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**ENDORSED
FILED
ALAMEDA COUNTY**

MAY 24 2021

CLERK OF THE SUPERIOR COURT
By ANDREL GOSPEL
Deputy

7 *Attorneys for Plaintiff, on behalf of the State of*
8 *California and Aggrieved Employees*

9 **SUPERIOR COURT OF CALIFORNIA**

10 **COUNTY OF ALAMEDA**

11 RACHEL MENDOZA, on behalf of herself, the
12 State of California, and Aggrieved Employees,

13 Plaintiff,

14 vs.

15 PAVILIONS MARKET; THE VONS
16 COMPANIES, INC.; ALBERTSONS
COMPANIES, INC.,

17 Defendants.

Case No. **RG21100503**

**COMPLAINT FOR PENALTIES
PURSUANT TO SECTIONS 2699(a) AND
(f) OF THE CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT
AND DEMAND FOR JURY TRIAL**

Filed By Fax

1 Plaintiff Rachel Mendoza (“Plaintiff”), on behalf of herself, the State of California, and
2 Aggrieved Employees, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this Labor Code Private Attorneys General Act (“PAGA”) enforcement
5 action behalf of the State of California to collect statutory penalties as a result of Defendants
6 Pavilions Market’s (“Pavilions”), The Vons Companies, Inc.’s (“Vons”), and Albertsons Companies,
7 Inc.’s (“Albertsons”) (collectively, “Defendants”) systematic violations of California labor law with
8 respect to Defendants’ current and former non-exempt hourly employees who work and worked in
9 the State of California (“Aggrieved Employees”).

10 2. Defendants maintain a longstanding policy and practice of failing to properly
11 compensate non-exempt hourly employees for all hours worked by rounding down the amount of
12 time worked, failing to properly compensate for missed meal and rest periods, and failing to timely
13 compensate all due wages. These policies deny Plaintiff and Aggrieved Employees proper
14 compensation for all hours worked and meal and rest periods that comply with California law.

15 3. This PAGA action against Defendants challenges their policies and practices of: (1)
16 failing to properly compensate Plaintiff and Aggrieved Employees for all hours worked; (2) failing
17 to authorize and permit Plaintiff and Aggrieved Employees to take compliant meal breaks which
18 they are entitled by law; (3) failing to authorize and permit Plaintiff and Aggrieved Employees to
19 take rest breaks which they are entitled by law; (4) failing to provide Plaintiff and Aggrieved
20 Employees accurate, itemized wage statements; and (5) failing to timely pay Plaintiff and Aggrieved
21 Employees full wages when due.

22 4. Plaintiff, on behalf of the State of California, seeks to recover penalties for these
23 violations pursuant to Sections 2699(a) and (f) of the PAGA.

24 **PARTIES**

25 5. Plaintiff Rachel Mendoza is an individual over the age of eighteen, and at all times
26 mentioned in this Complaint was a resident of the State of California. Plaintiff Rachel Mendoza
27 worked as an E-Commerce Associate in the Long Beach location in California of Pavilions Market
28

1 from November 22, 2020 until January 19, 2021. Plaintiff's hourly rate of pay was \$15.00 per hour.
2 While her shifts varied in length, Plaintiff typically worked approximately 6 hours per shift and on
3 average worked 25 hours per week.

4 6. Plaintiff is informed, believes, and thereon alleges that Defendant Albertsons
5 Companies, Inc. is a Delaware corporation registered to do business in California and headquartered
6 in Boise, Idaho. According to its website, Albertsons is the second-largest supermarket chain in
7 North America and operates stores, including but not limited to, Vons and Pavilions, throughout
8 California and the United States. Albertsons may be served with process by serving its registered
9 agent, CT Corporation System, 818 West Seventh Street, Suite 930, Los Angeles, California 90017.

10 7. Plaintiff is informed, believes, and thereon alleges that Defendant The Vons
11 Companies, Inc. is a Michigan corporation registered to do business in California and headquartered
12 in Fullerton, California. According to its website, Vons is a supermarket division of Albertsons in
13 Southern California. Vons may be served with process by serving its registered agent, CT
14 Corporation System, 818 West Seventh Street, Suite 930, Los Angeles, California 90017.

15 8. Plaintiff is informed, believes, and thereon alleges that Defendant Pavilions Market is
16 a corporation headquartered in Garden Grove, California. According to its website, Pavilions is a
17 grocery banner used by Vons. Pavilions may be served with process by serving its registered agent,
18 CT Corporation System, 818 West Seventh Street, Suite 930, Los Angeles, California 90017.

19 9. Plaintiff is informed, believes, and thereon alleges that Defendants operate retail
20 grocery stores throughout California. Plaintiff is informed, believes, and thereon alleges that
21 Defendants employ Aggrieved Employees throughout California.

22 10. Plaintiff is informed, believes, and thereon alleges that Defendants directly control the
23 operations of their agents, managers, and employees throughout all its facilities in California.

24 11. At all relevant times, Defendants have done business under the laws of California, and
25 have employed Aggrieved Employees in this judicial district. Defendants are, each, a "person" as
26 defined in Labor Code § 18 and Business and Professions Code § 17201. Defendants are also, each,
27 an "employer" as that term is used in the Labor Code, and IWC Wage Orders.

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12. Venue is proper in this County pursuant to Code of Civil Procedure §§ 395(a) and/or

13. This Court has jurisdiction over Plaintiff's claims for penalties pursuant to the PAGA.

9

14. Defendants operate distributions centers and retail grocery stores throughout the United

15. Plaintiff worked at the Pavilions Market in Long Beach, California as a non-exempt

16. Aggrieved Employees were and are employed by Defendants and perform work

17. Aggrieved Employees report to a facility owned, operated, or managed by Defendants

18. Aggrieved Employees perform their jobs under Defendants' supervision and using

19. Aggrieved Employees are required to follow and abide by common work, time, pay,

20. At the end of each pay period, Aggrieved Employees receive wages from Defendants

21. Defendants pay Aggrieved Employees on an hourly rate basis

1 22. As a matter of policy and/or practice, Defendants also fail to authorize and/or permit
2 Plaintiff and Aggrieved Employees to take compliant meal and rest breaks. Plaintiff's duties as an E-
3 commerce Associate, which were set forth by Defendants included, but were not limited to, ensuring
4 that online stores are visually appealing, easy to navigate and furnished with accurate, up-to-date
5 content. Plaintiff's duties required her constant attention throughout the day. The realities of the
6 work assigned to Plaintiff and others meant that, as a result of Pavilions Market's working
7 environment, she and others were not able to take bona fide meal and rest breaks free from duty.
8 Plaintiff is informed, believes, and thereon alleges that this policy and practice applies to all
9 Aggrieved Employees throughout California.

10 23. Moreover, Plaintiff is informed, believes, and thereon alleges that Defendants maintain
11 a longstanding policy and practice of rounding down to the nearest quarter-hour the amount of hours
12 Plaintiff and Aggrieved Employees worked in a day and, as a result, Plaintiff and Aggrieved
13 Employees are not properly compensated for all hours worked. Plaintiff is informed, believes, and
14 thereon alleges that this policy and practice applies to all Aggrieved Employees throughout California.

15 24. Plaintiff is informed, believes, and thereon alleges that the same timekeeping system
16 and practices are used across all Defendants' facilities.

17 25. Defendants' common course of wage-and-hour abuse results in routinely failing to
18 maintain true and accurate records of the hours worked by Aggrieved Employees. In particular,
19 Defendants have failed to properly record the total amount of hours worked by Plaintiff and Aggrieved
20 Employees and have failed to properly record the missed meal and rest breaks of Plaintiff and
21 Aggrieved Employees.

22 26. Defendants do not provide Aggrieved Employees, including Plaintiff, with full payment
23 of all compensation owed twice during each calendar month.

24 27. Defendants' method of paying Plaintiff and Aggrieved Employees was willful and was
25 not based on a good faith and reasonable belief that their conduct complied with California law.

26 28. Defendants' conduct was willful, carried out in bad faith, and caused significant
27 damages to non-exempt employees in an amount to be determined at trial.

FIRST CAUSE OF ACTION
Penalties Pursuant to Labor Code § 2699(a)

29. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

30. Labor Code § 2699(a) provides:

Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions commissions, boards, agencies or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees.

31. Labor Code § 226(a) provides:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (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, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her 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. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least four years at the place of employment or at a central location within the State of California.

32. Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is

entitled to an award of costs and reasonable attorney's fees.

33. Labor Code § 226.3 provides:

Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.

34. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendants, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized wage statement in compliance with Labor Code § 226(a) in the amounts established by Labor Code §§ 226(e) and/or 226.3.

35. Labor Code §§ 226.7 and 512 require Defendants to authorize, permit, and/or make available timely and compliant meal and rest periods to its employees. Labor Code § 512 prohibits employers from employing an employee for more than five hours without a meal period of not less than thirty minutes, and from employing an employee more than ten hours per day without providing the employee with a second meal period of not less than thirty minutes. § 226.7 requires employers to authorize and permit employees to take ten minutes of net rest time per four hours, or major fraction thereof of work, and to pay employees their full wages during those rest periods. Unless the employee is relieved of all duty during the thirty-minute meal period and ten-minute rest period, the employee is considered "on duty" and the meal or rest period is counted as time worked under the applicable wage orders.

36. Labor Code § 558 imposes a civil penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages, and one hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages

37. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendants, alleged above, to authorize, permit, and/or make available timely and compliant meal

1 and rest periods in compliance with Labor Code §§ 226.7 and 512, in the amounts established by
2 Labor Code § 558.

3 38. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and
4 Workforce Development Agency (“LWDA”) with notice of her intention to file this claim on
5 December 3, 2020. At least sixty-five calendar days have passed without notice from the LWDA.
6 Plaintiff satisfied the administrative prerequisites to commence this civil action in compliance with
7 § 2699.3(a).

8 39. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
9 Employees, and herself as set forth in Labor Code § 2699(g)(i).

10 40. Defendants are liable to Plaintiff, Aggrieved Employees, and the State of California for
11 the civil penalties set forth in this Complaint. Plaintiff is also entitled to an award of attorneys’ fees
12 and costs as set forth below.

13 41. Wherefore, Plaintiff requests relief as hereinafter provided.

14 **SECOND CAUSE OF ACTION**
15 **Penalties Pursuant to Labor Code § 2699(f)**

16 42. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
17 herein.

18 43. Labor Code § 2699(f) provides:

19 For all provisions of this code except those for which a civil penalty is
20 specifically provided, there is established a civil penalty for a violation of
21 these provisions, as follows: . . . (2) If, at the time of the alleged violation,
22 the person employs one or more employees, the civil penalty is one hundred
dollars (\$100) for each aggrieved employee per pay period for the initial
violation and two hundred dollars (\$200) for each aggrieved employee per
pay period for each subsequent violation.

23 44. Labor Code § 204(a) provides that “[a]ll wages ... earned by any person in any
24 employment are due and payable twice during each calendar month....”

25 45. To the extent than any violation alleged herein does not carry penalties under Labor
26 Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for Plaintiff and
27 Aggrieved Employees each pay period in which he or she was aggrieved, in the amounts established

1 by Labor Code § 2699(f). Plaintiff seeks civil penalties under Labor Code § 2699(f) for Defendants'
2 violations of Labor Code § 204.

3 46. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff has provided the LWDA with
4 notice of her intention to file this claim. More than sixty-five calendar days have passed without
5 notice from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil
6 action in compliance with § 2699.3(a).

7 47. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
8 Employees, and herself as set forth in Labor Code § 2699(g)(i).

9 48. Defendants are liable to Plaintiff, Aggrieved Employees, and the State of California for
10 the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an
11 award of attorneys' fees and costs as set forth below.

12 49. Wherefore, Plaintiff requests relief as hereinafter provided.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff prays for relief as follows:

- 15 1. For the Court to declare, adjudge, and decree that Defendants have violated the
16 California Labor Code as alleged herein;
 - 17 2. For an order awarding the State of California, Plaintiff, and Aggrieved Employees
18 civil penalties provided under the PAGA;
 - 19 3. For an award of reasonable attorneys' fees as provided by the California Labor
20 Code § 2699(g)(1); California Code of Civil Procedure §1021.5; and/or any other
21 applicable law;
 - 22 4. For interest on penalties awarded as provided by applicable law;
 - 23 5. For all costs of suit; and
 - 24 6. For such other and further relief as this Court deems just and proper.
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Respectfully submitted,

Date: May 21, 2021



Carolyn H. Cottrell
Esther L. Bylsma
Jin K. Oh
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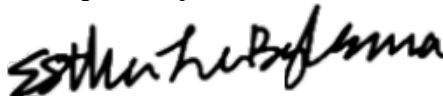
*Attorneys for Plaintiff, on behalf of the State of
California and Aggrieved Employees*

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled to
a jury.

Respectfully submitted,

Date: May 21, 2021



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*Attorneys for Plaintiff, on behalf of the State of
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