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County of Los Angeles

AUG 31 2021

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County of Los Angeles

AUG 30 2021

Sherri R. Carter, Executive Officer/Clerk
By: Rita Nazaryan, Deputy

Sherri R. Carter, Executive Officer/Clerk
By: Rita Nazaryan, Deputy

Attorneys for Plaintiff Allison Flores

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

BY FAX

21STCV32145

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

Plaintiff,

vs.

BERBERIAN ENTERPRISES, INC., a
California corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No.:

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

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

Jury Trial Demanded

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

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on June 25, 2021, until judgment (“non-party Aggrieved Employees”).
14 Plaintiff’s share of civil penalties sought in this action does not exceed \$75,000.

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

18 3. This Court has jurisdiction over all Defendants because, on information and
19 belief, Defendants are either citizens of California, have sufficient minimum contacts in
20 California, or otherwise intentionally avail themselves of the California market so as to render
21 the exercise of jurisdiction over them by the California courts consistent with traditional
22 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
23 in this action given that the State of California, as the real party in interest in this action, is not
24 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
25 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
26 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
27 in this action, and that diversity jurisdiction cannot be established when Plaintiff’s share of the
28 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

4. Venue is proper in this Court because Defendants filed a Statement of Information form with the California Secretary of State designating a principal place of business in Los Angeles, County of Los Angeles, in accordance with California Corporations Code section 2105(a)(3). Cal. Code Civ. P. § 395.5. Venue is also proper in this Court because Defendants employ persons in this county, and employed Plaintiff in this county, and thus a substantial portion of the transactions and occurrences related to this action occurred in this county.

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

THE PARTIES

6. Plaintiff Allison Flores is a resident of city of Valley Village in Los Angeles County, California. Defendants employed Plaintiff as an hourly paid, non-exempt Cashier/Checker from approximately January 2020 to March 2021. Plaintiff worked for Defendants at their JONS Fresh Marketplace supermarket located in Valley Village, California. Plaintiff typically worked eight (8) hours or more per day and five (5) days or more per week, from 2:00 p.m. to 10:30 p.m. Plaintiff was compensated approximately \$15.00 per hour. Her job duties included, without limitation, scanning and bagging items, ringing up customers, cleaning the check stand area, and performing go-backs.

7. On information and belief, Defendants required some employees, including Plaintiff, to execute a dispute resolution policy and/or arbitration agreement at the time of their hire or during their employment. On further information and belief, Defendants' dispute resolution policy and/or arbitration agreement was and is both procedurally and substantively unconscionable. Specifically, Defendants presented new hires with a Mutual Agreement to Arbitrate Claims ("Arbitration Agreement") during the onboarding process, which had to be reviewed and signed immediately. In fact, upon information and belief, the Arbitration Agreement was one of several documents presented to new employees for signature during the

1 orientation process, including the Anti-Discrimination, Harassment and Retaliation Policy;
2 Cardboard Baler and Compactor Policies and Procedures; Employee Clear Bag Policy; Tool
3 Policy, among other documents. Also, employees did not have a meaningful opportunity to
4 negotiate the terms of the Arbitration Agreement. Rather, it was provided to Defendants'
5 employees for them to sign on a take-it or leave-it basis at the time they were hired, along
6 with all of the other on-boarding documents. Further, Defendants did not set forth in the
7 agreement or otherwise provide employees with the rules which will govern the arbitration,
8 instead forcing employees to seek this information out on their own.

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

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

16 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
17 were the partners, agents, owners, or managers of BERBERIAN ENTERPRISES, INC.;
18 (collectively, "JONS") at all relevant times.

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

26 12. At all relevant times, Defendants, and each of them, ratified each and every act
27 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
28 and abetted the acts and omissions of each and all the other Defendants in proximately causing

1 the damages herein alleged.

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

5 **PAGA REPRESENTATIVE ALLEGATIONS**

6 14. Defendants are a California corporation that own and operate JONS
7 Marketplace, JONS International Marketplace, and JONS Fresh Marketplace, a
8 supermarket/grocery store chain in the Southern California area. Upon information and belief,
9 Defendants maintain a centralized Human Resources (“HR”) department at their corporate
10 headquarters in Los Angeles, California, which is responsible for the recruiting and hiring of
11 new employees, and communicating and implementing Defendants’ company-wide policies,
12 including timekeeping policies and meal and rest period policies, to employees throughout
13 California.

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

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

1 employment ends.

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

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

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

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

15 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that other non-party Aggrieved Employees were entitled to be paid at a
17 regular rate of pay, and corresponding overtime rates of pay, that included as eligible income
18 all income derived from hazard pay, incentive pay, nondiscretionary bonuses, and/or other
19 forms of compensation, but failed to incorporate all forms of remuneration in calculating the
20 regular rate of pay for other non-party Aggrieved Employees.

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

27 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to

1 meal periods in accordance with the California Labor Code and applicable IWC Wage Order
2 or payment of one (1) additional hour of pay at their regular rates of pay when they were not
3 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and
4 other non-party Aggrieved Employees were not provided with all meal periods or payment of
5 one (1) additional hour of pay at their regular rates of pay when they did not receive a timely,
6 uninterrupted, thirty (30) minute meal period.

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

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

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

25 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
27 timely payment of wages during their employment. In violation of the California Labor Code,
28 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,

1 including, but not limited to, overtime wages, minimum wages, and/or meal and rest period
2 premiums, within permissible time periods.

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

9 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
11 suitable seating and/or were entitled to sit when it did not interfere with the performance of
12 their duties and have seats nearby to use during a lull in tasks that do require moving about or
13 standing. In violation of the California Labor Code and applicable IWC Wage Order,
14 Defendants failed to provide Plaintiff and other non-party Aggrieved Employees suitable
15 seating.

16 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
18 receive reimbursement for all business-related expenses and costs they incurred during the
19 course and scope of their employment and that they did not receive reimbursement of
20 applicable business-related expenses and costs incurred.

21 31. Plaintiff is informed and believes, and thereon alleges, that at all times herein
22 mentioned, Defendants knew or should have known that they had a duty to provide Plaintiff
23 and other non-party Aggrieved Employees with written notice of the material terms of their
24 employment with Defendants as required by the California Wage Theft Prevention Act, but
25 failed to do so.

26 32. Plaintiff is informed and believes, and thereon alleges, that at all times herein
27 mentioned, Defendants knew or should have known that they had a duty to compensate
28 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants

1 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
2 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees
3 that they were properly denied wages, all in order to increase Defendants' profits.

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

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

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

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

- 19 (a) The aggrieved employee shall give written notice by online filing
20 (hereinafter "Employee's Notice") to the LWDA and by certified mail
21 to the employer of the specific provisions of the California Labor Code
22 alleged to have been violated, including the facts and theories to support
23 the alleged violations.
- 24 (b) An aggrieved employee's notice filed with the LWDA pursuant to
25 2699.3(a) and any employer response to that notice shall be
26 accompanied by a filing fee of seventy-five dollars (\$75).
- 27 (c) The LWDA shall provide notice (hereinafter "LWDA Notice") to the
28 employer and the aggrieved employee by certified mail that it does not

1 intend to investigate the alleged violation within sixty (60) calendar
2 days of the postmark date of the Employee's Notice. Upon receipt of
3 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
4 five (65) calendar days of the postmark date of the Employee's Notice,
5 the aggrieved employee may commence a civil action pursuant to
6 California Labor Code section 2699 to recover civil penalties in addition
7 to any other penalties to which the employee may be entitled.

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

- 12 (a) The aggrieved employee or representative shall give written notice by
13 online filing to the LWDA and by certified mail to the employer of the
14 specific provisions of the California Labor Code alleged to have been
15 violated (other than those listed in Section 2699.5), including the facts
16 and theories to support the alleged violation.
- 17 (b) An aggrieved employee's notice filed with the LWDA pursuant to
18 2699.3(c) and any employer response to that notice shall be
19 accompanied by a filing fee of seventy-five dollars (\$75).
- 20 (c) The employer may cure the alleged violation within thirty-three (33)
21 calendar days of the postmark date of the notice. The employer shall
22 give written notice by certified mail within that period of time to the
23 aggrieved employee or representative and the agency if the alleged
24 violation is cured, including a description of actions taken, and no civil
25 action pursuant to Section 2699 may commence. If the alleged violation
26 is not cured within the 33-day period, the employee may commence a
27 civil action pursuant to Section 2699.

28 38. On June 25, 2021, Plaintiff provided written notice by online filing to the

1 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
2 Code alleged to have been violated, including facts and theories to support the alleged
3 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
4 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
5 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
6 Plaintiff PAGA Case Number LWDA-CM-836095-21. A true and correct copy of Plaintiff's
7 written notice to the LWDA and Defendants dated June 25, 2021 is attached hereto as
8 "Exhibit 1."

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

12 40. Thus, Plaintiff has satisfied the administrative prerequisites under California
13 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
14 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a),
15 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

16 41. Labor Code section 558(a) provides "[a]ny employer or other person acting on
17 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
18 provision regulating hours and days of work in any order of the Industrial Welfare
19 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
20 dollars (\$50) for each underpaid employee for each pay period for which the employee was
21 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
22 underpaid employee for each pay period for which the employee was underpaid. . . ." Labor
23 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
24 to any other civil or criminal penalty provided by law." Plaintiff, acting in the public interest
25 as a private attorney general, seeks assessment and collection of civil penalties under Labor
26 Code section 558 for herself, all other non-party Aggrieved Employees, and the State of
27 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198,
28 and the applicable IWC Wage Order. Plaintiff, acting in the public interest as a private

1 attorney general, does not seek the recovery of unpaid wages under Labor Code section 558
2 from Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the
3 applicable IWC Wage Order.

4 42. Defendants, at all times relevant to this complaint, were employers or persons
5 acting on behalf of an employer(s) who violated Plaintiff's and other non-party Aggrieved
6 Employees' rights by violating various sections of the California Labor Code as set forth
7 above.

8 43. As set forth below, Defendants have violated numerous provisions of both the
9 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
10 Order.

11 44. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
12 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a
13 private attorney general, seeks assessment and collection of civil penalties for herself, all other
14 non-party Aggrieved Employees, and the State of California against Defendants for violations
15 of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516,
16 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

17 **FIRST CAUSE OF ACTION**

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

19 **(Against all Defendants)**

20 45. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
21 and every allegation set forth above.

22 46. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
23 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
24 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 226(a),
25 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c)
26 permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of
27 those Labor Code sections not found in section 2699.5, including sections 516, 1182.12, and
28 2810.5.

1 47. Defendants' conduct, as alleged herein, violates numerous sections of the
2 California Labor Code, including, but not limited to, the following:

- 3 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
4 Wage Order for Defendants' failure to compensate Plaintiff and other
5 non-party Aggrieved Employees with all required overtime pay and
6 failure to properly calculate the overtime rates paid to other non-party
7 Aggrieved Employees, as set forth below;
- 8 (b) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and
9 the applicable IWC Wage Order for Defendants' failure to compensate
10 Plaintiff and other non-party Aggrieved Employees with at least
11 minimum wages for all hours worked, as set forth below;
- 12 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
13 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
14 and other non-party Aggrieved Employees with meal periods, as set
15 forth below;
- 16 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the
17 applicable IWC Wage Order for Defendants' failure to authorize and
18 permit Plaintiff and other non-party Aggrieved Employees to take rest
19 periods, as set forth below;
- 20 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
21 IWC Wage Order for failure to provide accurate and complete wage
22 statements to Plaintiff and other non-party Aggrieved Employees, as set
23 forth below;
- 24 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable
25 IWC Wage Order for failure to maintain payroll records, as set forth
26 below;
- 27 (g) Violation of Labor Code section 204 for failure to pay all earned wages
28 during employment, as set forth below;

- 1 (h) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
2 earned wages upon termination, as set forth below;
- 3 (i) Violation of Labor Code section 1198 and the applicable IWC Wage
4 Order for failing to provide suitable seating to Plaintiff and other
5 non-party Aggrieved Employees, as set forth below;
- 6 (j) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
7 and other non-party Aggrieved Employees for all business expenses
8 necessarily incurred, as set forth below; and
- 9 (k) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
10 provide written notice of information material to Plaintiff's and other
11 non-party Aggrieved Employees' employment with Defendants, as set
12 forth below.

13 **FAILURE TO PAY OVERTIME**

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

15 48. Labor Code section 1198 makes it illegal to employ an employee under
16 conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor
17 Code section 1198 requires that "... the standard conditions of labor fixed by the commission
18 shall be the ... standard conditions of labor for employees. The employment of any employee
19 ... under conditions of labor prohibited by the order is unlawful."

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

24 50. Specifically, the applicable IWC Wage Order provides that Defendants are and
25 were required to pay Plaintiff and other non-party Aggrieved Employees working more than
26 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
27 one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty
28 (40) hours in a workweek.

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

6 52. California Labor Code section 510 codifies the right to overtime compensation
7 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
8 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
9 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
10 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
11 in a day on the seventh (7th) day of work.

12 53. Defendants willfully failed to pay all overtime wages owed to Plaintiff and
13 other non-party Aggrieved Employees. During the relevant time period, Plaintiff and other
14 non-party Aggrieved Employees were not paid overtime premiums for all of the hours they
15 worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in
16 excess of forty (40) hours in a week, because all hours that they worked were not recorded.

17 54. First, during the relevant period, Defendants had, and continue to have, a
18 company-wide policy and/or practice of improperly rounding employees' clock-in and clock-
19 out times in their timekeeping system to the nearest quarter (0.25) of an hour. Defendants'
20 rounding policy resulted in the failure to compensate Plaintiff and other non-party Aggrieved
21 Employees fully for all hours worked, causing Plaintiff and other non-party Aggrieved
22 Employees to not be paid overtime wages for all of the overtime hours they actually worked.
23 Defendants' policy of rounding is unfair and has, over time, resulted in the underpayment of
24 wages to Plaintiff and other non-party Aggrieved Employees. To the extent Defendants'
25 rounding policy has taken away time worked that was eligible for overtime, Plaintiff and other
26 non-party Aggrieved Employees were denied overtime pay for all hours worked.

27 55. Second, during the relevant period, Defendants implemented, on a company-
28 wide basis, an employer-imposed requirement that Plaintiff and other non-party Aggrieved

1 Employees undergo mandatory COVID-19 temperature checks and/or health screenings
2 before clocking in for their scheduled shifts. Prior to her shift, Plaintiff sometimes was
3 required to spend several minutes per instance waiting and then undergoing the mandatory
4 temperature check and/or health screening, before being permitted to clock in for her shift.
5 Even though Defendants required these health screenings, Defendants did not provide Plaintiff
6 and other non-party Aggrieved Employees a mechanism to record this time worked so they
7 could be compensated for the time spent undergoing mandatory temperature checks and/or
8 health screenings.

9 56. Third, Defendants had, and continue to have, a company-wide policy and/or
10 practice of requiring Plaintiff and other non-party Aggrieved Employees to complete
11 mandatory trainings at Defendants' other store locations. Plaintiff and other non-party
12 Aggrieved Employees were required to travel in their own personal vehicles or obtain
13 alternate transportation to attend Defendants' mandatory trainings. For example, Plaintiff
14 spent approximately 50 minutes driving 20 miles roundtrip from her home in Valley Village,
15 California, to the JONS International Marketplace store in Reseda, California, to attend a
16 training session. Defendants failed to track the time Plaintiff and other non-party Aggrieved
17 Employees spent traveling to and from the mandatory trainings, and Plaintiff other non-party
18 Aggrieved Employees received no compensation for this time.

19 57. Fourth, upon information and belief, Defendants had, and continue to have, a
20 company-wide policy and/or practice of strictly staffing their supermarkets based on the labor
21 hours allocated by corporate for each location. Defendants' uniform use of labor budgets,
22 combined with heavy workloads, resulted in chronic understaffing and a failure to provide
23 Plaintiff and/or other non-party Aggrieved Employees with adequate meal period coverage,
24 because there were too few employees on duty to handle the workload and attend to
25 customers. As a result of this lack of meal period coverage, Plaintiff and/or other non-party
26 Aggrieved Employees were not always afforded 30-minute meal periods during shifts when
27 they were entitled to receive a meal period.

28 58. Defendants knew or should have known that as a result of these company-wide

1 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
2 assigned duties off-the-clock during meal periods and/or before and after their shifts, and were
3 suffered or permitted to perform work for which they were not paid. Because Plaintiff and
4 other non-party Aggrieved Employees worked shifts of eight (8) hours a day or more or forty
5 (40) hours a week or more, some of this off-the-clock work qualified for overtime premium
6 pay. Therefore, Plaintiff and other non-party Aggrieved Employees were not paid overtime
7 wages for all of the overtime hours they actually worked.

8 59. Furthermore, Defendants did not pay other non-party Aggrieved Employees the
9 correct overtime rate for the recorded overtime hours that they generated. In addition to an
10 hourly wage, Defendants paid other non-party Aggrieved Employees hazard pay, incentive
11 pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of
12 the California Labor Code, Defendants failed to incorporate all compensation, including
13 hazard pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into
14 the calculation of the regular rate of pay for purposes of calculating the overtime wage rate.
15 Therefore, during times when other non-party Aggrieved Employees worked overtime and
16 received these other forms of pay, Defendants failed to pay all overtime wages by paying a
17 lower overtime rate than required.

18 60. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
19 the balance of overtime compensation as required by California law, violates the provisions of
20 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
21 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
22 558 and/or 2699(a), (f), and (g).

23 **FAILURE TO PAY MINIMUM WAGES**

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

25 61. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
26 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
27 to be paid to employees, and the payment of a wage less than the minimum so fixed is
28 unlawful. Compensable work time is defined in IWC Wage Order No. 7-2001 order as "the

1 time during which an employee is subject to the control of an employer, and includes all the
2 time the employee is suffered or permitted to work, whether or not required to do so.” Cal.
3 Code. Regs. tit. 8, § 11070(2)(G) (defining “Hours Worked”).

4 62. First, as set forth above, during the relevant time period, due to Defendants’
5 policy of rounding Plaintiff’s and other non-party Aggrieved Employees’ clock-in and clock-
6 out times to the quarter-hour in their timekeeping system, Defendants failed to compensate
7 Plaintiff and other non-party Aggrieved Employees fully for all hours worked. Second, as
8 stated above, due to Defendants’ mandated pre-shift COVID-19 temperature checks and/or
9 health screenings, Plaintiff and other non-party Aggrieved Employees performed work off-
10 the-clock before their scheduled shifts, because Defendants failed to provide Plaintiff and
11 other non-party Aggrieved Employees with any mechanism to record the time they spent
12 completing the mandated health screenings. Third, as set forth above, Plaintiff and other non-
13 party Aggrieved Employees traveled to attend Defendants’ mandatory trainings at Defendants’
14 other store locations, but Defendants did not compensate Plaintiff and other non-party
15 Aggrieved Employees for this time spent traveling. Finally, on information and belief, due to
16 Defendants’ company-wide practice of utilizing labor budgets, assignment of heavy
17 workloads, understaffing, and subsequent lack of meal period coverage, Plaintiff and/or other
18 non-party Aggrieved Employees were impeded from taking all uninterrupted meal periods to
19 which they were entitled and were required to work off-the-clock.

20 63. Thus, Defendants did not pay at least minimum wages for all hours worked by
21 Plaintiff and other non-party Aggrieved Employees. To the extent that these off-the-clock
22 hours did not qualify for overtime premium payment, Defendants did not pay at least
23 minimum wages for those hours worked off-the-clock in violation of California Labor Code
24 sections 1182.12, 1194, 1197, and 1198.

25 64. Defendants’ failure to pay Plaintiff and other non-party Aggrieved Employees
26 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
27 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
28 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

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

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

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

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

68. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), and 1198, and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

69. As stated above, Defendants had, and continue to have, a company-wide policy and/or practice of understaffing their locations due to labor budgeting, which, combined with assigning heavy workloads, has resulted in a lack of meal period coverage and prevented Plaintiff and other non-party Aggrieved Employees from taking all timely, uninterrupted meal periods to which they were entitled. Defendants also had a practice of failing to adhere to a schedule of meal periods, which further caused Plaintiff and other non-party Aggrieved

1 Employees to not be relieved of their duties for compliant meal periods.

2 70. Defendants' practices and policies prevented Plaintiff and other non-party
3 Aggrieved Employees from taking all compliant meal periods to which they were entitled. As
4 a result, Plaintiff and other non-party Aggrieved Employees were forced to work in excess of
5 five (5) hours before taking a meal period, had their meal periods interrupted, and/or had to
6 forgo their meal periods altogether. For example, twice per week, Plaintiff took her meal
7 periods late, after her fifth hour of work, because the store was understaffed and due to the
8 heavy workload.

9 71. Additionally, Defendants did not provide other non-party Aggrieved
10 Employees with second 30-minute meal periods on days that they worked in excess of ten (10)
11 hours in one day. Plaintiff and other non-party Aggrieved Employees did not sign valid meal
12 period waivers on days that they were entitled to meal periods and were not relieved of all
13 duties.

14 72. Moreover, Defendants had a company-wide policy of requiring all newly hired
15 employees to sign blanket meal period waivers at or near their time of hire. Defendants took
16 the position that non-exempt, hourly paid employees had waived their rights to first and
17 second meal periods for the entirety of their employment and, on that basis, did not provide
18 them with all meal periods to which they were entitled. Defendants' company-wide use of
19 blanket meal period waivers, signed at or near the time of hire, discouraged and impeded
20 Plaintiff and other non-party Aggrieved Employees from taking all meal periods to which they
21 were entitled. And, Defendants' presumption that meal periods would not be provided for
22 shifts in excess of five (5) hours but less than six (6) hours due to blanket meal period waivers
23 discouraged Plaintiff and other non-party Aggrieved Employees from taking meal periods.

24 73. What's more, an employer's obligation to provide a meal period is only
25 "triggered" when the employer "employs an employee for a work period of more than five
26 hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits
27 anyone to work for a full five hours, its meal break obligation is triggered.").

28 //

1 [A]fter the meal break obligation is triggered . . . an employer is put to a
2 choice: it must (1) afford an off-duty meal period; (2) consent to a
3 mutually agreed-upon waiver if one hour or less will end the shift; or (3)
4 obtain written agreement to an on-duty meal period if circumstances
5 permit. Failure to do one of these will render the employer liable for
6 premium pay.

7 *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). The fact that
8 Defendants requires aggrieved employees to sign meal waivers simultaneously at or near their
9 time of hire (as opposed to on a specific work day) renders them invalid and unenforceable,
10 because Defendants' obligation to provide Plaintiff and other non-party Aggrieved Employees
11 with meal periods did not arise until it had employed them for a full five (5) hours.

12 74. Defendants knew or should have known that as a result of its policies and/or
13 practices, that Plaintiff and other non-party Aggrieved Employees were not actually relieved
14 of all duties to take timely, uninterrupted meal periods. Defendants further knew or should
15 have known that they did not pay Plaintiff and other non-party Aggrieved Employees meal
16 period premiums when meal periods were missed, late, short, and/or interrupted.

17 75. As set forth above, Defendants have a company-wide policy and/or practice of
18 rounding employee clock-in and clock-out times in their timekeeping system, which prevented
19 Plaintiff and other non-party Aggrieved Employees from receiving all meal period premiums
20 when they took late and/or shortened meal periods. As stated, Defendants' rounding policy
21 rounded employees' clock-in and clock-out times in their timekeeping system to the nearest
22 quarter (0.25) of an hour. To the extent that Defendants' timekeeping system reported that
23 Plaintiff and other non-party Aggrieved Employees were provided with timely, full 30-minute
24 meal periods when, in fact, the meal periods were taken after the fifth hour of work or were
25 less than 30 minutes, Plaintiff and other non-party Aggrieved Employees were entitled to a
26 meal period penalty. Thus, Plaintiff and other non-party Aggrieved Employees did not
27 receive meal period penalties for these improperly rounded meal periods.

28 76. Furthermore, Defendants engaged in a company-wide practice and/or policy of
not paying all meal period premiums owed when compliant meal periods are not provided.
Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees

1 have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to
2 the extent that Defendants did pay other non-party Aggrieved Employees premium pay for
3 missed, late, and interrupted meal periods, Defendants did not pay other non-party Aggrieved
4 Employees at the correct rate of pay for premiums because Defendants systematically failed to
5 include all forms of compensation, such as hazard pay, incentive pay, nondiscretionary
6 bonuses, and/or other forms of remuneration, in the regular rate of pay.

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

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

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

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

18 79. At all relevant times, the applicable IWC Wage Order provides that "[e]very
19 employer shall authorize and permit all employees to take rest periods, which insofar as
20 practicable shall be in the middle of each work period" and that the "rest period time shall be
21 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
22 hours or major fraction thereof" unless the total daily work time is less than three and one-half
23 (3 ½) hours.

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

1 relieve their employees of all duties—including the obligation that an employee remain on
2 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
3 *Inc.*, 2 Cal. 5th 257, 269-270 (2016).

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

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

17 83. Furthermore, upon information and belief, Defendants maintained a company-
18 wide on-premises rest period policy, which mandated that Plaintiff and other non-party
19 Aggrieved Employees remain on Defendants’ premises during their rest periods. Because
20 Plaintiff and other non-party Aggrieved Employees were restricted from leaving the premises
21 during rest periods, they were denied the ability to use their rest periods freely for their own
22 purposes, such as running personal errands. Thus, Defendants effectively maintained control
23 over Plaintiff and other non-party Aggrieved Employees during rest periods.

24 84. As a result of Defendants’ practices and policies, Plaintiff and other non-party
25 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
26 excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they
27 were entitled. For example, Plaintiff had to forego her rest periods altogether twice per week
28 due to understaffing, the heavy workload, and lack of rest period coverage.

1 85. Defendants also have engaged in a company-wide practice and/or policy of not
2 paying all rest period premiums owed when compliant rest periods are not authorized or
3 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
4 Employees have not received premium pay for all missed rest periods. Alternatively, to the
5 extent that Defendants did pay other non-party Aggrieved Employees one (1) additional hour
6 of premium pay for missed rest periods, Defendants did not pay other non-party Aggrieved
7 Employees at the correct rate of pay for premiums because Defendants failed to include all
8 forms of compensation, such as hazard pay, incentive pay, nondiscretionary bonuses, and/or
9 other forms of remuneration, in the regular rate of pay.

10 86. Defendants' conduct violates the applicable IWC Wage Order and California
11 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved
12 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
13 558 and/or 2699(a), (f), and (g).

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

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

21 88. During the relevant time period, Defendants have knowingly and intentionally
22 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
23 inaccurate wage statements. For example, Defendants issued uniform wage statements to
24 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
25 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
26 the pay period, including rates of pay for overtime wages and/or meal and rest period
27 premiums, and the corresponding number of hours worked at each hourly rate. Specifically,
28 Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

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

10 90. In addition, because Defendants did not calculate other non-party Aggrieved
11 Employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal
12 and rest period premiums, Defendants did not list the correct amount of gross wages in
13 compliance with section 226(a)(1) and did not list the correct amount of net wages in violation
14 of section 226(a)(5). Defendants also failed to correctly list all applicable hourly rates in
15 effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and
16 rest period premiums, in violation of section 226(a)(9).

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

25 92. California Labor Code section 1174(d) provides that “[e]very person employing
26 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
27 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
28 plants or establishments at which employees are employed, payroll records showing the hours

1 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
2 applicable piece rate paid to, employees employed at the respective plants or
3 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
4 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-
5 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto
6 as a result of failing to record the off-the-clock hours that they worked and improperly
7 rounding Plaintiff’s and other non-party Aggrieved Employees’ total hours worked.

8 93. California Labor Code section 1198 provides that the maximum hours of work
9 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
10 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
11 employment of any employees for longer hours than those fixed by the order or under
12 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
13 Wage Order, employers are required to keep accurate time records showing when the
14 employee begins and ends each work period and meal period. During the relevant time
15 period, Defendants engaged in company-wide practices and/or policies of failing to record
16 actual hours worked and thereby failed to keep accurate records of work period and meal
17 period start and end times for Plaintiff and other non-party Aggrieved Employees in violation
18 of section 1198. Furthermore, in light of Defendants’ failure to provide other non-party
19 Aggrieved Employees with second 30-minute meal periods to which they were entitled,
20 Defendants kept no records of meal start and end times for second meal periods.

21 94. Defendants’ conduct violates California Labor Code sections 226(a), 1174(d),
22 and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover
23 civil penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

24 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

25 **VIOLATION OF LABOR CODE SECTION 204**

26 95. At all relevant times herein set forth, California Labor Code section 204
27 requires that all wages earned by any person in any employment between the 1st and the 15th
28 days, inclusive, of any calendar month, other than those wages due upon termination of an

1 employee, are due and payable between the 16th and the 26th day of the month during which
2 the labor was performed. Labor Code section 204 further provides that all wages earned by
3 any person in any employment between the 16th and the last day, inclusive, of any calendar
4 month, other than those wages due upon termination of an employee, are due and payable
5 between the 1st and the 10th day of the following month.

6 96. At all relevant times herein, California Labor Code section 204 also requires
7 that all wages earned for labor in excess of the normal work period shall be paid no later than
8 the payday for the next regular payroll period. Alternatively, at all relevant times herein,
9 Labor Code section 204 provides that the requirements of this section are deemed satisfied by
10 the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
11 more than seven (7) calendar days following the close of the payroll period.

12 97. During the relevant time period, Defendants willfully failed to pay Plaintiff and
13 other non-party Aggrieved Employees all wages due to them within any time period specified
14 by California Labor Code section 204 including, but not limited to, overtime wages, minimum
15 wages, and/or meal and rest period premiums, within the time periods specified by California
16 Labor Code section 204.

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

19 **FAILURE TO PAY WAGES UPON TERMINATION**

20 **VIOLATION OF LABOR CODE SECTIONS 201 AND 202**

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

28 100. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved

1 Employees who are no longer employed by Defendants their earned and unpaid wages set
2 forth above, including but not limited to, overtime wages, minimum wages, and/or meal and
3 rest period premiums, either at the time of discharge or within seventy-two (72) hours of their
4 leaving Defendants' employ.

5 101. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
6 who are no longer employed by Defendants their wages earned and unpaid at the time of
7 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
8 California Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved
9 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
10 256 and/or 2699(a), (f), and (g).

11 **FAILURE TO PROVIDE SUITABLE SEATING**

12 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
13 **REGULATIONS, TITLE 8, SECTION 11070, SUBDIVISION 14(A)**

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

20 103. California Code of Regulations, Title 8, section 11070(14)(A) provides that
21 "[a]ll working employees shall be provided with suitable seats when the nature of the work
22 reasonably permits the use of seats."

23 104. Plaintiff is informed and believes, and thereon alleges that Defendants'
24 California supermarkets are generally similar in their layout and design and there was, and
25 continues to be, space behind cash wraps to allow for the presence and use of a seat or stool
26 by Plaintiff and other non-party Aggrieved Employees (with reasonable or no modification to
27 these work areas) during the performance of their work duties. Defendants could provide
28 Plaintiff and other non-party Aggrieved Employees with a seat or stool at their cash wraps, but

1 instead denied them seating and forced Plaintiff and other non-party Aggrieved Employees to
2 stand throughout the day.

3 105. Plaintiff and other non-party Aggrieved Employees spent a substantial portion
4 of their day behind or at these cash wraps. The nature of the work of an employee performing
5 cashiering duties can reasonably be accomplished from a seated position. However,
6 Defendants systematically, and on a company-wide basis, do not provide seats or stools at or
7 near cash wraps, forcing Plaintiff and other non-party Aggrieved Employees to stand
8 throughout their work shifts.

9 106. During the relevant time period, Defendants violated California Labor Code
10 section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because
11 Plaintiff and other non-party Aggrieved Employees were not allowed to sit, even when it
12 would not have interfered with the performance of their duties, nor were they provided with
13 suitable seats. Defendants' management did not inform Plaintiff and other non-party
14 Aggrieved Employees that they were allowed to sit down, provide any means for them to sit
15 down, or mention any policy regarding sitting.

16 107. As a result of Defendants' company-wide policy and/or practice of prohibiting
17 employees from sitting during their shifts and company-wide failure to provide suitable
18 seating, Plaintiff and other non-party Aggrieved Employees were forced to stand during shifts
19 and denied seats. Defendants' failure to provide suitable seating to Plaintiff and other non-
20 party Aggrieved Employees violated and continues to violate California Labor Code section
21 1198 and IWC Wage Order No. 7-2001, subdivision 14(A).

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

24 **FAILURE TO PROVIDE SUITABLE SEATING**

25 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
26 **REGULATIONS, TITLE 8, SECTION 11070, SUBDIVISION 14(B)**

27 109. At all relevant times herein, California Labor Code section 1198 makes it
28 illegal to employ an employee under conditions of labor that are prohibited by the applicable

1 wage order. California Labor Code section 1198 requires that “. . . the standard conditions of
2 labor fixed by the commission shall be the . . . standard conditions of labor for employees.
3 The employment of any employee . . . under conditions of labor prohibited by the order is
4 unlawful.”

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

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

15 112. As stated, on information and belief, Defendants’ California supermarkets are
16 generally similar in their layout and design and there was, and continues to be, space near
17 their work areas (with reasonable or no modification to these work areas) to allow for the
18 presence and use of a seat or stool by Plaintiff and other non-party Aggrieved Employees
19 during lulls in operation. Defendants could have provided Plaintiff and other non-party
20 Aggrieved Employees with a seat or stool in their work areas, but instead denied employees
21 seating and forced Plaintiff and other non-party Aggrieved Employees to stand throughout the
22 day.

23 113. Defendants did not provide Plaintiff and other non-party Aggrieved Employees
24 with seats or stools in reasonable proximity to their work areas to allow them to use seats
25 when it would not interfere with the performance of their duties for times when they were not
26 engaged in active duties that require standing. In other words, to the extent Plaintiff and other
27 non-party Aggrieved Employees engaged in duties in which the nature of the work required
28 standing, Defendants denied them the use of suitable seats nearby during lulls in their work

1 duties. Moreover, Defendants did not inform Plaintiff and other non-party Aggrieved
2 Employees of their rights to a seat or stool under California law.

3 114. As a result of Defendants' company-wide policy and/or practice prohibiting
4 employees from sitting at any time, even when they were not engaged in active duties
5 requiring standing, and company-wide failure to provide seats in reasonable proximity to their
6 work areas, Plaintiff and other non-party Aggrieved Employees were forced to stand during
7 shifts and denied seats. Defendants' failure to provide suitable seating to Plaintiff and other
8 non-party Aggrieved Employees violated and continues to violate California Labor Code
9 section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

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

12 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

13 **VIOLATION OF LABOR CODE SECTION 2802**

14 116. At all times herein set forth, California Labor Code section 2802 provides that
15 an employer must reimburse employees for all necessary expenditures and losses incurred by
16 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
17 to prevent employers from passing off their cost of doing business and operating expenses on
18 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
19 (2014). The applicable wage order, IWC Wage Order No. 7-2001, provides that: "[w]hen the
20 employer requires the use of tools or equipment or they are necessary to the performance of a
21 job, such tools and equipment shall be provided and maintained by the employer, except that
22 an employee whose wages are at least two (2) times the minimum wage may provide and
23 maintain hand tools and equipment customarily required by the particular trade or craft."

24 117. During the relevant time period, Defendants had a company-wide policy of
25 requiring Plaintiff and other non-party Aggrieved Employees to utilize their own personal
26 vehicles or obtain alternate transportation to carry out company business, but failed to
27 reimburse them for all costs of travel, including mileage. For example, Defendants required
28 Plaintiff and other non-party Aggrieved Employees to travel to mandatory trainings at

1 Defendants' other store locations, including a store in Reseda, California. Plaintiff drove
2 approximately 20 miles roundtrip from her home in Valley Village, California to Defendants'
3 store in Reseda, but was not reimbursed for her mileage or travel. Although Defendants
4 required Plaintiff and other non-party Aggrieved Employees to use their own vehicles or
5 obtain alternate transportation to attend these mandatory trainings, Defendants never
6 reimbursed them for their travel expenses.

7 118. Additionally, Defendants on a company-wide basis, expected Plaintiff and
8 other non-party Aggrieved Employees to report to work in clean and presentable uniforms,
9 including an apron and/or t-shirt bearing Defendants' logo. However, Defendants did not
10 provide their employees with sufficient uniforms to wear for their shifts throughout the week.
11 For example, Defendants only provided Plaintiff and other non-party Aggrieved Employees
12 with one (1) uniform shirt and one (1) apron during their employment. Because Defendants
13 failed to provide Plaintiff and other non-party Aggrieved Employees with an adequate number
14 of uniform items in relation to their scheduled shifts and for the tasks they were required to
15 perform, Plaintiff and other non-party Aggrieved Employees were forced to wash their
16 uniforms more frequently than they otherwise do laundry, and incur expenses in doing so.
17 Thus, Defendants failed to maintain uniforms they required Plaintiff and other non-party
18 Aggrieved Employees to wear during their shifts and forced them to incur the cost of
19 maintaining employee uniforms.

20 119. Defendants could have provided Plaintiff and other non-party Aggrieved
21 Employees with the actual equipment for use on the job, including company vehicles, as well
22 as an adequate number of uniforms or access to laundering services. Or, Defendants could
23 have reimbursed Plaintiff and other non-party Aggrieved Employees for the costs of their
24 mileage, travel expenses, and laundering expenses or provided a uniform maintenance
25 allowance. Instead, Defendants passed these operating costs off onto Plaintiff and other non-
26 party Aggrieved Employees. At all relevant times, Plaintiff did not earn at least two (2) times
27 the minimum wage.

28 120. Defendants' company-wide policy and/or practice of passing on their operating

1 costs to Plaintiff and other non-party Aggrieved Employees violates California Labor Code
2 section 2802. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
3 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

4 **FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF**
5 **EMPLOYMENT**

6 **VIOLATION OF LABOR CODE SECTION 2810.5**

7 121. California's Wage Theft Prevention Act was enacted to ensure that employers
8 provide employees with basic information material to their employment relationship at the
9 time of hiring, and to ensure that employees are given written and timely notice of any
10 changes to basic information material to their employment. Codified at California Labor
11 Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an
12 employer must provide written notice to employees containing basic and material payroll
13 information, including, among other things, the rate(s) of pay and basis thereof, whether paid
14 by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for
15 overtime, the regular payday designated by the employer, and any allowances claims as part
16 of the minimum wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-
17 (C).

18 122. During the relevant time period, Defendants failed to provide Plaintiff and
19 other non-party Aggrieved Employees with written notice that lists all the requisite
20 information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Specifically, Defendants
21 failed to provide Plaintiff and other non-party Aggrieved Employees with the hourly rate(s) of
22 pay, including the overtime rate(s) of pay, in violation of section 2810.5(a)(1)(A). Instead, the
23 wage theft form that Defendants provided to Plaintiff is blank where the aforementioned wage
24 information should be filled in.

25 123. Defendants' failure to provide Plaintiff and other non-party Aggrieved
26 Employees with written notice of basic information regarding their employment with
27 Defendants is in violation of Labor Code section 2810.5. Plaintiff and other non-party
28 Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code

1 section 2699(a), (f), and (g).

2 **REQUEST FOR JURY TRIAL**

3 Plaintiff requests a trial by jury.

4 **PRAYER FOR RELIEF**

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

7 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
8 (\$25,000). Plaintiff reserves the right to amend her prayer for relief to seek a different amount.

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

10 2. That the Court declare, adjudge and decree that Defendants violated the
11 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
12 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
13 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516,
14 and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize
15 and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
16 statements and maintain accurate payroll records); 201 and 202 (by failing timely to pay all
17 earned wages upon termination); 204 (by failing timely to pay all earned wages during
18 employment); 1198 and the applicable IWC Wage Order (by failing to provide suitable
19 seating); 2802 (by failing to reimburse business expenses); and 2810.5 (by failing to provide
20 written notice of information material to employment);

21 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
22 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202,
23 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and
24 2810.5;

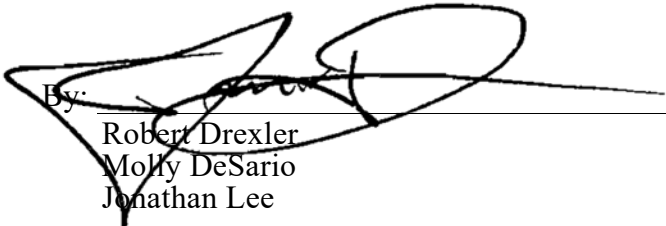
25 4. For attorneys' fees and costs pursuant to California Labor Code section
26 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
27 Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12,
28 1194, 1197, 1198, 2802, and 2810.5;

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- 5. For pre-judgment and post-judgment interest as provided by law; and
- 6. For such other and further relief as the Court may deem equitable and appropriate.

Dated: August 31, 2021

Respectfully submitted,
Capstone Law APC



By: _____
Robert Drexler
Molly DeSario
Jonathan Lee

Attorneys for Plaintiff Allison Flores

Exhibit 1

MAO SHIOKURA
310.712.8030 Direct
Mao.Shiokura@capstonelawyers.com

June 25, 2021

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Allison Flores v. Berberian Enterprises, Inc.*

Dear PAGA Administrator:

This office represents Allison Flores in connection with her claims under the California Labor Code. Ms. Flores was an employee of BERBERIAN ENTERPRISES, INC. ("JONS").

The employer may be contacted directly at the address below:

BERBERIAN ENTERPRISES, INC.
5315 SANTA MONICA BLVD.
LOS ANGELES CA 90029

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

JONS employed Ms. Flores as an hourly paid, non-exempt Cashier/Checker from approximately January 2020 to March 2021. Ms. Flores worked for JONS at its supermarket in Valley Village, California (Store #16). During the relevant time period, Ms. Flores typically worked eight (8) hours or more per day and five (5) days or more per week, from 2:00 p.m. to 10:30 p.m. At the time Ms. Flores's employment with JONS ended, she earned approximately \$15.00 per hour. Her job duties included, without limitation, scanning and bagging items, ringing up customers, cleaning the check stand area, and performing go-backs.

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

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

BERBERIAN ENTERPRISES, INC. is a California corporation, and owns and operates Jons Marketplace, Jons International Marketplace, and Jons Fresh Marketplace, a supermarket/grocery store chain in the Southern California area. Upon information and belief, JONS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Los Angeles, California for all non-exempt, hourly paid employees working for JONS in California, including Ms. Flores and other aggrieved employees. At all relevant times, JONS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Flores and other aggrieved employees, regardless of its location or position.

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

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

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

JONS willfully failed to pay all overtime wages owed to Ms. Flores and other aggrieved employees. During the relevant time period, Ms. Flores and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve

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

(12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, JONS had, and continues to have, a company-wide policy and/or practice of improperly rounding employees' clock-in and clock-out times in its timekeeping system to the nearest quarter (0.25) of an hour. JONS's rounding policy resulted in the failure to compensate Ms. Flores and other aggrieved employees fully for all hours worked, causing Ms. Flores and other aggrieved employees to not be paid overtime wages for all of the overtime hours they actually worked. JONS's policy of rounding is unfair and has, over time, resulted in the underpayment of wages to Ms. Flores and other aggrieved employees. To the extent JONS's rounding policy has taken away time worked that was eligible for overtime, Ms. Flores and other aggrieved employees were denied overtime pay for all hours worked.

Second, during the relevant period, JONS implemented, on a company-wide basis, an employer-imposed requirement that Ms. Flores and other aggrieved employees undergo mandatory COVID-19 temperature checks and/or health screenings before clocking in for their scheduled shifts. Prior to each shift, Ms. Flores sometimes was required to spend several minutes per instance waiting and then undergoing the temperature check and/or health screening, before being permitted to clock in for her shift. Even though JONS required these health screenings, JONS did not provide Ms. Flores and other aggrieved employees a mechanism to record this time worked so they could be compensated for the time spent undergoing mandatory temperature checks and/or health screenings.

Third, JONS had, and continues to have, a company-wide policy and/or practice of requiring Ms. Flores and other aggrieved employees to complete mandatory trainings at other JONS store locations. Ms. Flores and other aggrieved employees were required to travel in their own personal vehicles or obtain alternate transportation to attend JONS's mandatory trainings. For example, Ms. Flores spent approximately 50 minutes driving 20 miles roundtrip from her home in Valley Village to the JONS store in Reseda to attend a training session. JONS failed to track the time Ms. Flores and other aggrieved employees spent traveling to and from the mandatory trainings, and Ms. Flores and other aggrieved employees received no compensation for this time.

Fourth, upon information and belief, JONS had, and continues to have, a company-wide policy and/or practice of strictly staffing its supermarkets based on the labor hours allocated by corporate for each location. JONS's uniform use of labor budgets, combined with heavy workloads, resulted in chronic understaffing and a failure to provide Ms. Flores and/or other aggrieved employees with adequate meal period coverage, because there were too few employees on duty to handle the workload and attend to customers. As a result of this lack of meal period coverage, Ms. Flores and/or other aggrieved employees were not always afforded 30-minute meal periods during shifts when they were entitled to receive a meal period.

JONS knew or should have known that as a result of these company-wide practices and/or policies, Ms. Flores and other aggrieved employees were performing assigned duties off-the-clock during meal periods and/or before and after their shifts, and were suffered or permitted to perform work for which they were not paid. Because Ms. Flores and other aggrieved employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Ms. Flores and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

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

JONS's failure to pay Ms. Flores and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Ms. Flores and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 7-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11070(2)(G) (defining "Hours Worked").

First, as set forth above, during the relevant time period, due to JONS's policy of rounding Ms. Flores's and other aggrieved employees' clock-in and clock-out times to the quarter-hour in its timekeeping system, JONS failed to compensate Ms. Flores and other aggrieved employees fully for all hours worked. Second, as stated above, due to JONS's mandated pre-shift COVID-19 temperature checks and/or health screenings, Ms. Flores and other aggrieved employees performed work off-the-clock before their scheduled shifts, because JONS failed to provide Ms. Flores and other aggrieved employees with any mechanism to record the time they spent completing the mandated health screenings. Third, as set forth above, Ms. Flores and other aggrieved employees traveled to attend JONS's mandatory trainings at other JONS store locations, but JONS did not compensate Ms. Flores and other aggrieved employees for this time spent traveling. Finally, on information and belief, due to JONS's company-wide practice of utilizing labor budgets, assignment of heavy workloads, understaffing, and subsequent lack of meal period coverage, Ms. Flores and/or other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock.

Thus, JONS did not pay at least minimum wages for all hours worked by Ms. Flores and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, JONS did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, JONS regularly failed to pay at least minimum wages to Ms. Flores and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198. Ms. Flores and other aggrieved employees are entitled to recover civil

penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As stated above, JONS had, and continues to have, a company-wide policy and/or practice of understaffing its locations due to labor budgeting, which, combined with assigning heavy workloads, has resulted in a lack of meal period coverage and prevented Ms. Flores and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. JONS also had a practice of failing to adhere to a schedule of meal periods, which further caused Ms. Flores and other aggrieved employees to not be relieved of their duties for compliant meal periods.

JONS's practices and policies prevented Ms. Flores and other aggrieved employees from taking all compliant meal periods to which they were entitled. As a result, Ms. Flores and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, twice per week, Ms. Flores took her meal periods late, after her fifth hour of work, because the store was understaffed and due to the heavy workload.

Additionally, JONS did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Ms. Flores and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

Moreover, JONS had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. JONS took the position that non-exempt, hourly paid employees had waived their rights to first and second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. JONS's company-wide use of blanket meal period waivers, signed at or near the time of hire, discouraged and impeded Ms. Flores and other aggrieved employees from taking all meal periods to which they were entitled. And, JONS's presumption that meal periods would not be

provided for shifts in excess of five (5) hours but less than six (6) hours due to blanket meal period waivers discouraged Ms. Flores and other aggrieved employees from taking meal periods.

What's more, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). The fact that JONS requires aggrieved employees to sign meal waivers simultaneously at or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because JONS's obligation to provide Ms. Flores and other aggrieved employees with meal periods did not arise until it had employed them for a full five (5) hours.

JONS knew or should have known that as a result of its policies and/or practices, that Ms. Flores and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. JONS further knew or should have known that it did not pay Ms. Flores and other aggrieved employees meal period premiums when meal periods were missed, late, short, and/or interrupted.

Furthermore, JONS engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Flores and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that JONS did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, JONS did not pay other aggrieved employees at the correct rate of pay for premiums because JONS systematically failed to include all forms of compensation, such as hazard pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

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

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

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

insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3 ½) hours.

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

During the relevant time period, JONS regularly failed to authorize and permit Ms. Flores and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, JONS’s company-wide practices, including utilizing labor budgets and assigning heavy workloads, prevented Ms. Flores and other aggrieved employees from being relieved of all duty to take their rest periods. Additionally, JONS failed to adhere to a schedule of rest periods, which, coupled with JONS’s failure to provide adequate rest period coverage, further led to Ms. Flores and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Furthermore, upon information and belief, JONS maintained a company-wide on-premises rest period policy, which mandated that Ms. Flores and other aggrieved employees remain on JONS’s premises during their rest periods. Because Ms. Flores and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, JONS effectively maintained control over Ms. Flores and other aggrieved employees during rest periods.

As a result of JONS’s practices and policies, Ms. Flores and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Ms. Flores had to forego her rest periods altogether twice per week due to understaffing, the heavy workload, and lack of rest period coverage.

JONS also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Alternatively, to the extent that JONS did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, JONS did not pay other aggrieved employees at the correct rate of pay for premiums because JONS failed to include all forms of compensation, such as hazard pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

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

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

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. JONS has not provided Ms. Flores and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, JONS has knowingly and intentionally provided Ms. Flores and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, JONS issued uniform wage statements to Ms. Flores and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, JONS violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

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

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

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

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages

of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), JONS willfully failed to maintain accurate payroll records for Ms. Flores and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked and improperly rounding Ms. Flores’s and other aggrieved employees’ total hours worked.

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

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

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

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

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

During the relevant time period, JONS willfully failed to pay Ms. Flores and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within the time periods specified by California Labor Code section 204.

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

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

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

JONS willfully failed to pay Ms. Flores and other aggrieved employees who are no longer employed by JONS the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving JONS's employ.

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

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

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

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

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

Ms. Flores and other aggrieved employees spent a substantial portion of their day behind or at these cash wraps. The nature of the work of an employee performing cashier duties can reasonably be accomplished from a seated position. However, as set forth herein, JONS systematically, and on a company-wide basis, does not provide seats or stools at or near the cash wraps, forcing Ms. Flores and other aggrieved employees to stand throughout their work shifts.

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

As a result of JONS's company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Ms. Flores and other aggrieved employees were forced to stand during shifts and denied seats. JONS's failure to provide suitable seating to Ms. Flores and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(A).

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

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

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

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

take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under subdivision 14(B) during “lulls in operation.” *Id.*

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

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

As a result of JONS’s company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Ms. Flores and other aggrieved employees were forced to stand during shifts and denied seats. JONS’s failure to provide suitable seating to Ms. Flores and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 7-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

JONS had a company-wide policy of requiring Ms. Flores and other aggrieved employees to utilize their own personal vehicles or obtain alternate transportation to carry out company business, but failed to reimburse them for all costs of travel, including mileage. For example, JONS required Ms. Flores and other aggrieved employees to travel to mandatory trainings at other JONS store locations, including a store in Reseda, California. Ms. Flores drove approximately 20 miles roundtrip from her home in Valley Village to the JONS store in Reseda, but was not reimbursed for her mileage or travel. Although JONS required Ms. Flores and other aggrieved employees to use their own vehicles

or obtain alternate transportation to attend these mandatory trainings, JONS never reimbursed them for their travel expenses.

Additionally, JONS on a company-wide basis, expected Ms. Flores and other aggrieved employees to report to work in clean and presentable uniforms, including an apron and/or t-shirt emblazoned with JONS's logo. However, JONS did not provide their employees with sufficient uniforms to wear for their shifts throughout the week. For example, JONS only provided Ms. Flores and other aggrieved employees with one (1) uniform shirt and one (1) apron during their employment. Because JONS failed to provide Ms. Flores and other aggrieved employees with an adequate number of uniform items in relation to their scheduled shifts and for the tasks they were required to perform, Ms. Flores and other aggrieved employees were forced to wash their uniforms more frequently than they otherwise do laundry, and incur expenses in doing so. Thus, JONS failed to maintain uniforms they required Ms. Flores and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

JONS could have provided Ms. Flores and other aggrieved employees with the actual tools for use on the job, including company vehicles, as well as an adequate number of uniforms or access to laundering services. Or, JONS could have reimbursed Ms. Flores and other aggrieved employees for the costs of their mileage, travel expenses, and laundering expenses or provided a uniform maintenance allowance. Instead, JONS passed these operating costs off onto Ms. Flores and other aggrieved employees. At all relevant times, Ms. Flores did not earn at least two (2) times the minimum wage.

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

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

JONS failed to provide Ms. Flores and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Specifically, JONS failed to provide Ms. Flores and other aggrieved employees with the hourly rate(s) of pay, including the

overtime rate(s) of pay, in violation of section 2810.5(a)(1)(A). Instead, the wage theft form that JONS provided to Ms. Flores is blank where the aforementioned wage information should be filled in. JONS's failure to provide Ms. Flores and other aggrieved employees with written notice of basic information regarding their employment with JONS is in violation of Labor Code section 2810.5.

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

California Labor Code § 558(a)

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

Accordingly, Ms. Flores seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Flores, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for herself, all other aggrieved employees, and the State of California against JONS for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

Pre-Litigation Demand

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

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

1. JONS shall pay Ms. Flores and all other aggrieved employees employed by JONS at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.

2. JONS shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked and provided lawful meal and rest periods.
3. JONS shall conduct a survey or interview all current and former aggrieved employees in California who worked for JONS in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for mileage, travel, uniform laundering expenses, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. JONS shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. JONS also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. JONS shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for JONS's benefit, including, but not limited to, costs of mileage; travel expenses; and uniforms, including uniform maintenance and laundering expenses, as required by Labor Code section 2802.
6. JONS shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. JONS shall provide Ms. Flores and all aggrieved employees employed by JONS at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. JONS shall implement and provide suitable seating to all aggrieved employees.
9. JONS shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
10. JONS shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
11. JONS shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1194.5, 1197.1, and 2699, and IWC Wage Order No. 7-2001, section 20.

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

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

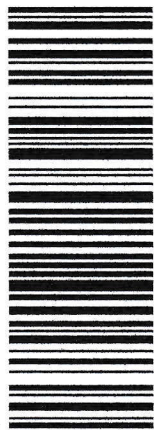
Best Regards,

A handwritten signature in black ink, appearing to read "Mao Shiokura". The signature is fluid and cursive, with the first name "Mao" being more prominent and the last name "Shiokura" written in a more compact, flowing style.

Mao Shiokura

Copy: BERBERIAN ENTERPRISES, INC. (via U.S. Certified Mail)

CERTIFIED MAIL®



7020 1290 0001 8879 4266

tone

LAW APC

1000 Park East, Ste 1000
Los Angeles, CA 90067



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- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

BERBERIAN ENTERPRISES, INC.
5315 SANTA MONICA BLVD.
LOS ANGELES CA 90029



9590 9402 5816 0034 8453 21

2. Article Number (Transfer from service label)

7020 1290 0001 8879 4266

PS Form 3811, July 2015 PSN 7530-02-000-9053

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A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

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D. Is delivery address different from item 1? ☐ Yes
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3. Service Type

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☐ Collect on Delivery Restricted Delivery

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For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

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\$ 3.60

Extra Services & Fees (check box, add fee as appropriate)

☒ Return Receipt (hardcopy) \$ 2.85

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☐ Adult Signature Restricted Delivery \$

Postage

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Total Postage and Fees

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PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

Postmark
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Flores v. Berberian
Enterprises, Inc.

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

BERBERIAN ENTERPRISES, INC.
5315 SANTA MONICA BLVD.
LOS ANGELES CA 90029



9590 9402 5816 0034 8453 21

2. Article Number (Transfer from service label)

7020 1290 0001 8879 4266

COMPLETE THIS SECTION ON DELIVERY

A. Signature

xm 2014

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

C-19

C. Date of Delivery

6/28

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



3. Service Type

- ☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
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