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MARCUS JAMES

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

MARCUS JAMES on behalf of himself, and all)
aggrieved employees,)

Plaintiff,

V.

ZERO GROCERY INC.; and DOES 1 through 100, inclusive,

Defendants.

Case No: **RG21103653**

REPRESENTATIVE ACTION

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. VIOLATIONS OF THE LABOR CODE;
2. PENALTIES; and
3. ATTORNEYS' FEES.

COMPLAINT

CASE NO.

Plaintiff MARCUS JAMES, on behalf of himself and all aggrieved employees, complains against Defendants ZERO GROCERY INC., and Does 1 through 100 (all referred to collectively as “Defendants” or “ZERO GROCERY”) as follows:

I. JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over Plaintiff’s claims, based on, among other statutes, California Business & Professions Code §§ 17200, *et seq.*, and California Labor Code §§ 201-203, 204, 224, 226(a), 226.3, 226.7, 226.8, 432.5, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2775 and 2802. In particular, Plaintiff has complied with all California Labor Code § 2699.3 requirements for commencing a civil action under the California Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.* (“PAGA”).

2. This Court has personal jurisdiction over the parties because, at all relevant times, Plaintiff was a California resident who worked in California for Defendants and Defendants systematically and continuously have conducted business in the State of California.

3. Venue is proper in this Court under California Code of Civil Procedure § 395.5 because (a) Plaintiff performed part of his duties in Alameda County, (b) part of the obligations of the parties arises in Alameda County, (c) part of Defendants’ liability arises in Alameda County, and (d) breaches by Defendants occurred in connection with work performed partly in Alameda County.

II. PARTIES AND BACKGROUND

4. Plaintiff Marcus James is an adult who worked for Defendants as a purported-independent-contractor grocery-store worker from approximately October 4, 2020 through April 12, 2021 in Alameda County.

5. Defendant ZERO GROCERY is a Delaware Corporation doing business throughout California and is a “person” as defined by California Labor Code § 18 and California Business and Professions Code § 17201. In addition, it is an “employer” as that term is used in the California Labor Code and in the California Industrial Welfare Commission’s Orders regulating wages, hours, and working conditions.

6. Plaintiff is ignorant of the true names and capacities of Defendants sued as Does 1

1 through 100, inclusive, and therefore sues those Defendants by those fictitious names. Plaintiff
2 will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is
3 informed and believes and on that ground alleges that each of the fictitiously-named Defendants
4 is responsible in some manner for the occurrences alleged and that Plaintiff's damages and other
5 losses as alleged are proximately caused by those occurrences.

6 7. On behalf of the State of California and all aggrieved employees who worked as
7 purported-independent-contractor grocery store workers for ZERO GROCERY in California at
8 any time or times during the time period from April 27, 2020 through the present and until
9 compliance with the law, Plaintiff seeks all applicable penalties, interest, attorneys' fees, costs
10 and other sums for each violation of: (a) California Labor Code §226.8 (willful misclassification
11 of grocery-store workers as "independent contractors"); (b) California Labor Code §§ 226.7, 510,
12 1194, 1194.2, 1197, 1197.1 1198 and 1199 and the applicable IWC Wage Order (failure to pay
13 wages, including minimum wages and overtime, for all hours worked)(c) California Labor Code
14 §§ 226.7, 512, 1198 and 1999 and the applicable IWC Wage Order (failure to provide meal
15 periods); (d) California Labor Code § 226.7, 1198 and 1199 and the applicable IWC Wage Order
16 (failure to authorize and permit rest breaks); (e) policy and practice of violating California Labor
17 Code §§ 226 and 226.3 (failure to provide accurate itemized wage statements); (f) California
18 Labor Code §§ 201-203 (failure to pay former grocery-store workers all wages due and owing at
19 the time of discharge or voluntary quit); (g) California Labor Code § 2802 (failure to reimburse
20 grocery-store workers for all necessary expenditures and losses incurred at the direction of and/or
21 on behalf of Defendants) and (h) California Labor Code § 432.5 (requiring employees to agree to
22 unlawful terms and conditions).

23 **III. FACTUAL ALLEGATIONS**

24 8. This is a representative action under Labor Code §§ 2698, *et seq.*, seeking PAGA
25 penalties interest, attorneys' fees, costs and other sums for violations of the Labor Code arising
26 from Defendants' affirmative decision to misclassify Defendants' grocery-store workers as
27 "independent contractors." By misclassifying the grocery-store workers as independent
28 contractors, Defendants have sought to increase their profits while avoiding multiple duties and

obligations that they owe to employees under the Labor Code and under the applicable Industrial Welfare Commission (“IWC”) Wage Order.

9. ZERO GROCERY is an online grocery store and grocery delivery service that serves customers throughout California. It uses purported-independent-contractor grocery-store workers at its warehouse locations to pack and deliver groceries to customers. These purported “independent contractor” job titles include “Pickers,” who stock the shelves and bag customer orders for delivery; “Checkers,” who check the bagged items to make sure that the orders are correct; and “Drivers,” who deliver the orders to customers.

10. At all relevant times, Plaintiff performed work for ZERO GROCERY as a purported-independent-contractor grocery-store worker. He worked as a “picker,” stocking shelves and bagging customer orders. During his employment with ZERO GROCERY, Plaintiff generally worked five days a week or more. He typically worked eight or more hours in a shift. Some shifts were longer than 10 hours.

11. **ABC Test:** On April 30, 2018, the California Supreme Court adopted the ABC test to determine whether a worker should be classified as an employee or as an independent contractor. *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal. 5th 903 (“*Dynamex*”). The California legislature then codified the ABC test as Labor Code § 2775.

12. The ABC test (1) places the burden on the hiring entity to establish that the worker is an independent contractor who was not intended to be included within the applicable wage order’s coverage, and (2) requires the hiring entity, in order to meet that burden, to establish ***each and all*** of the three factors embodied in the ABC test.

13. Those required factors are as follows: (A) that the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work ***and in fact; and*** (B) that the worker performs work that is outside the usual course of the hiring entity’s business; ***and*** (C) that the worker is customarily engaged in an independently established trade, occupation or business of the same nature as the work performed. *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal. 5th 903, 955-956 (2018).

1 14. Under factor A, Plaintiff and other aggrieved employees were not free from ZERO
2 GROCERY's direction and control. Among other things, ZERO GROCERY employs "Leads"
3 who are in charge of the purported-independent-contractor grocery-store workers. Those Leads
4 assign work to the grocery-store workers and tell them what to do no differently than would be
5 the case if those grocery-store workers were hourly employees. For example, Leads assign
6 customary grocery-store-worker tasks such as instructing Pickers to clean up the warehouse. The
7 Leads also supervise the grocery-store workers and check on their work. Indeed, Plaintiff and
8 other aggrieved employees do not appear to have material control over *anything* that they do.
9 Rather, they simply are performing the normal, everyday tasks that grocery-store workers who
10 typically are classified as hourly employees would perform, including packing groceries and
11 stocking shelves.

12 15. Further, ZERO GROCERY's business model does not satisfy factor B. Plaintiff
13 and other aggrieved employees perform work that is within the usual course of the hiring entity's
14 business. ZERO GROCERY exists for the sole purpose of selling groceries to its customers.
15 Plaintiff and other aggrieved employees were and are its entire labor force.

16 16. ZERO GROCERY's business model also fails to satisfy factor C. Plaintiff and
17 other aggrieved employees are not customarily engaged in an independently-established trade.
18 Instead, they are governed in all material respects by ZERO GROCERY. Grocery-store workers
19 traditionally and almost universally are considered hourly employees.

20 17. **Borello Factors:** Further, Plaintiff and other aggrieved employees also were
21 misclassified if one were to apply the pre-*Dynamex* multi-factor test that the California Supreme
22 Court established in *S.G. Borello & Sons, Inc. v Department of Industrial Relations* (1989) 48
23 Cal.3d 341 ("*Borello*"). Under *Borello*, a court first examines whether the alleged employer has
24 the "right to control" the work performed. *Id.* at 350. Here, acting in accordance with its written
25 agreements with Plaintiff and other aggrieved employees, ZERO GROCERY exercises thorough
26 and complete control over them as explained in the discussion of the ABC test above.

27 18. *Borello* also held that, after examining the right to control, a court should look at
28 "secondary factors" that include (1) whether the person performing services is engaged in a

1 distinct occupation or business, (2) the skill required in the particular occupation, (3) whether the
2 work is part of the regular business of the principal, and (4) the method of payment, whether by
3 the time spent or by the job. *Id.* at 351.

4 19. Here, Plaintiff and the other aggrieved employees were not involved in a distinct
5 occupation or business. ZERO GROCERY is an online grocery store that fulfills customer orders
6 and delivers them to its customers. Plaintiff and other aggrieved employees are the labor force
7 that provides those services.

8 20. Further, the job of a grocery-store worker does not require any special skills or
9 training. The grocery-store workers simply stock shelves, bag orders, and deliver those orders to
10 customers. Moreover, the work that Plaintiff and other aggrieved employees perform is part of the
11 regular business of the principal. The aggrieved employees are simply the labor force that
12 provides those services to ZERO GROCERY and its customers. Additionally, the method of
13 payment favors employee status as well. Plaintiff and other aggrieved employees ***are paid on an***
14 ***hourly basis***, similar to a customary employee.

15 21. *Borello* also approvingly cited five factors adopted in other jurisdictions. Those
16 factors include (1) the alleged employee's opportunity for profit or loss depending on the
17 employee's managerial skill, (2) the alleged employee's investment in equipment or materials
18 required by the task, or the alleged employee's employment of helpers, (3) whether the service
19 rendered requires a special skill, (4) the degree of permanence of the working relationship and (5)
20 whether the service rendered is an integral part of the alleged employer's business. *Id.* at 354-355.

21 22. Here, there is no true opportunity for profit or loss. Rather, ZERO GROCERY
22 performs all of the negotiating with its customers, including regarding the price of groceries.

23 23. With regard to the grocery-store workers' investment in equipment and materials,
24 ZERO GROCERY requires its grocery-store workers to have cellular telephones with associated
25 service plans so that they can review their time records and submit them for payment. Further,
26 ZERO GROCERY uses purported-independent-contractor "Drivers" to deliver its groceries to its
27 customers. On information and belief, ZERO GROCERY does not properly reimburse those
28 grocery-store employees for their business expenses associated with using their personal vehicles

1 to deliver groceries. This is just one more example of ZERO GROCERY shifting its costs of
2 doing business onto its labor force.

3 24. As noted above, grocery-store workers' tasks require no special skills.

4 25. Additionally, the services that Plaintiff James and other grocery-store workers
5 provide are integral to ZERO GROCERY's business. ZERO GROCERY must have a labor force
6 or it will go out of business.

7 26. **Claims:** Defendants have implemented a policy and practice of failing to pay
8 Plaintiff and other aggrieved employees statutorily-mandated overtime pay by failing to pay them
9 their entire hourly rate and/or premium wages and, at times, any wages at all, including the
10 minimum wage, for compensable time spent under ZERO GROCERY's direction and control.
11 Notwithstanding that Labor Code § 226.7 makes rest breaks paid time, ZERO GROCERY
12 required Plaintiff and other aggrieved employees to clock out for rest breaks and did not pay them
13 any wages whatsoever, including the minimum wage, for time spent on rest breaks. Further,
14 ZERO GROCERY does not pay premium wages for any hours worked beyond eight in work day
15 or 40 in a workweek.

16 27. At all relevant times, Labor Code §§ 226.7 and 512 and the applicable IWC Wage
17 Order required employers to provide employees with a first meal period of not less than 30
18 minutes during which they are relieved of all duty (referred to as "duty-free") before working
19 more than five hours, and a second duty-free meal period of not less than 30 minutes before
20 working more than 10 hours in a day. Defendants violated the Labor Code and the applicable
21 IWC Wage Order by implementing a policy and practice of intentionally and improperly
22 designating Plaintiff and other aggrieved employees as independent contractors in order to avoid
23 (a) providing meal periods and/or (b) paying meal-period premiums for meal periods that were
24 not provided.

25 28. Because Defendants did not have a meal period policy applicable to Plaintiff and
26 other aggrieved employees, Plaintiff did not take them. Further, Plaintiff occasionally worked
27 more than 10 hours in a day and did not receive a second meal period. Moreover, he never saw
28 any of his coworkers take a second meal period on shifts longer than 10 hours. Plaintiff never

1 waived his right to a second meal period and, on information and belief, neither did other
2 aggrieved employees.

3 29. At all relevant times, Labor Code § 226.7 and the applicable IWC Wage Order
4 required employers to authorize and permit a paid rest break of at least 10 minutes for every four
5 hours of work performed or major fraction thereof. An employee working more than ten hours in
6 a single workday is entitled to three paid rest breaks, each lasting at least 10 minutes.

7 30. Defendants implemented a policy and practice of intentionally and improperly
8 designating Plaintiff and other aggrieved employees as independent contractors in order to avoid
9 permitting and authorizing paid rest breaks and/or paying rest-break premiums for such breaks as
10 were not provided, all in violation of the Labor Code and applicable IWC Wage Order. Further,
11 as noted above and in violation of Labor Code § 226.7, Defendant required Plaintiff and other
12 aggrieved employees to clock out for rest periods. As a result, Plaintiff did not take rest breaks
13 because he would have had to clock out for those rest breaks and, in violation of Labor Code §
14 226.7, ZERO GROCERY was not counting them as paid time.

15 31. Labor Code § 226 provides that every employer is required, “semimonthly or at
16 the time of each payment of wages,” to provide each employee with an itemized wage statement
17 setting forth, *inter alia*, the total hours worked by the employee (except for salaried employees)
18 and “all applicable hourly rates in effect during the pay period and the corresponding number of
19 hours worked at each hourly rate by the employee.” Lab. Code § 226(a). Defendants
20 implemented a policy and practice of violating Labor Code § 226 by failing to provide complete
21 and accurate itemized wage statements to Plaintiff and other aggrieved employees. In fact, ZERO
22 GROCERY ***did not provide any wage statements at all*** to Plaintiff and other aggrieved
23 employees.

24 32. Defendants had a policy and practice of violating California Labor Code §§ 201-
25 203 by failing to pay Plaintiff and other aggrieved employees all wages due and owing at the time
26 of discharge or voluntary quit. Plaintiff and other aggrieved employees who no longer are
27 employed by Defendants still are owed minimum wages and overtime, as well as premium pay
28 for missed meal periods and rest breaks. Further, Plaintiff’s last day of work was April 11, 2021

1 and he did not receive his final paycheck until April 20, 2021. And that paycheck did not include
2 all of his wages that were due and owing.

3 33. Defendants implemented a policy and practice of violating Labor Code § 2802 by
4 failing to reimburse Plaintiff and other aggrieved employees for necessary expenditures and
5 losses incurred in their work for Defendants. ZERO GROCERY required Plaintiff and other
6 aggrieved employees to have a cellular telephone and related service in order to review and
7 submit their timesheets. Moreover, during the course of their relationship with ZERO
8 GROCERY, certain aggrieved employees have been required to use their personal vehicles for
9 business purposes. Plaintiff and other aggrieved employees have not received full reimbursement
10 and/or indemnity for all necessary expenditures or losses incurred in connection with the
11 expenses described above.

12 **IV. REPRESENTATIVE ACTION ALLEGATIONS**

13 34. Plaintiff seeks to represent all aggrieved employees within the meaning of Labor
14 Code §§ 2698, *et seq.* who, within the applicable limitations period, up to the present and until
15 compliance with the law, performed work in California for ZERO GROCERY as purported-
16 independent-contractor grocery-store workers. Plaintiff alleges that ZERO GROCERY willfully
17 misclassified those aggrieved employees as independent contractors.

18 35. On behalf of all aggrieved employees, Plaintiff seeks PAGA penalties under Labor
19 Code §§ 226.3, 226.8(b) and (c), and 2699(f), as applicable, for each violation of Labor Code,
20 including:

- 21 (a) § 226.8 (willful misclassification of employees as independent
22 contractors);
- 23 (b) §§ 226.7, 1194, 1194.2, 1197, 1197.1, 1198 and 1199 and the applicable
24 IWC Wage Order (failure to pay minimum wages and overtime);
- 25 (c) §§ 226.7, 512(a), 1198 and 1199 and the applicable IWC Wage Order
26 (failure to provide meal periods);
- 27 (d) §§ 226.7, 1198 and 1199 and the applicable IWC Wage Order (failure to
28 provide rest breaks);

- (e) §§ 226(a) and 226.3 (failure to provide itemized wage statements);
- (f) §§ 201-203 (failure to pay wages upon termination);
- (g) § 204 (failure to pay wages in a timely manner);
- (h) § 2802 (failure to reimburse business expenses); and
- (i) § 432.5 (requiring employees to agree to unlawful terms and conditions).

36. There is a well-defined community of OR The State of California has an enforcement interest in the questions of law and fact affecting the aggrieved employees whom Plaintiff seeks to represent. The aggrieved employees' claims against Defendants involve questions of common or general interest, including but not limited to whether Defendants: (1) willfully improperly classified grocery-store workers as independent contractors in violation of the Labor Code; (2) violated the Labor Code and the applicable IWC Wage Order by failing to pay grocery-store workers their proper wage rate for all straight time and overtime hours worked; (3) violated the Labor Code and the applicable IWC Wage Order by failing to pay any wages, including minimum wages, to grocery-store workers for various hours worked, including time spent clocked-out on rest breaks; (4) violated the Labor Code and the applicable IWC Wage Order by failing to provide grocery-store workers with all of their required off-duty meal periods and failing to pay the required missed-meal-period premiums for each meal period that was not provided; (5) violated the Labor Code and the applicable IWC Wage Order by failing to authorize and permit grocery-store workers to take all of their required paid rest breaks and failing to pay the required missed-rest-break premium for each paid rest break not allowed or permitted; (6) violated Labor Code §§ 226 and 226.3 by failing to provide grocery-store workers with accurate and itemized wage statements; (7) violated Labor Code §§ 201-203 by failing to pay departing grocery-store workers all wages due at the time of discharge or voluntary quit; (8) violated Labor Code § 204 by failing to pay grocery-store workers their wages in a timely manner as required by that section; (9) violated Labor Code § 2802 by failing to reimburse grocery-store workers for all necessary expenditures and losses incurred in the direct consequence of the discharge of their duties; and (10) violated Labor Code § 432.5 by requiring aggrieved employees to agree in writing to unlawful terms and conditions.

37. Plaintiff's claims are typical of the claims of the aggrieved employees whom Plaintiff seeks to represent on a representative basis and his interests are consistent with, and not antagonistic to, those of the other aggrieved employees. Plaintiff will fairly and adequately represent the interests of the aggrieved employees whom he seeks to represent because Plaintiff is also an aggrieved employee and his claims are typical of those of the aggrieved employees. Plaintiff has retained attorneys who are experienced in the prosecution of representative actions and Plaintiff intends to prosecute this action vigorously.

38. Common questions of law and fact exist as to all aggrieved employees that predominate over any other questions affecting only individual aggrieved employees.

39. Plaintiff requests permission to amend the Complaint to include additional representatives if Plaintiff is deemed not to be an adequate representative of the aggrieved employees.

V. FIRST CAUSE OF ACTION

(UNPAID WAGES, OVERTIME PAY AND MINIMUM WAGES – LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

40. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

41. California Labor Code § 2699(f) permits "aggrieved employees" to recover certain penalties on their own behalf and on behalf of other current and former employees.

42. Plaintiff is an "aggrieved employee" as that term is defined in the Labor Code Private Attorneys General Act of 2004 because he is a person who was employed by the alleged violators and against whom one or more of the alleged violations were committed.

43. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code §§ 226.7, 510, 1194, 1194.2, 1197, 1197.1, 1198 and 1199 as well as the applicable IWC Wage Order.

44. By the actions alleged in this complaint, Defendants misclassified Plaintiff and other aggrieved employees as independent contractors and failed to pay Plaintiff and other aggrieved employees any wages, including minimum wages and overtime pay, for certain hours

1 worked, all in violation of Labor Code §§ 226.7, 510, 1194, 1194.2, 1197, 1197.1, 1198 and 1199
2 as well as the applicable IWC Wage Order.

3 45. Therefore, Plaintiff and all current and former aggrieved employees demand the
4 penalties provided by Labor Code § 2699(f) for violations of Labor Code §§ 226.7, 510, 1194,
5 1194.2, 1197, 1197.1, 1198 and 1199 as well as the applicable IWC Wage Order.

6 46. Plaintiff further seeks reasonable attorneys' fees and costs under Labor Code §
7 2699(g)(1).

8 Wherefore, Plaintiff prays for relief as set forth below.

9 **VI. SECOND CAUSE OF ACTION**

10 **(FAILURE TO PROVIDE MEAL PERIODS –**

11 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)**

12 47. Plaintiff repeats and realleges each and every paragraph above as though fully set
13 forth herein.

14 48. California Labor Code § 2699(f) permits "aggrieved employees" to recover certain
15 penalties on their own behalf and on behalf of other current and former employees.

16 49. Plaintiff is an "aggrieved employee" as that term is defined in the Labor Code
17 Private Attorneys General Act of 2004 because he is a person who was employed by the alleged
18 violators and against whom one or more of the alleged violations was committed.

19 50. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil
20 action against Defendants for violations of Labor Code §§ 226.7, 512, 1198 and 1199 and the
21 applicable IWC Wage Order.

22 51. By the actions alleged herein, Defendants misclassified Plaintiff and other
23 aggrieved employees as independent contractors and failed to authorize and permit the required
24 meal periods in violation of Labor Code §§ 226.7, 512, 1198 and 1199 and the applicable IWC
25 Wage Order.

26 52. Therefore, Plaintiff and all current and former aggrieved employees demand the
27 penalties provided by Labor Code § 2699(f) for violations of Labor Code §§ 226.7, 512, 1198 and
28 1199 and the applicable IWC Wage Order.

53. Plaintiff further seeks reasonable attorneys' fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

VII. THIRD CAUSE OF ACTION

(FAILURE TO AUTHORIZE AND PERMIT REST PERIODS –

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

54. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

55. California Labor Code § 2699(f) permits "aggrieved employees" to recover certain penalties on their own behalf and on behalf of other current and former employees.

56. Plaintiff is an "aggrieved employee" as that term is defined in the Labor Code Private Attorneys General Act of 2004 because he is a person who was employed by the alleged violators and against whom one or more of the alleged violations was committed.

57. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code §§ 226.7, 1198 and 1199 and the applicable IWC Wage Order.

58. By the actions alleged herein, Defendants misclassified Plaintiff and other aggrieved employees as independent contractors and failed to authorize and permit the required rest periods in violation of Labor Code §§ 226.7, 1198 and 1199 and the applicable IWC Wage Order.

59. Therefore, Plaintiff and all current and former aggrieved employees demand the penalties provided by Labor Code § 2699(f) for violations of Labor Code §§ 226.7, 1198 and 1199 and the applicable IWC Wage Order.

60. Plaintiff further seeks reasonable attorneys' fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

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VIII. FOURTH CAUSE OF ACTION

**(FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS –
LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)**

61. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

62. California Labor Code § 2699(f) permits “aggrieved employees” to recover certain penalties on their own behalf and on behalf of other current and former employees.

63. Plaintiff is an “aggrieved employee” as that term is defined in the Labor Code Private Attorneys General Act of 2004 because he is a person who was employed by the alleged violators and against whom one or more of the alleged violations was committed.

64. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code §§ 226(a) and 226.3.

65. By the actions alleged herein, Defendants misclassified Plaintiff and other aggrieved employees as independent contractors and failed to comply with Labor Code §§ 226(a) and 226.3 as it relates to Plaintiff and the other aggrieved employees. As alleged above, ZERO GROCERY failed to provide Plaintiff and other aggrieved employees with any wage statements at all. In doing so, Defendants have violated Labor Code § 226(a) and 226.3.

66. Therefore, Plaintiff, for himself and all current and former aggrieved employees on behalf of the State of California, demands the Labor Code § 226.3 penalties provided for violations of Labor Code § 226(a). (If Labor Code § 226.3 is found not to apply to Defendants’ violations of Labor Code § 226(a), Plaintiff alternatively will seek Labor Code § 2699(f) penalties.)

67. Plaintiff further seeks reasonable attorneys’ fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

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IX. FIFTH CAUSE OF ACTION

(LABOR CODE §§ 201-203 –

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

68. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

69. California Labor Code § 2699(f) permits “aggrieved employees” to recover certain penalties on their own behalf and on behalf of other current and former employees.

70. Plaintiff is an “aggrieved employee” as that term is defined in the Labor Code Private Attorneys General Act of 2004 because he is a person who was employed by the alleged violators and against whom one or more of the alleged violations was committed.

71. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code §§ 201-203.

72. By the actions alleged herein, Defendants misclassified Plaintiff and other aggrieved employees as independent contractors and failed to comply with Labor Code §§ 201-203 as they relate to Plaintiff and the other aggrieved employees.

73. Therefore, Plaintiff, for himself and all current and former aggrieved employees, demands the penalties provided by Labor Code § 2699(f) for violations of Labor Code §§ 201-203.

74. Plaintiff further seeks reasonable attorneys’ fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

X. SIXTH CAUSE OF ACTION

(LABOR CODE § 2802 –

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

75. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

76. Labor Code § 2699(f) permits “aggrieved employees” to recover certain penalties on their own behalf and on behalf of other current and former employees.

1 77. Plaintiff is an “aggrieved employee” as that term is defined in PAGA because he is
2 a person who was employed by the alleged violators and against whom one or more of the alleged
3 violations was committed.

4 78. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil
5 action against Defendants for violations of Labor Code § 2802.

6 79. By their actions as alleged herein, Defendants have failed to comply with Labor
7 Code § 2802 as it relates to Plaintiff and other aggrieved employees.

8 80. Plaintiff, for himself and all current and former aggrieved employees, demands the
9 penalties provided by Labor Code § 2699(f) for violations of Labor Code §§ 2802.

10 81. Plaintiff further seeks reasonable attorneys’ fees and costs under Labor Code §
11 2699(g)(1).

12 Wherefore, Plaintiff prays for relief as set forth below.

13 **XVI. SEVENTH CAUSE OF ACTION**

14 **(LABOR CODE § 204 –**

15 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)**

16 82. Plaintiff repeats and realleges each and every paragraph above as though fully set
17 forth herein.

18 83. California Labor Code § 2699(f) permits “aggrieved employees” to recover certain
19 penalties on their own behalf and on behalf of other current and former employees.

20 84. Plaintiff is an “aggrieved employee” as that term is defined in the Labor Code
21 Private Attorneys General Act of 2004 because he is a person who was employed by the alleged
22 violators and against whom one or more of the alleged violations was committed.

23 85. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil
24 action against Defendants for violations of Labor Code § 204.

25 86. By the actions alleged herein, Defendants misclassified Plaintiff and other
26 aggrieved employees as independent contractors and Defendants have failed to comply with
27 Labor Code § 204 as it relates to Plaintiff and the other aggrieved employees.

28 87. Therefore, Plaintiff, for himself and all current and former aggrieved employees,

demands the penalties provided by Labor Code § 2699(f) for violations of Labor Code § 204.

88. Plaintiff further seeks reasonable attorneys' fees and costs under Labor Code § 2699(g)(1).

XVII. EIGHTH CAUSE OF ACTION
(WILLFUL MISCLASSIFICATION OF EMPLOYEES AS INDEPENDENT
CONTRACTORS –
LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

89. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

90. PAGA provides that any provision of law under the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency for violation of the Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee under the procedures outlined in Labor Code § 2699.3.

91. Plaintiff is an "aggrieved employee" as that term is defined in PAGA because he is a person who was employed by the alleged violators and against whom one or more of the alleged violations was committed.

92. Labor Code Labor Code § 226.8(a)(1) makes it unlawful for any person or employer to willfully misclassify an individual as an independent contractor. Labor Code § 226.8(a)(2) makes it unlawful for any person or employer to charge an individual who has been willfully misclassified as an independent contractor a fee, or make any deductions from that individual's compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment when any of those acts would have violated the law if the individual had not been misclassified.

93. At all relevant times, Defendants violated Labor Code § 226.8 by willfully misclassifying Plaintiff and other aggrieved employees as independent contractors.

94. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code § 226.8.

95. Therefore, Plaintiff, for himself and all current and former aggrieved employees, demands the maximum penalties provided by Labor Code §§ 226.8(b) and (c) and 2699(f) for violations of Labor Code § 226.8.

96. Plaintiff, for himself and all current and former aggrieved employees, requests that the Court order Defendants to place the notice required by Labor Code § 226.8(e) on ZERO GROCERY's websites.

97. Plaintiff further seeks reasonable attorneys' fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

XVIII. NINTH CAUSE OF ACTION
(REQUIRING EMPLOYEES TO AGREE TO UNLAWFUL TERMS AND
CONDITIONS –
LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

98. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

99. California Labor Code § 2699(f) permits "aggrieved employees" to recover certain penalties on their own behalf and on behalf of other current and former employees.

100. Plaintiff is an "aggrieved employee" as that term is defined in the Labor Code Private Attorneys General Act of 2004 because he is a person who was employed by the alleged violators and against whom one or more of the alleged violations was committed.

101. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code § 432.5.

102. By the actions alleged herein, Defendants misclassified Plaintiff and other aggrieved employees as independent contractors and Defendants have failed to comply with Labor Code § 432.5 as it relates to Plaintiff and the other aggrieved employees.

103. Therefore, Plaintiff, for himself and all current and former aggrieved employees, demands the penalties provided by Labor Code § 2699(f) for violations of Labor Code § 432.5.

104. Plaintiff further seeks reasonable attorneys' fees and costs under Labor Code §

2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

PRAYER FOR RELIEF

Plaintiff prays for relief as follows:

- i. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current and former aggrieved employee for each violation of Labor Code §§ 226.7, 510, 1194, 1194.2, 1197, 1197.1, 1198 and 1199 (failure to pay wages, including minimum wages and overtime, for all hours worked) during the applicable limitations period preceding the filing of the Complaint and up to and including the present and until the date of compliance with the law;
- ii. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current or former aggrieved employee for each violation of Labor Code §§ 226.7, 512(a), 1198 and 1199 (missed meal periods) during the applicable limitations period preceding the filing of the Complaint and up to and including the present and until the date of compliance with the law;
- iii. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current or former aggrieved employee for each violation of Labor Code §§ 226.7, 1198 and 1199 (missed rest periods) during the applicable limitations period preceding the filing of the Complaint and up to and including the present and until the date of compliance with the law;
- iv. For civil penalties as specified by Labor Code § 226.3 for Plaintiff and each current or former aggrieved employee and on behalf of the State of California for each violation of Labor Code § 226(a) (failure to provide itemized wage statements) during the applicable limitations period preceding the original filing of the Complaint. (Should Labor Code § 226.3 be found not to apply to Defendants' violations of Labor Code § 226(a), Plaintiff alternatively seeks the civil penalties specified by Labor Code § 2699(f) for Plaintiff and each current or former aggrieved employee and on behalf of the State of California for

each violation of Labor Code § 226(a) (failure to provide itemized wage statements) during the applicable limitations period preceding the original filing of the Complaint.)

v. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current or former aggrieved employee for each violation of Labor Code §§ 201-203 (failure to pay departing employees all wages due and owing) during the applicable limitations period preceding the filing of the Complaint and up to and including the present and until the date of compliance with the law;

vi. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current or former aggrieved employee for each violation of Labor Code § 2802 (unreimbursed business expenses) during the applicable limitations period preceding the filing of the Complaint and up to and including the present and until the date of compliance with the law;

vii. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current or former aggrieved employee for each violation of Labor Code § 204 (failure to pay wages in a timely manner) during the applicable limitations period preceding the filing of the Complaint and up to and including the present and until the date of compliance with the law;

viii. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current and former aggrieved employee for each violation of Labor Code § 226.8 (willful misclassification of employees as independent contractors) during the applicable limitations period preceding the filing of the Complaint and up to and including the present and until the date of compliance with the law;

ix. For civil penalties as allowed by Labor Code § 226.8 for Plaintiff and each current and former aggrieved employee during the applicable limitations period preceding the filing of the Complaint and up to and including the present and until the date of compliance with the law;

x. For an order by the Court commanding Defendants to place the notice required by Labor Code § 226.8(e) on applicable websites.

- xi. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current or former aggrieved employee for each violation of Labor Code § 432.5 (requiring employees to agree to unlawful terms and conditions) during the applicable limitations period preceding the filing of the Complaint and up to and including the present and until the date of compliance with the law;
- xii. For reasonable attorneys' fees and costs as allowed by law, including Labor Code § 2699(g)(1) and Code of Civil Procedure § 1021.5
- xiii. For all interest as required by Labor Code § 218.6 or any other applicable law;
- xiv. For such other and further relief as the Court should deem proper.

Dated: July 2, 2021

Respectfully submitted,

KELLER GROVER LLP

By:



ERIC A. GROVER

ROBERT SPENCER

Attorneys for Plaintiff and the Aggrieved Employees