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Attorneys for Plaintiffs
BEN WA and ANITA REAVIS

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

BEN WA, an individual, on behalf of himself
and all others similarly situated;

Plaintiffs,

vs.

SAFEWAY INC., a Delaware corporation;
and DOES 1 through 100, inclusive,

Defendants.

Case No. RG20075295

CLASS ACTION

FIRST AMENDED COMPLAINT

- 1. FAILURE TO REIMBURSE
EMPLOYEE EXPENSES [LAB.
CODE § 2802]**
- 2. UNFAIR COMPETITION [BUS. &
PROF. CODE § 17200, *et seq.*]**
- 3. PENALTIES PURSUANT TO
LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT
("PAGA") [LAB. CODE §§ 2698, *ET
SEQ.*]**

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to Code of Civil Procedure section 410.10, because Plaintiffs are residents of the State of California, and Defendant Safeway Inc. and DOES 1 through 100 (collectively "Defendants") are qualified to do business in California and regularly conduct business in California.

2. Venue is proper in this judicial district pursuant to Code of Civil Procedure sections 395 and 395.5, because Defendants reside and maintain their principal place of

1 business in the County of Alameda, and because Defendants' unlawful policies and
2 practices that are the subject of this action were applied, at least in part, to Plaintiffs and
3 other persons similarly situated, in the County of Alameda.

4 **PLAINTIFFS**

5 3. Plaintiffs seek to represent a class consisting of all persons employed in any
6 of Defendants' retail stores in California at any time on or after September 24, 2016 (the
7 "Class").

8 4. More than two thirds of the members of the Class are citizens of California.

9 5. At all relevant times herein mentioned, Plaintiff Ben Wa:

10 a. Was employed by Defendants from approximately 2012 through
11 August of 2018 as a Second Assistant Manager and Third Person in Defendants' stores in
12 the California cities of Tracy, Manteca, Modesto, and Turlock; and

13 b. Was a member of the Class.

14 6. At all relevant times herein mentioned, Plaintiff Anita Reavis:

15 c. Was employed by Defendants from approximately 2007 to December 5,
16 2020 as a First Assistant Manager, and from December 5, 2020 to the present as a Cashier, in
17 Defendants' stores in the California cities of Carmel and Salinas; and

18 d. Was a member of the Class.

19 **CLASS ALLEGATIONS**

20 7. The persons who comprise the Class are so numerous that joinder with all
21 such persons is impracticable and the disposition of his claims will benefit the parties and
22 the Court. The claims of Plaintiffs are typical of the claims of the Class. Plaintiffs will
23 fairly and adequately protect the interests of the Class. Plaintiffs do not have any interests
24 that are antagonistic to the Class. Counsel for Plaintiffs are experienced, qualified, and
25 generally able to conduct complex class action litigation.

26 8. This Court should permit this action to be maintained as a class action
27 pursuant to Code of Civil Procedure section 382 for the following reasons:

28 a. The questions of law and fact common to the Class predominate over

1 any question affecting only individual members;

2 b. A class action is superior to any other available method for the fair
3 and efficient adjudication of the claims of the members of the Class;

4 c. The members of the Class are so numerous that it is impractical to
5 bring all members of the Class before the Court;

6 d. Plaintiff and the other members of the Class will not be able to obtain
7 effective and economic legal redress unless the action is maintained as a class action;

8 e. There is a community of interest in obtaining appropriate legal and
9 equitable relief for the common law and statutory violations and other improprieties alleged
10 herein, as well as in obtaining adequate compensation for the damages and injuries for
11 which Defendants are responsible in an amount sufficient to adequately compensate the
12 members of the Class for the injuries sustained;

13 f. Without class certification, the prosecution of separate actions by
14 individual members of the Class would create a substantial risk of the following:

15 i. Inconsistent or varying adjudications with respect to individual
16 members of the Class that would establish incompatible standards of conduct for
17 Defendants, and/or

18 ii. Adjudications with respect to the individual members that
19 would, as a practical matter, be dispositive of the interests of other members not parties to
20 the adjudications, or would substantially impair or impede their ability to protect their
21 interests, including but not limited to the potential for exhausting the funds available from
22 those parties who are, or may be, responsible Defendants; and

23 g. Defendants have acted, or refused to act, on grounds that are generally
24 applicable to the Class, thereby making final injunctive relief appropriate with respect to
25 the Class as a whole.

26 **DEFENDANTS**

27 9. Plaintiffs are informed and believe, and based on that information and belief
28 allege, that Defendant Safeway Inc. is, and at all relevant times herein mentioned:

- a. Was a duly organized Delaware corporation;
- b. Was duly qualified to conduct business, and was conducting business, in the State of California, including the County of Alameda; and
- c. Had its principal place of business in Pleasanton, California.

10. The true names and capacities, whether individual, corporate, partnership, associate, or otherwise, of Defendants Does 1 through 100, inclusive (“Doe Defendants”), are unknown to Plaintiff who therefore sues these Doe Defendants by such fictitious names pursuant to Code of Civil Procedure section 474. Plaintiff will seek leave to amend this complaint to allege their true names and capacities when they are ascertained.

11. Plaintiffs are informed and believe, and based on that information and belief allege, that each of the Defendants named in this complaint, including each of the Doe Defendants, is responsible in some manner for one or more of the events and happenings, and proximately caused the injuries and damages, hereinafter alleged.

12. Plaintiffs are informed and believe, and based on that information and belief allege, that each of the Defendants named in this complaint, including each of the Doe Defendants, is, and at all relevant times herein mentioned was, the agent, servant, and/or employee of each of the other Defendants, and that each Defendant was acting within the course and scope of his, her, or its authority as the agent, servant, and/or employee of each of the other Defendants. Consequently, each Defendant is jointly and severally liable to Plaintiff and the other members of the Class for the damages sustained as a proximate result of their conduct.

BACKGROUND ALLEGATIONS

13. Defendants are a supermarket chain that owned and operated several hundred grocery stores in California throughout the Class Period.

14. At all relevant times herein mentioned, Plaintiffs and the other members of the Class were subjected to an established policy that required them to use their personal cell phones to be available to receive, and to actually receive, work related communications via voice calls and text messages. This policy was part of an effort by Defendants to

1 minimize operating expenses and maximize profits by using technology to communicate in
2 the work place without paying for the technology, thereby reaping an illicit windfall by
3 unlawfully passing operating expenses on to employees.

4 **FIRST CAUSE OF ACTION**

5 **FAILURE TO REIMBURSE EMPLOYEE EXPENSES**

6 **[Labor Code § 2802]**

7 **(By Plaintiffs Against all Defendants)**

8 15. Plaintiffs reallege and incorporate by reference, as though fully set forth
9 herein, paragraphs 1 through 14, inclusive, of this First Amended Complaint.

10 16. Pursuant to California Labor Code section 2802, Defendants are required to
11 reimburse Plaintiffs and the other members of the Class for expenses incurred by them in
12 the performance of their job duties (which may include but are not limited to the following
13 expenses: vehicle usage and mileage and cell phone usage).

14 17. At all time relevant herein mentioned, Defendants had a policy and procedure
15 whereby Plaintiffs and the other members of the Class were required personally to incur
16 and pay for said expenses during the performance of their employment duties, all without
17 reimbursement from Defendants. Accordingly, Defendants failed to reimburse Plaintiffs
18 and the other members of the Class for business expenses incurred as a condition of and in
19 the performance of their job duties, as described above.

20 18. As a proximate result of the aforementioned violations, Plaintiffs and the
21 other members of the Class have suffered damages in amounts presently unknown to them
22 but which exceed the jurisdictional limits of this Court and which will be ascertained
23 according to proof at trial.

24 19. Pursuant to Labor Code section 2802, Plaintiffs and the other members of the
25 Class are further entitled to recover from Defendants, in addition to the full amount of the
26 expenses they incurred in the course of their job duties, interest thereon and reasonable
27 attorney's fees and costs.

28 ///

1 **SECOND CAUSE OF ACTION**
2 **FOR UNFAIR COMPETITION**

3 **[Business & Professions Code § 17200, *et seq.*]**

4 **(By Plaintiffs Against all Defendants)**

5 20. Plaintiffs reallege and incorporate by reference, as though fully set forth
6 herein, paragraphs 1 through 19, inclusive, of this First Amended Complaint.

7 21. Defendants fall within the definition of “person” under Business and
8 Professions Code section 17021.

9 22. By and through the conduct described herein, Defendants engaged in unfair,
10 unlawful, and fraudulent practices, in violation of Business and Professions Code sections
11 17200, *et seq.*, and thereby deprived Plaintiffs and the other members of the Class of
12 fundamental rights and privileges guaranteed to all California employees under the Labor
13 Code.

14 23. By and through their unfair, unlawful, and fraudulent business practices
15 described herein, Defendants obtained valuable property, money, and services from
16 Plaintiffs and the other members of the Class and thereby deprived them of valuable rights
17 and benefits guaranteed by law, all to their detriment.

18 24. All of the acts described herein as violations of, among other things, the
19 Labor Code and Industrial Welfare Commission Wage Orders, are unlawful and in
20 violation of public policy. Said acts are in addition immoral, unethical, oppressive, and
21 unscrupulous, constituting unfair, unlawful, and fraudulent business practices in violation
22 of Business and Professions Code sections 17200, *et seq.*

23 25. Plaintiffs and the other members of the Class are entitled to, and do seek,
24 such relief as may be necessary to restore to them the money and property that Defendants
25 have unfairly, unlawfully, and fraudulently acquired from them by means of the above-
26 described business practices.

27 26. Plaintiffs and the other members of the Class are further entitled to, and do,
28 seek a declaration that the above-described business practices are unfair, unlawful, and

1 fraudulent and that injunctive relief should issue restraining Defendants from engaging in
2 any of the above-described unfair, unlawful, or fraudulent business practices in the future.

3 27. Plaintiffs and the other members of the Class have no plain, speedy, or
4 otherwise adequate remedy at law to redress the injuries which they have suffered as a
5 consequence of the unfair, unlawful, and fraudulent business practices of Defendants. As a
6 result of the unfair, unlawful, and fraudulent business practices described herein, Plaintiffs
7 and the other members of the Class have suffered and will continue to suffer irreparable
8 harm unless Defendants are restrained from continuing to engage in these unfair, unlawful,
9 and fraudulent business practices. In addition, Defendants should be required to pay
10 restitution of the unpaid wages to Plaintiffs and the other members of the Class.

11 **THIRD CAUSE OF ACTION**
12 **FOR PENALTIES PURSUANT TO**
13 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT (“PAGA”)**

14 **[CAL. LAB. CODE §§ 2698, *et seq.*]**

15 **(By Plaintiff Reavis Against All Defendants)**

16 28. Plaintiff Reavis realleges and incorporates by reference, as though fully set forth
17 herein, paragraphs 1 through 27, inclusive, of this First Amended Complaint, with exception of
18 the allegations in paragraphs 7 and 8 and the subparagraphs thereto.

19 29. Labor Code §§ 2698, *et seq.*, known as the Labor Code Private Attorneys
20 General Act of 2004 (hereinafter “PAGA” or “the Act”), expressly establishes that any
21 provision of the Labor Code that provides for a civil penalty to be assessed and collected
22 by the Labor and Workforce Development Agency (“LWDA”), or any of its departments,
23 divisions, commissions, boards agencies or employees for a violation of the Labor Code,
24 may be recovered through a civil action brought by an aggrieved employee on behalf of
25 himself or herself, and other current or former employees.

26 30. Plaintiff Reavis and all other persons employed in any of Defendants’ retail
27 stores in California at any time on or after January 22, 2020 are “aggrieved employees,” as
28 defined by Labor Code § 2699, in that one or more of the violations alleged herein was

1 committed against them, and each of them.

2 31. Pursuant to PAGA, Plaintiff Reavis and the other aggrieved employees seek to
3 recover civil penalties, including but not limited to penalties under California Labor Code
4 §§ 2698, *et seq.* from Defendants in a representative action for the violations alleged in this
5 Complaint, including but not limited to violations of California Labor Code § 2802. Plaintiff
6 Reavis and the other aggrieved employees are also entitled to an award of reasonable attorneys'
7 fees and costs pursuant to California Labor Code § 2699(g)(1).

8 32. By committing the violations alleged in this Complaint against Plaintiff
9 Reavis and the other aggrieved employees, Defendants committed the following violations:
10 Failure to to indemnify for all necessary expenditures or losses incurred in direct
11 consequence of the discharge of duty or obedience to the employer's directions, in violation
12 of Labor Code § 2802.

13 33. Labor Code § 2802(a) requires an employer to indemnify an employee for all
14 necessary expenditures or losses incurred by the employee in direct consequence of the
15 discharge of her his or her duties, or of his or her obedience to the directions of the
16 employer. Defendants failed to indemnify Plaintiff Reavis and the other Aggrieved
17 Employees for all business expenses and/or losses incurred in direct consequence of the
18 discharge of their duties while working under the direction of Defendants arising out of an
19 established policy that required them to use their personal cell phones to be available to
20 receive, and to actually receive, work related communications via voice calls and text
21 messages, in violation of Labor Code § 2802.

22 34. Pursuant to California Labor Code §§ 2699.3, Plaintiff Reavis gave written
23 notice on January 22, 2021 by online filing to the California Labor and Workforce Development
24 Agency ("LWDA") and by certified mail to Defendants of the specific provisions of the
25 California Labor Code and IWC Wage Orders alleged to have been violated, including the facts
26 and theories to support the alleged violations. A true and correct copy of the notice is attached
27 hereto as **Exhibit 1**. More than sixty-five (65) days have passed and the LWDA has not
28 provided notice to Plaintiff that it intends to investigate the alleged violations.

35. Therefore, Plaintiff has complied with all of the requirements set forth in California Labor Code § 2699.3 to commence a representative action under PAGA.

PRAYER

WHEREFORE, Plaintiffs on behalf of themselves and the other members of the Class and the Aggrieved Employees, pray for judgment as follows:

1. **On the First Cause of Action:**

- a. For damages; and
- b. For all applicable penalties.

2. **On the Second Cause of Action:**

- a. For restitution; and
- b. For injunctive relief.

3. On the Third Cause of Action:

- a. For all applicable penalties.
- On All Causes of Action:**
- a. For prejudgment interest;
 - b. For reasonable attorney's fees, costs, and expenses; and
 - c. For such other and further relief as this Court deems just and proper.

Dated: November 11, 2021

MATERN LAW GROUP, PC

By:

MATTHEW J. MATERN
MIKAEL H. STAHL

Attorneys for Plaintiffs
BEN WA and ANITA REAVIS

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Dated: November 11, 2021

Mike Stahl

MATTHEW J. MATERN
MIKAEL H. STAHL

Attorneys for Plaintiffs
BEN WA and ANITA REAVIS

Exhibit 1



MATERN LAW GROUP, PC

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January 22, 2021

Via Online Submission

California Labor & Workforce
Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

**Via Certified U.S. Mail – Return
Receipt Requested**

Safeway Inc.
11555 Dublin Canyon Road
Pleasanton, CA 94588

Albertsons Companies, Inc.
250 E. Parkcenter Blvd.
Boise, ID 83706

Re: Notice Pursuant to California Labor Code § 2699.3
Employee: Anita Reavis
Employer: Safeway Inc. and Albertsons Companies, Inc.

To Whom It May Concern:

This office represents Anita Reavis, who was employed by Safeway Inc. and Albertsons Companies, Inc. (collectively “Employers”). Pursuant to the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698, *et seq.*, this letter sets forth the specific provisions of the Labor Code and Industrial Welfare Commission (“IWC”) Wage Order No. 7-2001, which Ms. Reavis alleges Employers has violated, including the facts and theories to support the alleged violations. Please be advised that this letter constitutes written notice required by Labor Code § 2699.3, subdivisions (a)(1)(A) and (c)(1)(A) and may lead to immediate action against Employers in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against Employers. Under separate cover, our office is sending a check in the amount of \$75.00 to the Accounting Unit of the Department of Industrial

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Relations for the requisite filing fee, pursuant to Labor Code § 2699.3, subdivisions (a)(1)(B) and (c)(1)(B).

This letter also serves as notice of Ms. Reavis's demand for preservation and non-spoliation of evidence, requesting that all relevant documents and data be saved and that all electronic files and hard-copy documents that are related to Ms. Reavis's employment and potential claims must be preserved, even without a court order. Spoliation of evidence may result in legal claims for damages and monetary and evidentiary sanctions, including "adverse inference" jury instructions. Furthermore, intentional spoliation of evidence may carry criminal consequences pursuant to California Penal Code § 135. A detailed preservation and non-spoliation of evidence letter will follow under separate cover.

We are investigating a potential representative action on behalf of Employers' current and former non-exempt employees in the State of California regarding, among other things, the following violations: failure to provide meal and rest periods to employees in violation of Labor Code §§ 226.7, 512, and 558.1 and Wage Order No. 7-2001, §§ 11-12; failure to pay one additional hour of compensation at the employee's regular rate of compensation for each workday that a meal or rest period is not provided in violation of Labor Code § 226.7 and 558.1 and Wage Order No. 7-2001, §§ 11(B) and 12(B); failure to pay employees minimum wages for all hours worked in violation of Labor Code §§ 558.1, 1194, 1197, and 1197.1 and Wage Order No. 7-2001, § 4; failure to pay employees overtime wages in violation of Labor Code §§ 510, 558.1, and 1194 and Wage Order No. 7-2001, § 3; failure to timely pay employees all wages earned in violation of Labor Code § 204; willful failure to pay all wages due to discharged and quitting employees in violation of Labor Code §§ 201-203 and 558.1; failure to furnish accurate itemized wage statements to employees in violation of Labor Code § 226 and 558.1; failure to maintain required records pursuant to Labor Code §§ 226, 558.1, 1174, and 1174.5 and Wage Order No. 7-2001, § 7; and unlawful deductions and withholdings from employees' wages in violation of Labor Code §§ 221, 223, and 224.

The allegations made by Ms. Reavis on behalf of herself and all other similarly-situated current and former non-exempt employees of Employers in the State of California during the four years preceding the date of this notice are based on the following facts and theories: meal periods were less than thirty minutes, late (first meal periods starting after the fifth hour of work and/or second meal periods starting after the tenth hour), not given at all (including second meal periods after ten hours of work), or interrupted; rest periods were less than ten minutes, not provided, interrupted, and/or late; employees were not provided one hour of pay for each workday a meal period was not provided; employees were not provided one hour of pay for each workday a rest break was not authorized and permitted; and employees were not paid proper minimum and overtime wages for all hours worked as required by California law.¹ Given the overtime, meal period and rest period violations, and Employers' failure to compensate their employees fully, as set forth above, employees' wage statements were inaccurate and failed to comply with California

¹ "[T]he statement that defendant has not provided its employees with proper rest periods states both the facts and the theory." *Gutierrez v. California Commerce Club, Inc.* (2010) 187 Cal.App.4th 969, 979 n.5.

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law. In short, Employers' unlawful employment practices and policies have deprived their employees of earned wages and other compensation.

Failure to Provide Meal Periods

Pursuant to Labor Code §§ 226.7 and 512 and Wage Order No. 7-2001, § 11, an employer is required to provide meal periods to their employees. An employer must provide a meal period to any employee who works a shift of more than five (5) hours and a second meal period to any employee who works a shift of more than ten (10) hours. Furthermore, an employer must pay one extra hour of compensation for each workday a meal period is not provided.

If an employee is not relieved of all duty during a meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal period is permitted only when 1) the nature of the work prevents an employee from being relieved of all duty and 2) the parties have agreed in writing to on duty meal periods.

Ms. Reavis and other aggrieved employees are non-exempt employees and are entitled to the protections of California Labor Code §§ 226.7, 512, and 558.1 and Wage Order No. 7-2001, § 11. Employers failed to provide their employees timely and uninterrupted thirty-minute meal breaks. In fact, Ms. Reavis's and other aggrieved employees' meal periods were short (less than thirty minutes), late (first meal periods after the fifth hour of work and second meal periods after the tenth hour), interrupted, and/or missed. Employers consistently failed to provide Ms. Reavis and other aggrieved employees meal breaks because Ms. Reavis and other aggrieved employees were given too much work to perform to take meal breaks.

Employers further violated Labor Code § 226.7 and Wage Order No. 7-2001 by failing to compensate Ms. Reavis and other aggrieved employees who were not provided with meal periods in accordance with California law one additional hour of pay at each employee's regular rate of compensation for each workday a meal period was not provided.

Labor Code § 558.1 imposes liability for violating, or causing to violate, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802.

Failure to Authorize and Permit Rest Periods

Pursuant to Labor Code § 226.7 and Wage Order No. 7-2001, § 12, an employer is required to provide rest periods to its employees. An employer must provide a ten (10) minute rest period for every four (4) hours worked or major action thereof which insofar as practicable shall be in the middle of each work period. Furthermore, an employer must pay one extra hour of compensation for each workday a rest period is not authorized and permitted.

Ms. Reavis and other aggrieved employees were and are non-exempt employees and are entitled to the protections of Labor Code § 226.7 and 558.1 and Wage Order No. 7-2001. Employers failed to authorize and permit their employees to take required rest periods.

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Specifically, Employers maintained a policy or practice of not authorizing and permitting Ms. Reavis and other aggrieved employees to take one ten (10) minute rest break for shifts of three and one-half (3.5) to six (6) hours, a second rest break for shifts greater than six (6) hours and less than or equal to ten (10) hours, and a third rest break for shifts in excess of ten (10) hours. Employers consistently failed to authorize and permit Ms. Reavis and other similarly-situated individuals to take rest breaks because Ms. Reavis and other similarly-situated individuals were given too much work to perform to take rest breaks. When Ms. Reavis and other aggrieved employees were able to take rest breaks, Employers failed to authorize and permit Ms. Reavis and other aggrieved employees to take their rest breaks in the middle of each work period insofar as practicable.

Employers further violated Labor Code § 226.7 and Wage Order No. 7-2001, § 12 by failing to pay Ms. Reavis and other aggrieved employees one additional hour of pay at each employee's regular rate of compensation for each workday a rest period was not authorized and permitted.

Labor Code § 558.1 imposes liability for violating, or causing to violate, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802.

Failure to Pay Minimum Wages

Pursuant to Labor Code §§ 558.1, 1194, and 1197 and Wage Order No. 7-2001, § 4, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

Ms. Reavis and other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 558.1, 1194, and 1197 and Wage Order No. 7-2001, § 4. Employers failed to pay Ms. Reavis and other aggrieved employees minimum wages for all hours worked by, among other things: requiring, suffering, or permitting Ms. Reavis and other similarly-situated individuals to work off-the-clock; requiring, suffering, or permitting Ms. Reavis and other aggrieved employees to work through their meal breaks but not compensating them for this time; illegally and inaccurately recording time worked by Ms. Reavis and other aggrieved employees; failing to properly maintain Ms. Reavis's and other aggrieved employees' records; failing to provide accurate itemized wage statements to Ms. Reavis and other aggrieved employees for each pay period; and other methods to be discovered.

Labor Code § 558.1 imposes liability for violating, or causing to violate, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802.

Employers' conduct violates Labor Code §§ 558.1, 1194, and 1197 and Wage Order No. 7-2001, § 4.

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Failure to Pay Overtime Wages

Pursuant to California Labor Code §§ 510 and 1194 and Wage Order No. 7-2001, § 3, an employer must compensate its employees for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive work day, with double time for all hours worked in excess of eight (8) hours on the seventh day of any workweek, or after twelve (12) hours in any workday.

Ms. Reavis and other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 510, 558.1, and 1194 and Wage Order No. 7-2001. Employers failed to compensate Ms. Reavis and other aggrieved employees for all overtime hours worked as required under the foregoing provisions of the Labor Code and IWC Wage Order by, among other things: failing to pay overtime at one and one-half (1 ½) times or double the regular rate of pay as provided by Labor Code §§ 510, 558.1, and 1194 and Wage Order No. 7-2001, § 3; requiring, suffering, or permitting Ms. Reavis and other aggrieved employees to work off-the-clock; requiring, suffering, or permitting Ms. Reavis and other aggrieved employees to work through meal periods but not compensating them for this time; illegally and inaccurately recording time worked by Ms. Reavis and other aggrieved employees; failing to properly maintain Ms. Reavis's and other aggrieved employees' records through falsifying hours worked; failing to provide accurate itemized statements to Ms. Reavis and other aggrieved employees for each pay period; and other methods to be discovered.

In violation of California law, Employers has refused to perform their obligations to compensate Ms. Reavis and other aggrieved employees for all wages earned and all hours worked. Employers' conduct violates Labor Code §§ 510, 558.1, and 1194 and Wage Order No. 7-2001, § 3.

Labor Code § 558.1 imposes liability for violating, or causing to violate, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802.

Failure to Timely Pay All Wages Earned

Pursuant to Labor Code § 204, an employer must pay its employees at least twice a month for all wages earned during the preceding pay period. Labor Code § 204 provides that labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. An employer using an alternate payday schedule must pay wages within seven calendar days of the end of the payroll period in which the wages were earned.

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Employers failed to pay Ms. Reavis and other aggrieved employees on their regularly scheduled payday for all work performed during the preceding pay period. Specifically, Employers required Ms. Reavis and other aggrieved employees to work off-the-clock without compensation and required Ms. Reavis and other aggrieved employees to work through required meal breaks without compensation. Additionally, Employers failed to pay Ms. Reavis and other aggrieved employees premium wages owed for each workday a meal periods was not provided and each workday a rest period was not authorized and permitted.

Employers also failed to pay Ms. Reavis and other aggrieved employees for the overtime wages they earned in violation of Labor Code § 204. Labor Code § 204 requires an employer to pay overtime wages no later than the payday for the next regular payroll period following the payroll period in which the overtime wages were earned. Employers knew it was required to pay overtime wages, yet on many occasions failed to pay Ms. Reavis and other aggrieved employees overtime wages on any payday.

Failure to Pay All Wages Due Upon Separation

Pursuant to Labor Code § 201, 202, and 203, an employer is required to pay all earned and unpaid wages to an employee upon separation. Labor Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately. Pursuant to Labor Code § 202, an employer is required to pay all accrued wages due to an employee no later than 72 hours after the employee quits his or her employment, unless the employee provided 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.

Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the employee at the same rate for up to thirty (30) days.

Employers willfully failed to pay accrued wages and other compensation to Ms. Reavis and other aggrieved employees in accordance with Labor Code §§ 201, 202, and 558.1. Because Employers required Ms. Reavis and other aggrieved employees to work off-the-clock without compensation and through required meal breaks without compensation and failed to pay Ms. Reavis and other aggrieved employees the premium wages for all meal periods which were not provided and all rest periods which were not authorized or permitted, Employers failed and continue to fail to pay the full earned and unpaid wages due to Ms. Reavis and other aggrieved employees upon separation.

Labor Code § 558.1 imposes liability for violating, or causing to violate, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226 requires every employer to furnish each of its employees an accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) 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, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Employers failed to provide Ms. Reavis and other aggrieved employees with timely and accurate itemized wage statements in writing showing each employee's gross wages earned, total hours worked, all deductions made, net wages earned, the name and address of the legal entity or entities employing Ms. Reavis and other aggrieved employees, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate, including without limitation the hourly rates and hours worked that formed the basis for overtime adjustments resulting from bonus pay, in violation of Labor Code § 226 and 558.1 and Wage Order No. 7-2001, § 7.

Specifically, Employers had knowledge it was not providing their employees with proper meal and rest breaks; nevertheless, Employers knowingly failed to include in the wage statements the extra hour of compensation owed for each workday a meal break was not provided and each workday a rest break was not authorized and permitted. As a result, Ms. Reavis and other aggrieved employees lost wages. In addition, Employers had knowledge they were requiring employees to work off-the-clock and were not properly compensating their employees for all hours worked, yet Employers knowingly failed to include this time worked in the wage statements. As a result, Ms. Reavis and other aggrieved employees lost wages. Employers also did not properly calculate the regular rate of pay of Ms. Reavis and other aggrieved employees. As a result, Ms. Reavis's and other aggrieved employees' wage statements did not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

Labor Code § 558.1 imposes liability for violating, or causing to violate, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802.

Failure to Maintain Required Records

Employers failed to maintain records as required under Labor Code §§ 226, 558.1, and 1174 and Wage Order No. 7-2001, § 7, including but not limited to the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods; time

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records showing when each employee begins and ends each work period; and accurate itemized statements.

Specifically, Employers had knowledge they were not providing their employees with proper meal and rest breaks; nevertheless, Employers knowingly failed to include in the wage statements the extra hour of compensation owed for each workday a meal break was not provided and each workday a rest break was not authorized and permitted. In addition, Employers had knowledge it was requiring employees to work off-the-clock and were not properly compensating their employees for all hours worked, yet Employers knowingly failed to include this time worked in the regular rate of pay of aggrieved employees.

Labor Code § 558.1 imposes liability for violating, or causing to violate, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802.

Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties

Labor Code § 2802(a) requires an employer to indemnify an employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer. Employers failed to indemnify Ms. Reavis and other aggrieved employees for all business expenses and/or losses incurred in direct consequence of the discharge of their duties while working under the direction of Employers, including but not limited to expenses for uniforms expenses, cell phone usage, and other employment-related expenses, in violation of Labor Code § 2802.

Additionally, Labor Code § 558.1 imposes liability for violating, or causing to violate, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802.

This notice is hereby given to Employers and any and all related and/or alter ego companies, corporations, partnerships, and/or business entities, as well as against any and all officers, owners, directors, managers, managing agents, or entities who are or may be liable under California law for any of the violations alleged herein as to any locations or employees who worked at any time in the State of California.

This notice is made on behalf of all persons who are, were, or will be non-exempt employees of Employers, or any related or alter-ego company, corporation, partnership, and/or business entity at any time on or after a date four years prior to the date of this letter in the State of California.

This notice shall be construed as extending without limitation to any past, present, future, or continuing violation of the Labor Code, the applicable IWC Wage Order, or any applicable

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regulation which might be discovered as a result of a reasonable and diligent investigation made pursuant to this notice.

This notice shall further represent Ms. Reavis's reasonable attempt to settle her dispute with Employers prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to apprise Employers of Ms. Reavis's aforementioned grievances and the proposed remedies as detailed below, while affording Employers reasonable opportunity to meet Ms. Reavis's demands.

Demand is hereby made that Employer shall agree, in writing received at this office no later than 30 calendar days from the postmark date of this notice, as follows:

1. Employers shall pay Ms. Reavis and all other similarly-situated persons employed by Employers at any time during the past 48 months back pay and compensation for the above-referenced violations.
2. Employers shall comply with all California labor laws and ensure that their non-exempt employees are paid proper overtime compensation and given required meal and rest periods.
3. Employers shall conduct a survey or interview all current and former non-exempt employees in California during the past 48 months to obtain information from them regarding the number of meal breaks which were not provided, the number of rest breaks which were not authorized and permitted, and the and the number of employees who were required to pay for uniforms expenses or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. Employers shall pay each employee one hour of pay for each workday he or she was not authorized and permitted one or more rest periods, as required by Labor Code § 226.7. Employers also shall pay each employee one hour of pay for each workday he or she was not provided one or more and meal periods, as required by Labor Code § 226.7.
5. Employers shall reimburse those employees who were forced to pay for any business expenses incurred for Employers' benefit, including but not limited to uniform expenses.
6. Employers shall pay waiting time penalties, equal to thirty days of pay, to each former employee who was not paid all wages due as described herein.
7. Employers shall pay accrued interest to all employees at the rate of ten percent per annum for said unpaid wages.
8. Employers 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 § 2698 *et seq.*, including but not limited to penalties under Labor Code §§ 210, 225.5, 226.3, 558, 1174.5, 1197.1, 1199 and 2699 and Wage Order No. 7-2001, § 20.

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If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please notify this office of that decision by certified mail addressed to Matern Law Group, PC, 1230 Rosecrans Avenue, Suite 200, Manhattan Beach, California 90266. Additionally, please advise us if the Agency or Employers require additional information regarding Ms. Reavis's complaints.

Thank you for your prompt attention to this matter.

Very truly yours,

MATERN LAW GROUP, PC



Mikael H. Stahle

1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California. I am over the age of
3 18 years, and not a party to this action. My business address is 1230 Rosecrans Avenue, Suite
4 200, Manhattan Beach, California 90266.

5 On **December 2, 2021**, I served the following document or documents:

6 **FIRST AMENDED COMPLAINT**

7 ☒ **By e-mail or electronic transmission.** I caused the documents to be sent to the person
8 at the e-mail addresses listed below. I did not receive, within a reasonable time after the
9 transmission, any electronic message or other indication that the transmission was
10 unsuccessful.

11 Joan B. Tucker Fife
jfife@winston.com
12 **WINSTON & STRAWN LLP**
101 California Street
13 San Francisco, CA 94111-5894
Telephone: (415) 591-1000
14 Facsimile: (415) 591-1400

Attorneys for Defendant SAFEWAY INC.

15 Susan B. Mcinerney, Esq.
smcinerney@winston.com
16 Tristan R. Kirk, Esq.
tkirk@winston.com
17 **WINSTON & STRAWN LLP**
18 333 S. Grand Avenue
19 Los Angeles, CA 90071-1543
20 Telephone: (213) 615-1700
21 Facsimile: (213) 615-1750

22 I declare under penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct.

24 Executed on **December 2, 2021** at La Mirada, California.

25
26
27 _____
28 Cathy Lozano
Type or Print Name

Cathy Lozano
Signature