Employees that they were
28 allowed to sit down, provide any means for them to sit down, or mention any policy regarding

1 sitting.

2 113. As a result of Defendants' company-wide policy and/or practice of prohibiting
3 employees from sitting during their shifts and company-wide failure to provide suitable
4 seating, other non-party Aggrieved Employees were forced to stand during shifts and denied
5 seats. Defendants' failure to provide suitable seating to other non-party Aggrieved Employees
6 violated and continues to violate California Labor Code section 1198 and IWC Wage Order 7-
7 2001, Section 14(A).

8 114. Other non-party Aggrieved Employees are therefore entitled to recover civil
9 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

10 **FAILURE TO PROVIDE SUITABLE SEATING**
11 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
12 **REGULATIONS, TITLE 8, SECTION 11070(14)(B)**

13 115. At all relevant times herein, California Labor Code section 1198 makes it
14 illegal to employ an employee under conditions of labor that are prohibited by the applicable
15 wage order. California Labor Code section 1198 requires that “. . . the standard conditions of
16 labor fixed by the commission shall be the . . . standard conditions of labor for employees.
17 The employment of any employee . . . under conditions of labor prohibited by the order is
18 unlawful.”

19 116. California Code of Regulations, Title 8, section 11070(14)(B) provides that
20 “[w]hen employees are not engaged in the active duties of their employment and the nature of
21 the work requires standing, an adequate number of suitable seats shall be placed in reasonable
22 proximity to the work area and employees shall be permitted to use such seats when it does
23 not interfere with the performance of their duties.”

24 117. During the relevant time period, Defendants violated California Labor Code
25 section 1198 and California Code of Regulations, Title 8, section 11070(14)(B), because
26 Plaintiff and other non-party Aggrieved Employees were not allowed to sit, even during lulls
27 in their work duties, nor were they provided with suitable seats in reasonable proximity to
28 their work areas.

118. As stated, Plaintiff alleges that Defendants' California grocery stores are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Plaintiff and other non-party Aggrieved Employees during lulls in operation. Defendants could have provided Plaintiff and other non-party Aggrieved Employees with a seat or stool in their work areas, but instead denied Plaintiff and other non-party Aggrieved Employees suitable seating altogether and effectively forced Plaintiff and other non-party Aggrieved Employees to stand throughout the day.

119. Defendants did not provide Plaintiff and other non-party Aggrieved Employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Plaintiff and other non-party Aggrieved Employees engaged in duties in which the nature of the work required standing, Defendants denied them the use of seats nearby during lulls in their work duties. Moreover, Defendants did not inform Plaintiff and other aggrieved employees of their rights to a seat or stool under California law.

120. As a result of Defendants' company-wide policy and/or practice prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Plaintiff and other non-party Aggrieved Employees were forced to stand during shifts and denied seats. Defendants' failure to provide suitable seating to Plaintiff and other non-party Aggrieved Employees violated and continues to violate California Labor Code section 1198 and IWC Wage Order 7-2001, Section 14(B).

121. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES

VIOLATION OF LABOR CODE SECTION 2802

122. At all times herein set forth, California Labor Code section 2802 provides that

1 an employer must reimburse employees for all necessary expenditures and losses incurred by
2 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
3 to prevent employers from passing off their cost of doing business and operating expenses on
4 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
5 (2014). The applicable wage order, IWC Wage Order 7-2001, provides that: "[w]hen the
6 employer requires the use of tools or equipment or they are necessary to the performance of a
7 job, such tools and equipment shall be provided and maintained by the employer, except that
8 an employee whose wages are at least two (2) times the minimum wage may provide and
9 maintain hand tools and equipment customarily required by the particular trade or craft."

10 123. During the relevant time period, Defendants, on a company-wide basis,
11 required Plaintiff and other non-party Aggrieved Employees to wear uniforms bearing the
12 company logo (including shirts, aprons, hats, and/or nametags) on a daily basis, but only
13 provided their Plaintiff two uniform shirts. Additionally, Defendants had a company-wide
14 policy stating, "uniform shirts should be neat, clean, [and] in good repair . . . at all times"
15 which forced Plaintiff and other non-party Aggrieved Employees to launder their uniforms
16 frequently and incur expenses in doing so. Thus, Defendants failed to provide Plaintiff and
17 other non-party Aggrieved Employees with an adequate number of uniforms in relation to
18 their scheduled shifts and for the tasks they were required to perform, forcing Plaintiff and
19 other non-party Aggrieved Employees to incur laundry expenses for the upkeep of their
20 uniforms, as the nature of their work resulted in their uniforms becoming sweaty and/or dirty.
21 For example, Plaintiff washed his uniform shirts every other day, incurring additional laundry
22 expenses, in order to meet Defendants' policy and expectations for employee appearance.
23 Additionally, Plaintiff and other non-party Aggrieved Employees were required to pay out-of-
24 pocket and purchase directly from Defendants some of their uniform components, such as hats
25 and additional shirts, but were not reimbursed for these costs. Specifically, as mentioned
26 above, Plaintiff was required to wear a hat for work, as part of his uniform, but was not
27 provided one; he ultimately purchased two (2) hats from Defendants for \$8.00 each.

28 124. Defendants could have provided Plaintiff and other non-party Aggrieved

1 Employees with the actual tools for use on the job, such as an adequate number of uniforms
2 and/or laundering services, or, Defendants could have reimbursed employees for their uniform
3 and laundering expenses. Instead, Defendants passed these operating costs off onto Plaintiff
4 and other non-party Aggrieved Employees. At all relevant times, Plaintiff and other non-party
5 Aggrieved Employees did not earn at least two (2) times the minimum wage.

6 125. Defendants' company-wide policy and/or practice of passing on their operating
7 costs to Plaintiff and other non-party Aggrieved Employees violates California Labor Code
8 section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiff and
9 other non-party Aggrieved Employees for necessary business-related expenses and costs.

10 126. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
11 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

12 **REQUEST FOR JURY TRIAL**

13 Plaintiff requests a trial by jury.

14 **PRAYER FOR RELIEF**

15 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and
16 judgment against Defendants, jointly and severally, as follows:

17 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
18 (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

19 **As to the First Cause of Action**

20 2. That the Court declare, adjudge and decree that Defendants violated the
21 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
22 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
23 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516,
24 and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize
25 and permit all rest periods); 226.7, 516, and 1198 (by failing to provide all recovery periods);
26 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain
27 accurate payroll records); 201, 202, and 203 (by failing timely to pay all earned wages upon
28 termination); 204 (by failing timely to pay all earned wages during employment); 206.5 (by

1 requiring employees to execute a release of claims for wages due); 450 (by compelling and/or
2 coercing employees to patronize employer's business); 1198 (by failing to provide suitable
3 seating); and 2802 (by failing to reimburse business expenses).

4 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
5 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202,
6 203, 204, 206.5, 226(a), 226.7, 450, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198,
7 and 2802;

8 4. For attorneys' fees and costs pursuant to California Labor Code section
9 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
10 Labor Code sections 201, 202, 203, 204, 206.5, 226(a), 226.7, 450, 510, 512(a), 516, 1174(d),
11 1182.12, 1194, 1197, 1198, and 2802;

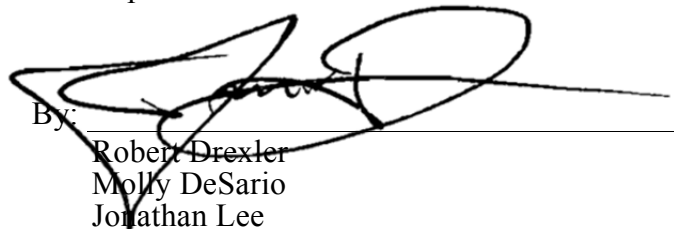
12 5. For pre-judgment and post-judgment interest as provided by law; and

13 6. For such other and further relief as the Court may deem equitable and
14 appropriate.

15
16 Dated: November 16, 2020

Respectfully submitted,

Capstone Law APC

18
19 By: 
20 Robert Drexler
21 Molly DeSario
Jonathan Lee

22 Attorneys for Plaintiff Jose Cortez
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26
27
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Exhibit 1



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Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

MAO SHIOKURA
310.712.8030 Direct
Mao.Shiokura@capstonelawyers.com

September 9, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/266>)

Subject: *Jose Cortez v. B & V Enterprises, Inc.*

Dear PAGA Administrator:

This office represents Jose Cortez in connection with his claims under the California Labor Code. Mr. Cortez was an employee of B & V ENTERPRISES, INC. ("BVE").

The employer may be contacted directly at the address below:

B & V ENTERPRISES, INC.
791 S. MISSION ROAD
LOS ANGELES CA 90023

Mr. Cortez intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Cortez seeks relief on behalf of himself, the State of California, and other persons who are or were employed by BVE as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

BVE employed Mr. Cortez as an hourly paid, non-exempt employee from approximately September 2019 to March 2020. Mr. Cortez worked for BVE as a Courtesy Clerk at the Super King Market in Anaheim, California. During his employment, Mr. Cortez typically worked six (6) hours or more per day, six (6) days per week. At the time his employment ended, Mr. Cortez was compensated approximately \$13.00 per hour. His job duties included, without limitation, collecting shopping carts from the parking lot, returning shopping carts to their station, and assisting customers by taking groceries to their vehicles.

BVE committed one or more of the following Labor Code violations against Mr. Cortez, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

BVE’s Company-Wide and Uniform Payroll and HR Practices

B & V ENTERPRISES, INC. is a California corporation that owns and operates a chain of Super King Markets grocery stores offering products from around the world, including Middle Eastern, European, Asian, Latin, and domestic brands. BVE operates approximately seven (7) locations in California. Upon information and belief, BVE maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Los Angeles, California, for all non-exempt, hourly paid employees working for BVE in California, including Mr. Cortez and other aggrieved employees. At all relevant times, BVE issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Cortez and other aggrieved employees, regardless of its location or position.

Upon information and belief, BVE maintains a centralized Payroll department at its corporate headquarters in Los Angeles, California, which processes payroll for all non-exempt, hourly paid employees working for BVE in California, including Mr. Cortez and other aggrieved employees. Further, BVE issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Cortez and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, BVE utilized the same methods and formulas when calculating wages due to Mr. Cortez and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

BVE willfully failed to pay all overtime wages owed to Mr. Cortez and other aggrieved employees. During the relevant time period, Mr. Cortez and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

¹ These facts, theories, and claims are based on Mr. Cortez’s experience and counsel’s review of those records currently available relating to Mr. Cortez’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Cortez reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

During the relevant period, BVE had, and continues to have, a company-wide policy and/or practice of understaffing its store locations. BVE's company-wide understaffing of its locations led to a failure to provide Mr. Cortez and other aggrieved employees with adequate meal period coverage. In conjunction with the lack of meal period coverage, BVE required Mr. Cortez and other aggrieved employees to remain on the store premises for their meal periods. Because Mr. Cortez and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes. Thus, BVE effectively maintained control over Mr. Cortez and other aggrieved employees during meal periods. As a result, Mr. Cortez and other aggrieved employees missed meal periods and/or had their meal periods interrupted, but were not compensated for this time.

Additionally, during the relevant period, BVE had a company-wide practice and/or policy of requiring Mr. Cortez and other aggrieved employees to continue to perform work-related tasks while off-the-clock, such as assisting customers in carrying their groceries to their cars. For example, 2-3 times per week, Mr. Cortez was directed by his supervisor to continue these work-related tasks after he had clocked out, which took 5-15 minutes per instance. Thus, BVE failed to track this time spent working before or after scheduled shifts, and Mr. Cortez and other aggrieved employees received no compensation for this time.

BVE knew or should have known that, as a result of these company-wide practices and/or policies, Mr. Cortez and other aggrieved employees were performing their assigned duties during meal periods and while off-the-clock, and were suffered or permitted to perform work for which they were not paid. BVE also knew, or should have known, that it did not compensate Mr. Cortez and other aggrieved employees applicable overtime rates of pay for overtime hours that they worked.

Because Mr. Cortez and/or other aggrieved employees occasionally worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Cortez and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. BVE's failure to pay Mr. Cortez and/or other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

Furthermore, BVE did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, BVE paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, BVE failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, BVE failed to pay all overtime wages by paying a lower overtime rate than required.

Mr. Cortez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 7 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or

permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11070(2)(G) (defining “Hours Worked”).

As set forth above, during the relevant time period, due to BVE’s company-wide policies of understaffing, resultant lack of meal period coverage, and requirement that employees to stay on the store premises during meal periods, Mr. Cortez and other aggrieved employees were forced to forego meal periods and/or had their meal periods interrupted by work. Also, as stated, BVE required that Mr. Cortez and other aggrieved employees perform work off-the-clock before and after their scheduled shifts, including assisting customers with their groceries. BVE also had, and continues to have, a company-wide policy and/or practice of requiring Mr. Cortez and other aggrieved employees to travel to attend mandatory training or meetings while off-the-clock. For example, Mr. Cortez was required to drive his own vehicle from Orange County to Los Angeles for more than an hour roundtrip for a mandatory training at BVE’s corporate headquarters, located at 791 S. Mission Road, in Los Angeles, California, but was not paid for the time he spent traveling to and from the meeting.

Moreover, BVE maintained and implemented a company-wide policy of requiring employees to travel to a medical facility on their own time and using their own personal vehicles or alternate transportation to undergo mandatory drug testing and/or physical examinations. At all times, BVE was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. BVE gave other aggrieved employees strict instructions to undergo drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or examinations for the sole benefit of BVE. Other aggrieved employees were required to travel in their own personal vehicles or obtain alternate transportation and spend time undergoing BVE’s mandatory drug tests and/or physical examinations. However, BVE did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities and undergoing the mandatory drug testing and/or physical examinations.

Thus, BVE did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, BVE did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1. Accordingly, BVE regularly failed to pay at least minimum wages to Mr. Cortez and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198.

Mr. Cortez and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee’s regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require

employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As stated, BVE has, and continues to have, a uniform policy and/or practice of understaffing, which resulted in a lack of meal period coverage and prevented Mr. Cortez and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. In addition, as mentioned above, BVE had a practice of requiring that Mr. Cortez and other aggrieved employees remain on the store premises during unpaid meal periods, which further caused Mr. Cortez and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, once per month, Mr. Cortez would have his meal periods interrupted by his supervisor directing him to help customers needing assistance carrying groceries to their vehicles. As a further example, once per month, Mr. Cortez missed his meal periods entirely due to the lack of meal period coverage when he worked alone because another employee had called out sick. As a result of BVE's practices and/or policies, Mr. Cortez and other aggrieved employees had to work through part or all of their meal periods, have their meal periods interrupted, and/or wait extended periods of time before taking meal periods.

Moreover, BVE did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. Mr. Cortez and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

BVE knew or should have known that as a result of its company-wide policies and/or practices, that Mr. Cortez and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. BVE further knew or should have known that it did not pay Mr. Cortez and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted.

Furthermore, BVE engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Cortez and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that BVE did pay meal period premium wages to other aggrieved employees, it did so at the incorrect rates. Because BVE did not properly calculate other aggrieved employees' regular rates of pay by including all remunerations, such as incentive pay and/or nondiscretionary bonuses, any premiums paid for meal period violations were also paid at an incorrect rate and resulted in an underpayment of meal period premium wages.

Accordingly, BVE failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Cortez and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an

applicable order of the California IWC. The applicable IWC Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties — including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, BVE regularly failed to authorize and permit Mr. Cortez and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, BVE’s company-wide policy and practice of understaffing and the resultant lack of rest period coverage, prevented Mr. Cortez and other aggrieved employees from being relieved of all duty to take their rest periods. BVE also failed to adhere to a schedule of rest periods, which, coupled with BVE’s failure to provide adequate rest period coverage, further led to Mr. Cortez and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Additionally, upon information and belief, during the relevant time period, BVE maintained implemented a company-wide on-premises rest period policy, which mandated that Mr. Cortez and other aggrieved employees remain on the work premises during their rest periods. Upon information and belief, BVE’s company-wide on-premises rest period policy prevented Mr. Cortez and other aggrieved employees from being relieved of all duties for rest periods and caused them to perform work during rest periods.

As a result of BVE’s practices and policies, Mr. Cortez and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, once a week, Mr. Cortez’s rest periods were cut short or interrupted by his supervisor asking him to return to work to assist customers in carrying their groceries to their vehicles.

BVE also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Cortez and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that BVE did pay rest period premium wages to other aggrieved employees, it did so at the incorrect rates. Because BVE did not properly calculate other aggrieved employees’ regular rates of pay by including all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, any premiums paid for rest period violations were also paid at an incorrect rate and resulted in an underpayment of rest period premium wages.

Accordingly, BVE failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Cortez and other aggrieved employees are entitled to civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 & California Code of Regulations Title 8, Section 3395 – Failure to Provide Heat Recovery Periods

California Labor Code section 226.7(a) defines “recovery period” to mean a cooldown period afforded an employee to prevent heat illness. California Labor Code section 226.7 provides that no employer shall require an employee to work during any recovery period mandated by an applicable order of the California IWC, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health. The applicable General Industry Safety Order provides that “[w]hen the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling.” Cal. Code of Reg., Title 8, § 3395(d)(1). Furthermore, “[t]he amount of shade present shall be at least enough to accommodate the number of employees on recovery or rest periods, so that they can sit in a normal posture fully in the shade without having to be in physical contact with each other.” *Id.* “Employees shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel the need to do so to protect themselves from overheating. Such access to shade shall be permitted at all times.” *Id.*

During the relevant time period, BVE violated California Labor Code section 226.7 and California Code of Regulations, Title 8, section 3395(d), because BVE failed to provide Mr. Cortez and other aggrieved employees with recovery periods. For example, Mr. Cortez was not permitted to take recovery periods in a shaded area while working outside, in the grocery store parking lot.

BVE also has engaged in a company-wide practice and/or policy of not paying all recovery period premiums owed when compliant recovery periods are not provided. Alternatively, to the extent that BVE did pay recovery period premium wages to other aggrieved employees, it did so at the incorrect rates. Because BVE did not properly calculate other aggrieved employees’ regular rates of pay by including all remunerations, such as incentive pay and/or nondiscretionary bonuses, any premiums paid for recovery period violations were also paid at an incorrect rate and resulted in an underpayment of recovery period premium wages.

Accordingly, BVE failed to authorize and permit all recovery periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Cortez and other aggrieved employees are entitled to civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. BVE has not provided Mr. Cortez and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, BVE has knowingly and intentionally provided Mr. Cortez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, BVE

issued uniform wage statements to Mr. Cortez and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, BVE violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because BVE did not record the time Mr. Cortez and other aggrieved employees spent working off-the-clock, BVE did not list the correct amount of gross wages and net wages earned by Mr. Cortez and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, BVE failed to accurately list the total number of hours worked by Mr. Cortez and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Also, because BVE did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, BVE did not list the correct amount of gross wages earned by other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by other aggrieved employees in violation of section 226(a)(5). BVE also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for premium wages, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments" Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), BVE willfully failed to maintain accurate payroll records for Mr. Cortez and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, BVE failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Cortez and other aggrieved employees, in violation of section 1198. Furthermore, in light of BVE's failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, BVE kept no records of meal start and end times for second meal periods.

Because BVE failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Cortez and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Cortez and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Cortez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, BVE failed to pay Mr. Cortez and other aggrieved employees all wages due to them, including, but not limited to, overtime wages; minimum wages; and meal, rest, and recovery period premium wages, within any time period specified by California Labor Code section 204.

Mr. Cortez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 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 or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

On information and belief, BVE has a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Mr. Cortez was terminated on or around March 16, 2020. However, BVE only provided him part of his earned wages on March 16, 2020, and then, only after Mr. Cortez asked about his missing wages, did BVE provide him with the remaining balance of his final wages approximately one week later, when BVE required him to pick up his final check. Thus, BVE failed to pay Mr. Cortez his full final wages immediately, in violation of Labor Code section 201. Additionally, BVE willfully failed to pay Mr. Cortez and other aggrieved employees who are no longer employed by BVE all their earned wages, including, but not limited to, overtime wages; minimum wages;

and meal, rest, and recovery premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving BVE's employ in violation of California Labor Code sections 201, 202, and 203.

Mr. Cortez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 206.5 – Release of Claims for Wages Due

California Labor Code section 206.5 prohibits employers from requiring employees to execute releases of a claim or right "on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee."

During the relevant time period, on information and belief, BVE required Mr. Cortez and other aggrieved employees to release their claims for unpaid wages as a condition to receiving their paychecks. For example, on information and belief, BVE required Mr. Cortez and other aggrieved employees to sign verifications at the end of each shift, stating that they had taken all meal and rest periods, regardless if they were provided with a compliant meal period or permitted or authorized to take a compliant rest period. BVE compelled Mr. Cortez and other aggrieved employees to sign this false verification when they, in fact, had not received all earned and unpaid wages, including overtime wages, minimum wages, and meal and rest period premium wages. BVE's policy and practice of requiring Mr. Cortez and other aggrieved employees to release their claims for unpaid wages as a condition to receiving their paychecks is in violation of California Labor Code section 206.5.

Mr. Cortez and other aggrieved employees are therefore entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, BVE implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo mandatory drug testing and/or physical examinations, but required them to do so at their own expense. As stated, BVE had a company-wide policy requiring that other aggrieved employees travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing and/or physical examinations. At all times, BVE was in control of scheduling the date and time for the testing and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations.

However, BVE did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities, for the time they spent undergoing the drug testing and/or physical examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. BVE's policy and/or practice of not paying for all costs other aggrieved employees incurred obtaining mandatory drug testing and/or physical examinations is in violation of California Labor Code section 222.5.

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 450 – Compelling Patronization

California Labor Code section 450 provides that an employer may not “compel or coerce any employee, or applicant for employment, to patronize his or her employer, or any other person, in the purchase of anything of value.” An employer violates section 450 by forcing an employee to patronize the employer’s business in the purchase of a company-provided good.

BVE had a company-wide policy of requiring employees to purchase uniform items directly from the company. Upon information and belief, Mr. Cortez and other aggrieved employees were required to pay for uniform items, including shirts, aprons, hats, and/or nametags bearing BVE’s logo. For example, Mr. Cortez was required to wear a hat for work, as part of his uniform, but was not provided one; he ultimately purchased two (2) hats from BVE for \$8.00 each.

BVE’s conduct of compelling and/or coercing Mr. Cortez other aggrieved employees to purchase goods from them is in violation of California Labor Code section 450. Mr. Cortez and/or other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(A) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11070(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

“The ‘nature of the work’ refers to an employee’s tasks performed at a given location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for.” *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). “Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s characteristics.” *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is “infeasible because no suitable seating exists.” *See id.*

BVE’s California grocery stores are generally similar in their layout and design and there was, and continues to be, space behind cash wraps to allow for the presence and use of a seat or stool by other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. BVE could provide other aggrieved employees with a seat or stool at its cash wraps, but instead denies employees seating and forces other aggrieved employees to stand throughout the day.

Other aggrieved employees spent a substantial portion of their day behind or at these cash wraps. The nature of the work of an employee performing cashier duties can reasonably be accomplished from a seated position. However, as set forth herein, BVE systematically, and on a company-wide basis, does

not provide seats or stools at or near cash wraps, forcing other aggrieved employees to stand throughout their work shifts.

BVE violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because other aggrieved employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. BVE's management did not inform other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of BVE's company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Mr. Cortez and other aggrieved employees were forced to stand during shifts and denied seats. BVE's failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 7-2001, Section 14(A).

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring BVE into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11070(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

The IWC states that section 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under section 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under section 14(B) during “lulls in operation.” *Id.*

As stated, BVE's California grocery stores are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Mr. Cortez and other aggrieved employees during lulls in operation. BVE could provide Mr. Cortez and other aggrieved employees with a seat or stool in its work areas, but instead denies employees seating and forces Mr. Cortez and other aggrieved employees to stand throughout the day.

BVE did not provide Mr. Cortez and other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Mr. Cortez and other aggrieved employees engaged in duties in which the nature of

the work required standing, BVE denied them the use of seats nearby during lulls in their work duties. Moreover, BVE did not inform Mr. Cortez and other aggrieved employees of their rights to a seat or stool under California law.

As a result of BVE's company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, and Mr. Cortez and other aggrieved employees were forced to stand during shifts and denied seats. BVE's failure to provide suitable seating to Mr. Cortez and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 7-2001, Section 14(B).

Mr. Cortez and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring BVE into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 7-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

During the relevant time period, BVE required Mr. Cortez and other aggrieved employees to wear uniforms bearing the company logo (including shirts, aprons, hats, and/or nametags) on a daily basis, but only provided their Mr. Cortez two uniform shirts and one hat. Additionally, BVE had a company-wide policy stating, "uniform shirts should be neat, clean, [and] in good repair . . . at all times" which forced Mr. Cortez and other aggrieved employees to launder their uniforms frequently and incur expenses in doing so. Thus, BVE failed to provide Mr. Cortez and other aggrieved employees with an adequate number of uniforms in relation to their scheduled shifts and for the tasks they were required to perform, forcing Mr. Cortez and other aggrieved employees to incur laundry expenses for the upkeep of their uniforms, as the nature of their work resulted in their uniforms becoming sweaty and/or dirty. For example, Mr. Cortez washed his uniform shirts every other day, incurring additional laundry expenses, in order to meet BVE's policy and expectations for employee appearance. Additionally, Mr. Cortez and other aggrieved employees were required to pay out-of-pocket and purchase directly from BVE some of their uniform components, such as hats and additional shirts, but were not reimbursed for these costs. Specifically, as mentioned above, Mr. Cortez was required to wear a hat for work, as part of his uniform, but was not provided one; he ultimately purchased two (2) hats from BVE for \$8.00 each.

Additionally, BVE, on a company-wide basis, failed to provide Mr. Cortez and other aggrieved employees with safety devices and safeguards such as protective raingear or rain jackets, to keep them safe in the workplace (*see infra*). For example, BVE only provided yellow jackets without a protective hood against rain; during inclement weather, Mr. Cortez and other aggrieved employees had continued to work outside with no protective wear for their shifts. Mr. Cortez was eventually forced to purchase his own waterproof jacket for \$25.00 in order to shield himself from the rain while he worked, but was not reimbursed for this work-related expense.

Furthermore, during the relevant time period, BVE had a company-wide policy of requiring other aggrieved employees to travel to medical facilities on their own time and using their personal vehicles to obtain mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. At all times, BVE was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. BVE gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or physical examinations for the sole benefit of BVE. Although BVE required other aggrieved employees to use their own vehicles or obtain alternate transportation to undergo drug testing and/or physical examinations, BVE never reimbursed them for their travel expenses.

BVE could have provided Mr. Cortez and other aggrieved employees with the actual tools for use on the job, such as an adequate number of uniforms and/or laundering services, safety devices and safeguards, and company vehicles, or could have reimbursed employees for their uniform and laundering expenses, costs of safety devices and safeguards, mileage, and travel expenses. Instead, BVE passed these operating costs off onto Mr. Cortez and other aggrieved employees. At all relevant times, Mr. Cortez and other aggrieved employees did not earn at least two (2) times the minimum wage.

Thus, BVE had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Cortez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

Violation of California Labor Code §§ 6401 and 6403 – Failure to Provide Safety Devices and Safeguards

California Labor Code section 6401 provides that employers must furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the employment and place of employment safe and healthy. California Labor Code Section 6401 further provides that an employer must do everything reasonably necessary to protect the life, safety and health of its employees. California Labor Code section 6403(a) requires that employers provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

BVE, on a company-wide basis, failed to provide Mr. Cortez and other aggrieved employees with safety devices and safeguards such as protective raingear or rain jackets, to keep them safe in the workplace. For example, BVE only provided yellow jackets without a protective hood against rain; during inclement weather, Mr. Cortez and other aggrieved employees had continued to work outside with no protective wear for their shifts. Mr. Cortez eventually purchased his own waterproof jacket for \$25.00 in order to protect himself from the rain, but ultimately contracted bronchitis due to the lack of protective wear.

BVE's failure to provide Mr. Cortez and other aggrieved employees with safety devices and safeguards, including basic personal protective equipment, for the workplace violates Labor Code sections 6401 and 6403. Mr. Cortez and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating

hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid . . .” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” BVE, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Cortez’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Cortez seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Cortez, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against BVE for violations of California Labor Code sections 201, 202, 203, 204, 206.5, 222.5, 226(a), 226.7, 450, 510, 512(a), 516, 558(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6401, and 6403.

Therefore, on behalf of all aggrieved employees, Mr. Cortez seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Mr. Cortez’s reasonable attempt to settle his dispute with BVE prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform BVE of Mr. Cortez’s aforementioned grievances and the proposed remedies as detailed below, while affording BVE a reasonable opportunity to satisfy Mr. Cortez’s demands.

Demand is hereby made that BVE shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. BVE shall pay Mr. Cortez and all other aggrieved employees employed by BVE at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. BVE shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked and provided lawful meal, rest, and recovery periods.
3. BVE shall conduct a survey or interview all current and former aggrieved employees in California who worked for BVE in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; the number of recovery periods which were not provided; and the number of employees who were required to pay for uniforms, uniform maintenance, safety devices and safeguards, mandatory medical examinations, travel, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. BVE shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512, 516, and 1198. BVE also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted

one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198. Additionally, BVE also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more recovery periods, as required by Labor Code sections 226.7, 516, and 1198.

5. BVE shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for BVE's benefit, including, but not limited to, costs of uniforms, uniform maintenance or laundering costs, safety devices and safeguards, mandatory medical examinations, and travel, as required by Labor Code sections 222.5 and 2802.
6. BVE shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. BVE shall provide Mr. Cortez and all aggrieved employees employed by BVE at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. BVE shall cease the practice of requiring aggrieved employees to release their claims for unpaid wages as a condition to receiving their paychecks (Labor Code section 206.5).
9. BVE shall cease the practice of forcing aggrieved employees to patronize BVE's business in the purchase of company-provided goods (Labor Code section 450).
10. BVE shall implement and provide suitable seating to all aggrieved employees.
11. BVE shall provide all aggrieved employees with safety devices and safeguards reasonably adequate to render the employment and place of employment safe, pursuant to Labor Code sections 6401 and 6403.
12. BVE shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
13. BVE shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, 1199, and 2699, and Wage Order No. 7-2001, section 20.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Mao Shiokura
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in black ink, appearing to read "Mao Shiokura". The signature is fluid and cursive, with a long, sweeping horizontal stroke at the end.

Mao Shiokura

Copy: B & V ENTERPRISES, INC. (via U.S. Certified Mail)

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7019 0700 0001 7653 2350

tone
LAW APC
ury Park East, Ste 1000
ss, CA 90067

B & V ENTERPRISES, INC.
791 S. MISSION ROAD
LOS ANGELES CA 90023

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- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
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2. Article Number (Transfer from service label)

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A. Signature

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☐ Agent

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B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

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