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Attorneys for Plaintiffs WILLIAM GARCIA RAYA, JR. and LAURIELLE CUTHBERTSON
on behalf of all the general public as private attorney general,

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

WILLIAM GARCIA RAYA, JR. and
LAURIELLE CUTHBERTSON on behalf of
the general public as private attorney general,

Plaintiffs,

v.

SFM, LLC, a California Limited Liability
Company; SF MARKETS, LLC, dba
SPROUTS FARMERS MARKET., a Delaware
Limited Liability Company; and DOES 1-50,
inclusive,

Defendants.

Case No. 21STCV18228
ASSIGNED FOR ALL PURPOSES TO:
JUDGE: Hon. David Sotelo
DEPT: 40

**[PROPOSED] FIRST AMENDED PAGA
REPRESENTATIVE ACTION
COMPLAINT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code §§ 2698 *et seq.*)**

COMES NOW Plaintiffs WILLIAM GARCIA RAYA, JR. and LAURIELLE CUTHBERTSON (“Plaintiffs”), on behalf the general public and all non-exempt aggrieved employees, acting on behalf of the California Attorney General as private attorney general, and assert claims against Defendants SFM, LLC, and SF MARKETS, LLC, dba SPROUTS FARMERS MARKET and DOES 1-50, inclusive (collectively “Defendants”) as follows:

I. INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of the general public as private attorney general and all other current and former aggrieved employees, to recover civil penalties and address an employer’s violations of the California Labor Code.

2. In this case, Defendants violated various provisions of the California Labor Code. As set forth below, Defendants implemented policies and practices which led to unpaid wages resulting from Defendant’s: (a) to accurately pay overtime wage, (b) failure to pay sick pay at the regular rate, (c) failure to provide meal periods for every work period exceeding more than ten (10) hours per day and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a meal period; (d) failure to provide rest breaks for every four hours or major fraction thereof worked and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a rest period; (e) failing to pay all wages earned and owed upon separation from Defendant’s employ, (f) failing to provide accurate itemized wage statements, and (g) for issuing payment of wages in the form of a non-Labor Code-compliant instrument. As a result Plaintiffs seek penalties under Labor Code 2698, *et. seq.* on behalf of the general public as private attorney general and all other aggrieved employees.

II. JURISDICTION AND VENUE

3. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all cases except those given by statute to other trial courts.” The statutes under which

1 this action is brought do not give jurisdiction to any other court.

2 4. This Court has jurisdiction over Defendants because, upon information and belief,
3 each Defendant either has sufficient minimum contacts in California, or otherwise intentionally
4 avails itself of the California market so as to render the exercise of jurisdiction over it by the
5 California Courts consistent with traditional notions of fair play and substantial justice.

6 5. Venue as to each Defendant is proper in this judicial district pursuant to Code of
7 Civil Procedure section 395. Defendants are doing business throughout California, including but
8 not limited to San Joaquin County, and each Defendant is within the jurisdiction of this Court for
9 service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiffs and
10 all other aggrieved employees within the State of California. Defendants employ numerous
11 aggrieved employees in in the State of California.

12 6. On information and belief, Defendants have conducted business within the State of
13 California during the purported liability period and continue to conduct business throughout the
14 State of California. The unlawful acts alleged herein have had a direct effect on Plaintiffs, and the
15 similarly situated non-exempt aggrieved employees within California.

16 7. The California Superior Court also has jurisdiction in this matter because on
17 information and belief there are no federal questions at issue, as the issues herein are based solely
18 on California statutes and law, including the California Labor Code, the IWC Wage Orders, the
19 California Code of Civil Procedure, the California Civil Code, and the California Business and
20 Professions Code.

21 8. On information and belief, during the statutory liability period and continuing to
22 the present ("liability period"), Defendant consistently maintained and enforced against
23 Defendant's Non-Exempt Aggrieved Employees, among others, the following unlawful practices
24 and policies, in violation of California state wage and hour laws: (a) to accurately pay overtime
25 wage, (b) failure to pay sick pay at the regular rate, (c) failure to provide meal periods for every
26 work period exceeding more than ten (10) hours per day and failure to pay an additional hour's of
27 pay or accurately pay an additional hour's of pay in lieu of providing a meal period; (d) failure to
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1 provide rest breaks for every four hours or major fraction thereof worked and failure to pay an
2 additional hour's of pay or accurately pay an additional hour's of pay in lieu of providing a rest
3 period; (e) failing to pay all wages earned and owed upon separation from Defendant's employ,
4 (f) failing to provide accurate itemized wage statements, and (g) for issuing payment of wages in
5 the form of a non-Labor Code-compliant instrument.

6 9. On information and belief, during the statutory liability period and continuing to
7 the present, Defendants have had a consistent policy of failing to provide its Non-Exempt
8 Employees within the State of California, including Plaintiffs, unfettered, uninterrupted, duty free
9 rest periods of at least (10) minutes per four (4) hours worked or major fraction thereof and failing
10 to pay such employees one (1) hour of pay at the employees regular rate of compensation for each
11 workday that the rest period is not provided, as required by California state wage and hour laws.

12 10. On information and belief, during the statutory liability period and continuing to
13 the present, Defendants have had a consistent policy of failing to accurately pay overtime wages
14 for hours worked while subject to the control of Defendants.

15 11. On information and belief, during the statutory liability period and continuing to
16 the present, Defendants have had a consistent policy of failing to accurately pay sick pay at the
17 regular rate.

18 12. On information and belief, during the statutory liability period and continuing to
19 the present (rest and meal period liability period), Defendants have had a consistent policy of
20 requiring its Non-Exempt Employees within the State of California, including Plaintiffs, to work
21 at least five (5) and or ten (10) hours without a meal period and failing to pay or accurately pay
22 such employees one (1) hour of pay at the employees regular rate of compensation for each
23 workday that the meal period is not provided, as required by California state wage and hour laws.

24 13. On information and belief, during the statutory liability period and continuing to
25 the present (rest and meal period liability period), Defendants have had a consistent policy of
26 requiring its Non-Exempt Employees within the State of California, including Plaintiffs, to work
27 in excess of four hours and or ten (10) hours without authorizing and permitting a rest period and
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1 failing to pay or accurately pay such employees one (1) hour of pay at the employees regular rate
2 of compensation for each workday that the rest period is not authorized and permitted, as required
3 by California state wage and hour laws.

4 14. On information and belief, during the statutory liability period and continuing to
5 the present, Defendants have had a consistent policy of failing to timely pay wages upon
6 separation.

7 15. On information and belief, during the statutory liability period and continuing to
8 the present, Defendants have failed to provide Plaintiffs and aggrieved employees accurate
9 itemized wage statements.

10 16. Plaintiffs on behalf of the general public as private attorney general and all other
11 aggrieved employees bring this action pursuant to Labor Code 2698, et. seq. for violations
12 enumerated under 2699.5 as follows: sections 201-203, 212, 213, 246, 510, 512, 558, 226, 226.3,
13 226.7, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, and seeking penalties, interest, attorneys'
14 fees and costs.

15 **III. PARTIES**

16 **A. Plaintiffs**

17 17. Plaintiff, WILLIAM GARCIA RAYA JR., was at all times relevant to this action,
18 a resident of California. Plaintiff was employed by Defendants in approximately May 2020 as a
19 Non-Exempt Employee and worked at Defendants' retail store during the liability period for
20 Defendants until his separation from Defendants' employ in approximately November 2020.
21 Plaintiff's duties included but were not limited to stocking products, maintaining the sales floor,
22 and maintaining the store's stock room.

23 18. Plaintiff, LAURIELLE CUTHBERTSON, was at all times relevant to this action,
24 a resident of California. Plaintiff was employed by Defendants in approximately May 2019 as a
25 Non-Exempt Employee and worked at Defendants' retail store during the liability period for
26 Defendants until her separation from Defendants' employ in approximately November 2020.
27 Plaintiff's duties included but were not limited to working the cashier register inside the store and
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1 handing customer transactions.

2 19. As Defendants' employee, Plaintiffs, and all other aggrieved employees, were
3 regularly required to and subsequently suffered:

- 4 a) perform work subject to the control of the employer without being compensated all
5 wages including overtime, all in violation of California labor laws, regulations, and the
6 Industrial Welfare Commission Wage Order ("IWC");
- 7 b) work without being permitted or authorized a minimum ten-minute rest period for
8 every four hours or major fraction thereof worked and not compensated one (1) hour of
9 pay at his regular rate of compensation for each workday that a rest period was not
10 provided, all in violation of California labor laws, regulations, and the Industrial
11 Welfare Commission Wage Orders ("IWC");
- 12 c) work in excess of six and ten hours per day without being provided meal periods and
13 not compensated one (1) hour of pay at the regular rate of compensation for each
14 workday that a meal period was not provided, all in violation of California labor laws,
15 regulations, and the Industrial Welfare Commission Wage Orders ("IWC");
- 16 d) not accurately paid sick leave at the regular rate; and
- 17 e) not provided accurate itemized wage statements.
- 18

19 20. On information and belief, Defendants willfully failed to pay all earned wages in
20 the form regular wages and overtime wages, and meal and rest period premium wages, to its
21 Non-Exempt Employees and members of the Representative Group; nor have Defendants
22 returned to Plaintiffs or members of the Representative Group, upon or after separation from
23 employment with Defendants, all wages earned and owing. Plaintiffs seek penalties under Labor
24 Code 2698, *et. seq.* on behalf of the general public as private attorney general and all other
25 aggrieved employees..

26 **B. Defendants**

27 21. Defendants SFM, LLC, and SF MARKETS, LLC, dba SPROUTS FARMERS
28 MARKET operates as a retail chain of grocery markets, across the U.S. including California.

1 Plaintiffs estimate there are in excess of 100 Non-Exempt Employees who work or have worked
2 for Defendants over the last year.

3 22. Other than identified herein, Plaintiffs are unaware of the true names, capacities,
4 relationships and extent of participation in the conduct alleged herein, of the defendants sued as
5 DOES 1 through 50, but is informed and believes and thereon alleges that said defendants are
6 legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by
7 such fictitious names. Plaintiffs will amend this complaint when their true names and capacities
8 are ascertained.

9 23. Plaintiffs are informed and believe and thereon allege that each Defendant, directly
10 or indirectly, or through agents or other persons, employed Plaintiffs and other members of the
11 Representative Group, and exercised control over their wages, hours, and working conditions.
12 Plaintiffs are informed and believe and thereon allege that each defendant acted in all respects
13 pertinent to this action as the agent of the other defendants, carried out a joint scheme, business
14 plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable
15 to the other defendants.

16 IV. GENERAL ALLEGATIONS

17 24. At all times set forth herein, Defendants employed Plaintiffs and other persons in
18 the capacity of non-exempt positions, however titled, throughout the state of California.

19 25. Plaintiffs are informed and believe Aggrieved Employees have at all times pertinent
20 hereto been Non-Exempt within the meaning of the California Labor Code and the implementing
21 rules and regulations of the IWC California Wage Orders.

22 26. Plaintiffs are informed and believe that all Aggrieved Employees are citizens of the
23 state of California.

24 27. Defendants continue to employ Non-Exempt Employees, however titled, in
25 California and implement a uniform set of policies and practices to all non-exempt employees, as
26 they were all engaged in the generic job duties of providing grocery market services at Defendants'
27 store locations.
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1 28. Plaintiffs are informed and believe, and thereon allege, that Defendants are and
2 were advised by skilled lawyers and other professionals, employees, and advisors with knowledge
3 of the requirements of California's wage and employment laws.

4 29. During the relevant time frame, Defendants compensated Plaintiffs and Aggrieved
5 Employees based upon an hourly rate.

6 30. On information and belief, during the relevant time frame, Plaintiffs and Aggrieved
7 Employees frequently worked well over eight (8) hours in a day and forty (40) hours in a work
8 week.

9 31. During the relevant time frame, Defendants failed to accurately account for bonuses
10 earned into Plaintiffs and Aggrieved Employees regular rate of pay for overtime purposes. As a
11 result, Defendants failed to accurately pay overtime wages to Plaintiffs and Aggrieved Employees.

12 32. On information and belief, Defendants' failed to accurately pay sick pay at
13 Plaintiffs and Aggrieved Employees' regular rates.

14 33. On information and belief, Defendants violated Labor Code sections 212 and 213
15 by issuing payment to Plaintiffs and Aggrieved Employees for their wages in a non-Labor Code-
16 compliant instrument. For instance, Defendants on occasion would issue gifts cards to Plaintiffs
17 and Aggrieved Employees to be included as a form of compensation.

18 34. Plaintiffs and the Aggrieved Employees were regularly required to work shifts in
19 excess of five hours without being provided a lawful meal period and over ten hours in a day
20 without being provided a second lawful meal period as required by law.

21 35. Indeed, during the relevant time, as a consequence of Defendants' staffing and
22 scheduling practices, lack of coverage, work demands, and Defendants' policies and practices,
23 Defendants frequently failed to provide Plaintiffs and the Aggrieved Employees timely, legally
24 complaint uninterrupted 30-minute meal periods on shifts over five hours as required by law.
25 Similarly, as a consequence of Defendants' staffing and scheduling practices, lack of coverage,
26 work demands, and Defendants' policies and practices, Defendants frequently failed to provide
27 Plaintiffs and the Aggrieved Employees legally compliant second meal periods on shifts over ten
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1 hours as required by law.

2 36. On information and belief, Plaintiffs and Aggrieved Employees did not waive their
3 rights to meal periods under the law.

4 37. Plaintiffs and the Aggrieved Employees were not provided with valid lawful on-
5 duty meal periods.

6 38. Despite the above-mentioned meal period violations, Defendants failed to
7 compensate Plaintiffs, and on information and belief, failed to compensate Aggrieved Employees,
8 one additional hour of pay at their regular rate as required by California law when meal periods
9 were not timely or lawfully provided in a compliant manner.

10 39. Further, Plaintiff and Aggrieved Employees received bonuses in the same pay
11 periods in which Plaintiff and Aggrieved Employees received meal period premium pay. However,
12 Defendants failed to adjust Plaintiff's and Aggrieved Employees' regular rates of pay by failing to
13 to incorporate the value of the bonus when calculating the meal period premium.

14 40. Plaintiffs are informed and believe, and thereon allege, that Defendants know,
15 should know, knew, and/or should have known that Plaintiffs and the other Aggrieved Employees
16 were entitled to receive premium wages based on their regular rate of pay under Labor Code §226.7
17 but were not receiving such compensation.

18 41. In addition, during the relevant time frame, Plaintiffs and the Non-Exempt
19 Employees were systematically not authorized and permitted to take one net ten-minute paid, rest
20 period for every four hours worked or major fraction thereof, which is a violation of the Labor
21 Code and IWC wage order.

22 42. Defendants maintained and enforced scheduling practices, policies, and imposed
23 work demands that frequently required Plaintiffs and Aggrieved Employees to forego their lawful,
24 paid rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
25 requisite rest periods were not timely authorized and permitted as a result of Defendants' failure
26 to provide relief for Plaintiffs and Aggrieved Employees to take their lawfully required breaks.
27

28 43. Despite the above-mentioned rest period violations, Defendants did not compensate

1 Plaintiffs, and on information and belief, did not pay Aggrieved Employees one additional hour of
2 pay at their regular rate as required by California law, including Labor Code section 226.7 and the
3 applicable IWC wage order, for each day on which lawful rest periods were not authorized and
4 permitted.

5 44. Defendants further failed to incorporate all bonuses earned and other remunerations
6 into Plaintiff's and Aggrieved Employees' regular rates of pay when calculating rest period
7 premiums.

8 45. Defendants also failed to provide accurate, lawful itemized wage statements to
9 Plaintiffs and the Aggrieved Employees in part because of the above specified violations. In
10 addition, upon information and belief, Defendants omitted an accurate itemization of total hours
11 worked, including premiums due and owing for meal and rest period violations, gross pay and net
12 pay figures from Plaintiffs and the Aggrieved Employees' wage statements. Defendants further
13 failed to include or itemize the gift card payments made to Plaintiffs and Aggrieved Employees.

14 46. Plaintiffs are informed and believe, and thereon alleges, that at all times herein
15 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
16 thereof for resignations without prior notice as the case may be) they had a duty to accurately
17 compensate Plaintiffs and Aggrieved Employees for all wages owed including overtime wages,
18 sick pay, meal and rest period premiums, and that Defendants had the financial ability to pay such
19 compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so in part
20 because of the above-specified violations.

21 47. Upon information and belief, Defendants knew and or should have known that it is
22 improper to implement policies and commit unlawful acts such as:
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24 (a) requiring employees to work four (4) hours or a major fraction thereof without
25 being provided a minimum ten (10) minute rest period and without compensating the employees
26 with one (1) hour of pay at the employees' regular rate of compensation for each workday that a
27 rest period was not provided;

28 (b) requiring employees to work in excess of five (5) hours or ten (10) hours per day

1 without being provided an uninterrupted thirty minute meal period and/or a second meal period,
2 and without compensating employees with one (1) hour of pay at the regular rate of compensation
3 for each workday that such a meal period was not provided;

4 (c) failing to pay Plaintiffs and Aggrieved Employees for accurately pay overtime
5 wages and sick pay owed;

6 (d) failing to timely pay Plaintiffs and Aggrieved Employees;

7 (e) failing to provide accurate itemized wage statements; and

8 (f) providing non-compliant wage compensation in the form of gift cards;

9 48. In addition to the violations above, and on information and belief, Defendants knew
10 they had a duty to compensate Plaintiffs and Aggrieved Employees for the allegations asserted
11 herein and that Defendants had the financial ability to pay such compensation, but willfully,
12 knowingly, recklessly, and/or intentionally failed to do so.

13 **V. REPRESENTATIVE CLAIMS**

14 **THE PRIVATE ATTORNEYS GENERAL ACT- LABOR CODE §§ 2698 et seq.**

15 49. Plaintiffs incorporate by reference and re-allege each and every allegation
16 contained above, as though fully set forth herein.

17 50. On August 26, 2021 Plaintiffs complied with notice requirements pursuant to Labor
18 Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit A**,
19 indicating that the LWDA and Defendants were put on notice of the claims alleged here and that
20 the notice requirement has been satisfied. Sixty five days have passed and the LWDA has not
21 indicated intent to investigate the claims. Therefore, Plaintiffs may proceed with this action in a
22 representative capacity. The substance and violations set forth in this Complaint of which the
23 LWDA was provided timely notice, Plaintiffs have also sent a copy of this PAGA Representative
24 Action Complaint to the LWDA.

25 51. Plaintiffs are an aggrieved employee as defined in Labor Code Section 2699(a).
26 Plaintiffs bring this cause of action on behalf of all current and former California Non-Exempt
27 Employees of Defendants.
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1 52. Pursuant to Labor Code section 2699(a) Plaintiffs seek to recover civil penalties for
2 which Defendants are liable due to numerous Labor Code violations as set forth in this Complaint,
3 including without limitation Labor Code section 201-203, 212, 213, 246, 510, 512, 558, 226,
4 226.3, 226.7, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, and 2698 *et seq.*, applicable IWC
5 Wage Orders and California Code of Regulations, Title 8, section 11000 *et. seq.*

6 53. At all times relevant, Plaintiffs and all other aggrieved employees regularly
7 performed non-exempt work in excess of 50% of the time, and thus, were subject to the meal and
8 rest break requirements of the applicable IWC wage order and the Labor Code.

9 54. Defendants violated Labor Code section 510, and 1194 by failing to accurately pay
10 overtime wages by failing to calculate bonuses into Plaintiffs' and Aggrieved Employees' regular
11 rates of pay for overtime purposes. Section 510 of the Labor Code codifies the right to overtime
12 compensation at the rate of one and one-half times the regular rate of pay for all hours worked in
13 excess of eight (8) hours in a day or forty (40) hours in a work week and to overtime compensation
14 twice the regular rate of pay for hours worked in excess of twelve (12) hours in a day or in excess
15 of eight (8) hours in a day on the seventh day of work in a particular work week

16 55. Defendants also failed to accurately pay sick pay at Plaintiffs and Aggrieved
17 Employees' regular rates. Labor Code § 246 provides that the employer shall calculate paid sick
18 leave by using one of two calculations: (1) "Paid sick time for nonexempt employees shall be
19 calculated in the same manner as the regular rate of pay for the workweek in which the employee
20 uses paid sick time, whether or not the employee actually works overtime in that workweek;" or
21 (2) "Paid sick time for nonexempt employees shall be calculated by dividing the employee's total
22 wages, not including overtime premium pay, by the employee's total hours worked in the full pay
23 periods of the prior 90 days of employment."

24 56. Whenever Defendant paid Plaintiffs and aggrieved employees sick time pursuant
25 to California Labor Code § 246, Defendant did so at the incorrect rate of pay. Defendant paid
26 Plaintiffs and the Aggrieved Employees at the base hourly rate of pay, as opposed to the regular
27 rate of pay, which would take into account and include non-discretionary wages, including, but
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1 not limited to, shift differentials and/or other incentive pay in the computation of their overtime
2 rate of pay, or by dividing the employees' total wages, not including overtime premium pay, by
3 the employees' total hours worked in the full pay periods of the prior 90 days of employment, as
4 required by Labor Code § 246. This resulted in the employees being underpaid for sick time, and
5 resulted in violations of California Labor Code §§ 201, 202, and 203, and other derivative Labor
6 Code violations, because Defendant did not pay, or timely pay, Plaintiffs and the unpaid wages for
7 work performed by them during their employment and at the end of their employment

8 57. On information and belief, Defendants violated Labor Code sections 212 and 213
9 by issuing payment to Plaintiffs and Aggrieved Employees for their wages in a non-Labor Code-
10 compliant instrument. For instance, Defendants on occasion would issue gifts cards to Plaintiffs
11 and Aggrieved Employees to be included as a form of compensation.

12 58. California Labor Code § 212 requires California employers to comply with a series
13 of provisions when issuing wages to employees. In short, the provisions of section 212(a)(1) forbid
14 an employer from issuing payment of wages in an instrument that is not (1) negotiable, (2) payable
15 in cash, (3) on demand, (4) without discount, (5) at an established place of business in the State,
16 (6) the name and address of which appears on the instrument, and (7) which place of business has
17 been prepared, by the deposit of funds, the establishment of credit, or by some arrangement or
18 understanding, to pay the money called for by the instrument. *See People v. Turner*, 154 Cal. App.
19 2d F. Supp. 883, 885-86 (1957).

20 59. Labor Code § 213 prohibits an employer from depositing wages due or to become
21 due or an advance on wages to be earned in an account in any bank, savings and loan association,
22 or credit union of the employee's choice with a place of business located in this state, provided
23 that the employee has voluntarily authorized that deposit. If an employer discharges an employee
24 or the employee quits, the employer may pay the wages earned and unpaid at the time the employee
25 is discharged or quits by making a deposit authorized pursuant to this subdivision, provided that
26 the employer complies with the provisions of this article relating to the payment of wages upon
27 termination or quitting of employment.
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1 60. Defendants violated Labor Code sections 512 and 226.7 for failing to provide
2 timely, uninterrupted first and second meal periods and requiring unlawful on duty meal periods,
3 or compensation in lieu thereof. Pursuant to Labor Code section 512, no employer shall employ
4 an employee for a work period of more than five (5) hours without providing a meal break of not
5 less than thirty (30) minutes in which the employee is relieved of all of his or her duties. An
6 employer may not employ an employee for a work period of more than ten (10) hours per day
7 without providing the employee with a second meal period of not less than thirty (30) minutes,
8 except that if the total hours worked is no more than twelve (12) hours, the second meal period
9 may be waived by mutual consent of the employer and the employee only if the first meal period
10 was not waived.

11 61. Defendants failed to provide Plaintiffs and all other aggrieved employees
12 uninterrupted duty free meal periods of not less than thirty (30) minutes. Defendants implemented
13 and enforced policies of on duty meal period practices which required employees to work during
14 their meal periods, to forego their meal periods, and/or to return to work from meal periods prior
15 to thirty (30) uninterrupted minutes. As a proximate result of the aforementioned violations,
16 Plaintiffs and all other aggrieved employees have been damaged in an amount according to proof
17 at time of trial.

18 62. Plaintiffs, and on information and belief, all aggrieved employees, were
19 systematically not permitted or authorized to take ten minute rest periods for every four hours
20 worked or major fraction thereof, which is a violation of the Labor Code and IWC wage order.
21 Plaintiffs and on information and belief, aggrieved employees, were not compensated with one
22 hour of wages for every day in which a rest period was missed or untimely as a result of
23 Defendants' policies, practices, or work demands. By failing to authorize and permit a ten-minute
24 rest period for every four hours or major fraction thereof worked per day by its Non-Exempt
25 Employees, and by failing to provide compensation for such non-provided or shortened rest
26 periods, as alleged above, Defendants willfully violated the provisions of Labor Code sections
27 226.7, 512 and the applicable IWC Wage Order.
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1 63. Defendants also willfully violated Labor Code sections 201-203 by failing to
2 provide all owed wages at separation from employment. Labor Code sections 201 and 202 require
3 Defendants to pay their employees all wages due either at time of firing, or within seventy-two
4 (72) hours of voluntary separation, if not sooner. Section 203 of the Labor Code provides that if
5 an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to
6 pay the subject employee's wages until the back wages are paid in full or an action is commenced.
7 The penalty cannot exceed 30 days of wages.

8 64. Plaintiffs and all other aggrieved employees who were separated from employment
9 are entitled to compensation for all forms of wages earned, including but not limited to
10 compensation overtime wages, sick pay, and for non-provided meal and rest periods, but to date
11 have not received such compensation, therefore entitling them to penalties under PAGA for
12 violations of Labor Code sections 201-203.

13 65. On information and belief, Defendants willfully failed to pay all wages due and
14 owing upon separation from employment. These wages include overtime wages, sick pay, and
15 meal and rest period premiums.

16 66. On information and belief, Defendants failed to provide accurate itemized wage
17 statements which failed to include all hours worked, including overtime, accurate accounting of,
18 the lawful meal and rest period premiums due and owing to Plaintiffs and the aggrieved employees,
19 and the address of the legal entity that is the employer pursuant to Labor Code section 226(a).
20 Defendants further failed to include or itemize the gift card payments made to Plaintiffs and
21 Aggrieved Employees.

22 67. Pursuant to Labor Code section 226.3, any employer who violates subdivision (a)
23 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
24 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
25 for each violation in a subsequent citation, for which the employer fails to provide the employee a
26 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.

27 68. Additionally, Defendants have no accurate records relating to aggrieved
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employees' work periods, meal periods, total daily hours worked, total hours worked per payroll period and applicable pay rates, in violation of Wage Order. Similarly, Defendants failed to maintain accurate records relating to hours worked daily in violation of Labor Code sections 1174(d), 1174.5.

69. As a result of Defendants' unlawful conduct, Plaintiffs and Aggrieved employees are entitled to penalties to the extent they were not paid at the prevailing wage rate for all hours worked.

70. Plaintiffs and the Representative Aggrieved Employees are entitled to recover Penalties and attorneys' fees and costs under Labor Code section 2698, et. seq.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants, as follows:

1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq.;
2. For reasonable attorneys' fees and costs; and
3. For such other and further relief as the Court deems proper.

Dated: August 26, 2021

JAMES HAWKINS APLC

By: _____

JAMES R. HAWKINS, ESQ.
GREGORY MAURO, ESQ.
MICHAEL CALVO, ESQ.

Attorneys for Plaintiffs WILLIAM GARCIA
RAYA JR. and LAURIELLE
CUTHBERTSON on behalf of the general
public as private attorney general