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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN

JOSE CEJA, individually, and on behalf of
other members of the general public
similarly situated, and as an aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"),

Plaintiff,

vs.

EL TORO LOCO MARKET, LLC, a
California limited liability company; TORO
LOCO LINDA LLC, a California limited
liability company; EXPRESS
WHOLESALE LLC, a California limited
liability company; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: BCV-21-101202

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of California Labor Code §§ 551, 552, and 558 (Failure to Provide One Day's Rest in Seven);

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- (9) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (10) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (12) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Jose Ceja, individually and on behalf of all other members of the public
2 similarly situated, and as an aggrieved employee and on behalf of all other aggrieved employees,
3 alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt, hourly
9 paid employees and received at least one wage statement and against whom one or more
10 violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision
11 regulating hours and days of work in the applicable Industrial Welfare Commission (“IWC”)
12 Wage Order were committed, as set forth in this complaint. The monetary damages, penalties,
13 and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court
14 and will be established according to proof at trial. This Court has jurisdiction over this action
15 pursuant to the California Constitution, Article VI, section 10. The statutes under which this
16 action is brought do not specify any other basis for jurisdiction. Plaintiff’s share of damages,
17 penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of jurisdiction
21 over them by the California courts consistent with traditional notions of fair play and substantial
22 justice. There is no basis for federal diversity jurisdiction in this action because there is no
23 complete diversity, and this case falls within the statutory exceptions to “minimal diversity”
24 jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4). Upon information
25 and belief, two-thirds or more of the class members and Defendants are citizens of California
26 and/or (a) two-thirds of the class members and Defendants are citizens of California; (b) the
27 alleged wage and hour violations occurred in California; (c) significant relief is being sought
28 against Defendants whose violations of California wage and hour laws form a significant basis

1 for Plaintiff's claims; and (d) no other class action has been filed within the past three (3) years
2 on behalf of the same proposed class against Defendants asserting the same or similar factual
3 allegations.

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

10 **THE PARTIES**

11 4. Plaintiff Jose Ceja is a resident of Lost Hills, in Kern County, California.
12 Defendants employed Plaintiff as an hourly paid, non-exempt Meat Department Supervisor,
13 Butcher, and Cashier, from approximately March 2016 to December 2020. Plaintiff worked for
14 Defendants at their location in Lost Hills, California. During his employment, Plaintiff typically
15 worked ten (10) hours or more per day, and five (5) or more days per week. Plaintiff's primary
16 job duties included, without limitation, butchering, stocking, labelling, organizing and
17 displaying meat product; attending to customers; and grilling and cooking foods.

18 5. EL TORO LOCO MARKET, LLC was and is, upon information and belief, a
19 California limited liability company, and at all times hereinafter mentioned, an employer whose
20 employees are engaged throughout this county and the State of California.

21 6. TORO LOCO LINDA LLC was and is, upon information and belief, a California
22 limited liability company, and at all times hereinafter mentioned, an employer whose employees
23 are engaged throughout this county and the State of California.

24 7. EXPRESS WHOLESALE LLC was and is, upon information and belief, a
25 California limited liability company, and at all times hereinafter mentioned, an employer whose
26 employees are engaged throughout this county and the State of California.

27 8. Plaintiff is unaware of the true names or capacities of the Defendants sued herein
28 under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the

1 complaint and serve such fictitiously named Defendants once their names and capacities
2 become known.

3 9. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
4 were the partners, agents, owners, or managers of EL TORO LOCO MARKET, LLC; TORO
5 LOCO LINDA LLC; and EXPRESS WHOLESALE LLC at all relevant times.

6 10. Plaintiff is informed and believes, and thereon alleges, that each and all of the
7 acts and omissions alleged herein was performed by, or is attributable to, EL TORO LOCO
8 MARKET, LLC; TORO LOCO LINDA LLC; EXPRESS WHOLESALE LLC; and/or DOES 1
9 through 10 (collectively, “Defendants” or “EL TORO”), each acting as the agent, employee,
10 alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants
11 and was acting within the course and scope of such agency, employment, joint venture, or
12 concerted activity with legal authority to act on the others’ behalf. The acts of any and all
13 Defendants were in accordance with, and represent, the official policy of Defendants.

14 11. At all relevant times, Defendants, and each of them, ratified each and every act
15 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
16 and abetted the acts and omissions of each and all the other Defendants in proximately causing
17 the damages herein alleged.

18 12. Plaintiff is informed and believes, and thereon alleges, that each of said
19 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
20 omissions, occurrences, and transactions alleged herein.

21 13. Under California law, Defendants are jointly and severally liable as employers
22 for the violations alleged herein because they have each exercised sufficient control over the
23 wages, hours, working conditions, and employment status of Plaintiff and class members. Each
24 Defendant had the power to hire and fire Plaintiff and class members, supervised and controlled
25 their work schedule and/or conditions of employment, determined their rate of pay, and
26 maintained their employment records. Defendants suffered or permitted Plaintiff and class
27 members to work and/or “engaged” Plaintiff and class members so as to create a common-law
28 employment relationship. As joint employers of Plaintiff and class members, Defendants are

1 jointly and severally liable for the civil penalties and all other relief available to Plaintiff and
2 class members under the law.

3 14. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
4 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class
5 members because Defendants have:

- 6 (a) jointly exercised meaningful control over the work performed by Plaintiff
7 and class members;
- 8 (b) jointly exercised meaningful control over Plaintiff's and class members'
9 wages, hours, and working conditions, including the quantity, quality
10 standards, speed, scheduling, and operative details of the tasks performed
11 by Plaintiff and class members;
- 12 (c) jointly required that Plaintiff and class members perform work which is
13 an integral part of Defendants' businesses; and
- 14 (d) jointly exercised control over Plaintiff and class members as a matter of
15 economic reality in that Plaintiff and class members were dependent on
16 Defendants, who shared the power to set the wages of Plaintiff and class
17 members and determined their working conditions, and who jointly
18 reaped the benefits from the underpayment of their wages and
19 noncompliance with other statutory provisions governing their
20 employment.

21 15. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
22 there has existed a unity of interest and ownership between Defendants such that any
23 individuality and separateness between the entities has ceased.

24 16. EL TORO LOCO MARKET, LLC; TORO LOCO LINDA LLC; EXPRESS
25 WHOLESALE LLC; and/or DOES 1 through 10 are therefore alter egos of each other.

26 17. Adherence to the fiction of the separate existence of Defendants would permit an
27 abuse of the corporate privilege, and would promote injustice by protecting Defendants from
28 liability for the wrongful acts committed by them under the name EL TORO.

1 18. Plaintiff further alleges, upon information and belief, that Defendants EL TORO
2 LOCO MARKET, LLC; TORO LOCO LINDA LLC; and EXPRESS WHOLESALE LLC are
3 alter egos of each other for the following reasons:

4 (a) On the California Secretary of State's website
5 (<https://businesssearch.sos.ca.gov/>), EL TORO LOCO MARKET, LLC;
6 TORO LOCO LINDA LLC; and EXPRESS WHOLESALE LLC share
7 the same entity address and/or mailing address, "825 Central Valley
8 Hwy., Shafter, CA 93263";

9 (b) According to the most recent "Statement of Information" forms filed with
10 the California Secretary of State, EL TORO LOCO MARKET, LLC;
11 TORO LOCO LINDA LLC; and EXPRESS WHOLESALE LLC; share
12 the same officers, managers, and/or members, including, but not limited
13 to, Iskander Hussein;

14 (c) According to the most recent "Statement of Information" forms filed with
15 the California Secretary of State, EL TORO LOCO MARKET, LLC;
16 TORO LOCO LINDA LLC; and EXPRESS WHOLESALE LLC; share
17 the same Agent for Service of Process, Iskander Hussein; and

18 (d) On information and belief, EL TORO LOCO MARKET, LLC; TORO
19 LOCO LINDA LLC; and EXPRESS WHOLESALE LLC utilize the same
20 standardized employment forms and issue the same employment policies.

21 **GENERAL ALLEGATIONS**

22 19. Defendants own and operate a chain of specialty supermarkets. Upon
23 information and belief, Defendants maintain a single, centralized Human Resources ("HR")
24 department at their corporate headquarters in Shafter, California, which is responsible for the
25 recruiting and hiring of new employees, and communicating and implementing Defendants'
26 company-wide policies, including timekeeping policies and meal and rest period policies, to
27 employees throughout California.

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1 20. In particular, Plaintiff and class members, on information and belief, received
2 the same standardized documents and/or written policies. Upon information and belief, the
3 usage of standardized documents and/or written policies, including new-hire documents,
4 indicate that Defendants dictated policies at the corporate level and implemented them
5 company-wide, regardless of their employees' assigned locations or positions. Upon
6 information and belief, Defendants set forth uniform policies and procedures in several
7 documents provided at an employee's time of hire.

8 21. Upon information and belief, Defendants maintain a centralized Payroll
9 department at their corporate headquarters in Shafter, California, which processes payroll for
10 all non-exempt, hourly paid employees working for Defendants at their various locations and
11 jobsites in California, including Plaintiff and class members. Based upon information and
12 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
13 employees in California, irrespective of their work locations. Upon information and belief,
14 Defendants process payroll for departing employees in the same manner throughout the State
15 of California, regardless of the manner in which each employee's employment ends.

16 22. Defendants continue to employ non-exempt or hourly paid employees in
17 California.

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

22 24. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
23 members were not paid for all hours worked because all hours worked were not recorded.

24 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and class members were entitled to receive certain wages for
26 overtime compensation and that they were not receiving certain wages for overtime
27 compensation.

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1 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and class members were entitled to receive at least minimum
3 wages for compensation and that they were not receiving at least minimum wages for work that
4 was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff and
5 class members were not paid at least minimum wages for work done off-the-clock.

6 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and class members were entitled to meal periods in accordance
8 with the California Labor Code and applicable IWC Wage Order or payment of one (1)
9 additional hour of pay at their regular rates of pay when they were not provided with timely,
10 uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members were not
11 provided with all meal periods or payment of one (1) additional hour of pay at their regular rates
12 of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

13 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and class members were entitled to rest periods in accordance
15 with the California Labor Code and applicable IWC Wage Order or payment of one (1)
16 additional hour of pay at their regular rates of pay when they were not authorized and permitted
17 to take a compliant rest period. In violation of the California Labor Code, Plaintiff and class
18 members were not authorized and permitted to take compliant rest periods, nor did Defendants
19 provide Plaintiff and class members with payment of one (1) additional hour of pay at their
20 regular rates of pay when they were not authorized and permitted to take a compliant rest period.

21 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and class members were entitled to receive complete and
23 accurate wage statements in accordance with California law. In violation of the California
24 Labor Code, Plaintiff and class members were not provided complete and accurate wage
25 statements.

26 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that they had a duty to maintain accurate and complete payroll records in
28 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,

1 knowingly, and intentionally failed to do so.

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

8 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and class members were entitled to timely payment of wages
10 during their employment. In violation of the California Labor Code, Plaintiff and class members
11 did not receive payment of all wages, including, but not limited to, overtime wages, minimum
12 wages, and/or meal and rest period premiums, within permissible time periods.

13 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and class members were entitled to one day's rest in seven. In
15 violation of the California Labor Code, Defendants required Plaintiff and class members to work
16 more than six consecutive days without a day of rest, where the total hours worked exceeded 30
17 hours in any week or six hours in any one day thereof.

18 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and class members were entitled to suitable seating and/or
20 were entitled to sit when it did not interfere with the performance of their duties and also have
21 seats nearby to use during a lull in tasks that do require moving about or standing. In violation
22 of the California Labor Code and applicable IWC Wage Order, Defendants failed to provide
23 Plaintiff and class members suitable seating.

24 39. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and/or class members were entitled to be paid reporting time
26 pay when they reported to work for their scheduled shift but were put to work for less than half
27 of the regular schedule. In violation of the California Labor Code and applicable IWC Wage
28 Order, Defendants did not pay Plaintiff and/or class members all reporting time pay due.

1 40. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and/or class members were entitled to be paid a split-shift
3 premium when they returned to work for an additional shift in the same day, after having been
4 clocked out for more than an hour. In violation of the California Labor Code and applicable
5 IWC Wage Order, Defendants did not pay Plaintiff and/or class members an additional hour at
6 minimum wage when they worked split-shifts.

7 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and class members were entitled to receive full reimbursement
9 for all business-related expenses and costs they incurred during the course and scope of their
10 employment and that they did not receive full reimbursement of applicable business-related
11 expenses and costs incurred.

12 35. Plaintiff is informed and believes, and thereon alleges, that at all times herein
13 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff
14 and class members for all hours worked, and that Defendants had the financial ability to pay
15 such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
16 represented to Plaintiff and class members that they were properly denied wages, all in order to
17 increase Defendants' profits.

18 **PAGA REPRESENTATIVE ALLEGATIONS**

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

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

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1 38. Plaintiff and other current and former employees of Defendants are “aggrieved
2 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
3 or former employees and one or more of the alleged violations were committed against them.

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

7 (a) The aggrieved employee or representative shall give written notice by
8 online filing with the LWDA and by certified mail to the employer of the
9 specific provisions of the California Labor Code alleged to have been
10 violated, including the facts and theories to support the alleged violation.

11 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
12 2699.3(a) and any employer response to that notice shall be accompanied
13 by a filing fee of seventy-five dollars (\$75).

14 (c) The LWDA shall notify the employer and the aggrieved employee or
15 representative by certified mail that it does not intend to investigate the
16 alleged violation (“LWDA’s Notice”) within sixty (60) calendar days of
17 the postmark date of the aggrieved employee’s notice. Upon receipt of
18 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
19 (65) calendar days of the postmark date of the aggrieved employee’s
20 notice, the aggrieved employee may commence a civil action pursuant to
21 California Labor Code section 2699 to recover civil penalties.

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

25 (a) The aggrieved employee or representative shall give written notice by
26 online filing with the LWDA and by certified mail to the employer of the
27 specific provisions of the California Labor Code alleged to have been
28 violated (other than those listed in Section 2699.5), including the facts

1 and theories to support the alleged violation.

2 (b) An aggrieved employee's notice filed with the LWDA pursuant to
3 2699.3(c) and any employer response to that notice shall be accompanied
4 by a filing fee of seventy-five dollars (\$75).

5 (c) The employer may cure the alleged violation within thirty-three (33)
6 calendar days of the postmark date of the notice sent by the aggrieved
7 employee or representative. The employer shall give written notice
8 within that period of time by certified mail to the aggrieved employee or
9 representative and by online filing with the LWDA if the alleged violation
10 is cured, including a description of actions taken, and no civil action
11 pursuant to Section 2699 may commence. If the alleged violation is not
12 cured within the 33-day period, the aggrieved employee may commence
13 a civil action pursuant to Section 2699.

14 41. On June 2, 2021, Plaintiff provided written notice by online filing to the LWDA
15 and by Certified Mail to Defendants of the specific provisions of the California Labor Code
16 alleged to have been violated, including facts and theories to support the alleged violations, in
17 accordance with California Labor Code section 2699.3. Plaintiff's written notice was
18 accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA
19 Administrator confirmed receipt of Plaintiff's written notice and assigned Plaintiff PAGA Case
20 Number LWDA-CM-833777-2. A true and correct copy of Plaintiff's written notice to the
21 LWDA and Defendants is attached hereto as "Exhibit 1."

22 42. As of the filing date of this complaint, over 65 days have passed since Plaintiff
23 sent the notice described above to the LWDA, and the LWDA has not responded that it intends
24 to investigate Plaintiff's claims and Defendants have not cured the violations.

25 43. Thus, Plaintiff has satisfied the administrative prerequisites under California
26 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
27 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a),
28 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

44. 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 “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

45. Defendants, at all times relevant to this complaint, were employers or persons acting on behalf of an employer(s) who violated Plaintiff's and other aggrieved employees' rights by violating various sections of the California Labor Code as set forth above.

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

47. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

CLASS ACTION ALLEGATIONS

48. Plaintiff brings this action on his own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of Civil Procedure section 382.

49. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

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1 50. Plaintiff’s proposed class consists of and is defined as follows:

2 All persons who worked for Defendants as non-exempt, hourly
3 paid employees in California, within four years prior to the filing
 of the initial complaint until the date of trial (“Class”).

4 51. Plaintiff’s proposed subclass consists of and is defined as follows:

5 All persons who worked for Defendants as non-exempt, hourly
6 paid employees in California and who received at least one wage
7 statement within one (1) year prior to the filing of the initial
 complaint until the date of trial (“Subclass”).

8 52. Members of the Class and Subclass are referred to herein as “class members.”

9 53. Plaintiff reserves the right to redefine the Class and Subclass and to add
10 additional subclasses as appropriate based on further investigation, discovery, and specific
11 theories of liability.

12 54. There are common questions of law and fact as to class members that
13 predominate over questions affecting only individual members, including, but not limited to:

- 14 (a) Whether Defendants required Plaintiff and class members to work over
15 eight (8) hours per day, over twelve (12) hours per day, or over forty (40)
16 hours per week and failed to pay all legally required overtime
17 compensation to Plaintiff and class members;
- 18 (b) Whether Defendants failed to pay Plaintiff and class members at least
19 minimum wages for all hours worked;
- 20 (c) Whether Defendants failed to provide Plaintiff and class members with
21 meal periods;
- 22 (d) Whether Defendants failed to authorize and permit Plaintiff and class
23 members to take rest periods;
- 24 (e) Whether Defendants provided Plaintiff and class members with complete
25 and accurate wage statements as required by California Labor Code
26 section 226(a);
- 27 (f) Whether Defendants maintained accurate payroll records as required by
28 California Labor Code section 1174(d);

- (g) Whether Defendants failed to pay earned overtime wages, minimum wages, and/or meal and rest period premiums, due to Plaintiff and class members upon their discharge;
- (h) Whether Defendants failed timely to pay overtime wages, minimum wages, and/or meal and rest period premiums, due to Plaintiff and class members during their employment;
- (i) Whether Defendants failed to provide Plaintiff and class members to take one day's rest in seven;
- (j) Whether Defendants failed to provide Plaintiff and class members with suitable seating;
- (k) Whether Defendants required Plaintiff and/or class members to report to work, but failed to provide them with work or provided them with less than half their scheduled day's work, without properly compensating them as required by California Code of Regulations, Title 8, section 11070, subsection 5;
- (l) Whether Defendants required Plaintiff and/or class members to return to work for an additional shift in the same day, after having been clocked out for more than an hour, without paying Plaintiff and/or class members an additional hour of pay at the minimum wage as required by California Code of Regulations, Title 8, section 11070(4)(C);
- (m) Whether Defendants failed to reimburse Plaintiff and class members for necessary and required business-related expenditures and/or losses incurred by them in the scope of their employment;
- (n) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and
- (o) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

1 55. There is a well-defined community of interest in the litigation and the class
2 members are readily ascertainable:

3 (a) Numerosity: The class members are so numerous that joinder of all
4 members would be unfeasible and impractical. The membership of the
5 entire class is unknown to Plaintiff at this time; however, the class is
6 estimated to be greater than one hundred (100) individuals and the
7 identity of such membership is readily ascertainable by inspection of
8 Defendants' employment records.

9 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect
10 the interests of each class member with whom he has a well-defined
11 community of interest, and Plaintiff's claims (or defenses, if any) are
12 typical of all class members as demonstrated herein.

13 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect
14 the interests of each class member with whom he has a well-defined
15 community of interest and typicality of claims, as demonstrated herein.
16 Plaintiff acknowledges that he has an obligation to make known to the
17 Court any relationship, conflicts or differences with any class member.
18 Plaintiff's attorneys, the proposed class counsel, are versed in the rules
19 governing class action discovery, certification, and settlement. Plaintiff
20 has incurred, and throughout the duration of this action, will continue to
21 incur costs and attorneys' fees that have been, are, and will be necessarily
22 expended for the prosecution of this action for the substantial benefit of
23 each class member.

24 (d) Superiority: The nature of this action makes the use of class action
25 adjudication superior to other methods. A class action will achieve
26 economies of time, effort, and expense as compared with separate
27 lawsuits, and will avoid inconsistent outcomes because the same issues
28 can be adjudicated in the same manner and at the same time for the entire

class.

(e) Public Policy Considerations: Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while simultaneously protecting their privacy.

FIRST CAUSE OF ACTION

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

(Against all Defendants)

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

57. 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.”

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

59. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and class members 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) for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

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

6 61. 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 seventh
9 (7th) day of work, and to overtime compensation at twice the employee's regular rate of pay for
10 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
11 the seventh (7th) day of work.

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

17 63. First, during the relevant period, Defendants had, and continue to have, a policy
18 and/or practice of requiring Plaintiff and class members to continue to perform work-related
19 tasks while off-the-clock, such as communicating with Defendants' management via their
20 personal cellular phones or continuing to perform their assigned duties. For example, about
21 once per week, Plaintiff's supervisor would call him to discuss assignments and the execution
22 of tasks, which took up to five (5) minutes per instance. As a further example, at least once per
23 week, while off-the-clock, Plaintiff would receive phone calls from Defendants' third-party
24 vendors and suppliers to discuss purchasing inventory, which took up to 20 minutes.
25 Defendants failed to track this time Plaintiff and class members spent working off-the-clock,
26 and thus, Plaintiff and class members received no compensation for this time.

27 64. Second, Defendants' company-wide closing procedures required Plaintiff and
28 class members to perform work after clocking out for their shifts. For example, on closing

1 shifts, the designated Manager on Duty (MOD) would lock the store at closing time, while the
2 remaining employees completed their closing duties. The MOD, who was the only person with
3 a key to let other employees out, would then complete his or her closing duties. Meanwhile,
4 per Defendants' store procedures, Plaintiff and class members would finish their own closing
5 tasks, clock out, and then gather near the store's entrance to wait for the MOD to complete his
6 or her closing duties and let them out of the store. This process could take five (5) minutes or
7 more per instance, time that Plaintiff and other class members spent under Defendants' control
8 and off-the-clock.

9 65. Third, during the relevant period, on information and belief, Defendants had a
10 company-wide policy and/or practice of improperly rounding employees' clock-in and clock-
11 out times in their timekeeping system to the nearest half (0.5) of an hour. Defendants' rounding
12 policy resulted in the failure to compensate Plaintiff and class members fully for all hours
13 worked, causing Plaintiff and class members to not be paid overtime wages for all of the
14 overtime hours they actually worked. Defendants' policy of rounding was unfair and has, over
15 time, resulted in the underpayment of wages to Plaintiff and class members. To the extent
16 Defendants' rounding policy took away time worked that was eligible for overtime, Plaintiff
17 and class members were denied overtime pay for all hours worked.

18 66. Fourth, on information and belief, Defendants had, and continue to have, a
19 company-wide policy staffing their supermarket locations strictly based on the labor hours or
20 labor budget set by corporate for each location. Defendants' uniform use of labor budgets,
21 combined with the assignment of heavy workloads, resulted in chronic understaffing and a
22 failure to provide Plaintiff and class members with adequate meal period coverage, because
23 there were too few employees on duty to handle the workload and attend to customers.
24 Defendants also had a practice of failing to schedule meal periods, which further caused Plaintiff
25 and class members to not be relieved of their duties for compliant meal periods. As a result of
26 this lack of meal period coverage, Plaintiff and class members were not always afforded 30-
27 minute meal periods during shifts when they were entitled to receive a meal period. For
28 example, Plaintiff was required to work through his meal periods three (3) days per week to

1 meet customer demand and take and prepare customers' orders. Accordingly, Plaintiff and class
2 members missed meal periods and/or had meal periods cut short or interrupted in order to handle
3 their workloads.

4 67. Fifth, during the relevant time period, Defendants maintained and implemented
5 a company-wide on-premises meal period policy, which mandated that Plaintiff and class
6 members remain on the work premises during their meal periods. Because Plaintiff and class
7 members were restricted from leaving the premises during meal periods, Plaintiff and class
8 members were denied the ability to use meal periods freely for their own purposes, such as
9 running personal errands. Thus, Defendants effectively maintained control over Plaintiff and
10 class members during meal periods.

11 68. Sixth, during the relevant time period, Defendants did not have a procedure in
12 place to track the start and stop times of meal periods or to allow employees to report a short,
13 missed, or interrupted meal period. Instead, Defendants automatically recorded that employees,
14 including Plaintiff and class members, took 30-minute meal periods. Thus, Defendants would
15 record that compliant meal periods were taken, even if that was not the case. Because
16 Defendants failed to implement any sort of timekeeping system for tracking and recording meal
17 periods and automatically recorded that compliant meal periods were taken, even when they
18 were not, Plaintiff and class members were not paid for all hours worked.

19 69. Defendants knew or should have known that as a result of these company-wide
20 practices and/or policies, Plaintiff and class members were performing their assigned duties off-
21 the-clock before and after their shifts and during meal periods, and were suffered or permitted
22 to perform work for which they were not paid. Because Plaintiff and class members worked
23 shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-
24 clock work qualified for overtime premium pay. Therefore, Plaintiff and class members were
25 not paid overtime wages for all of the overtime hours they actually worked.

26 70. Defendants' failure to pay Plaintiff and class members the balance of overtime
27 compensation as required by California law, violates the provisions of California Labor Code
28 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class

1 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,
2 and attorneys' fees.

3 **SECOND CAUSE OF ACTION**

4 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 5 **Minimum Wages** 6 **(Against all Defendants)**

7 71. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
8 and every allegation set forth above.

9 72. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
10 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
11 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
12 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 7-2001 as "the
13 time during which an employee is subject to the control of an employer, and includes all the
14 time the employee is suffered or permitted to work, whether or not required to do so." Cal.
15 Code. Regs. tit. 8, § 11070(2)(G) (defining "Hours Worked").

16 73. As stated, Defendants required that Plaintiff and class members perform work
17 off-the-clock, including communicating with Defendants' supervisors and vendors on their
18 personal cellular phones and waiting to leave the store premises after closing. As also stated,
19 Defendants had a company-wide policy and/or practice of rounding Plaintiff's and class
20 members' hourly clock-in and clock-out times in their timekeeping system to the nearest half-
21 hour, resulting in the failure to compensate them for all hours worked.

22 74. Additionally, as set forth above, due to Defendants' uniform policies and/or
23 practices of utilizing labor budgets while assigning heavy workloads, failing to schedule meal
24 periods, and requiring employees to stay on the work premises during meal periods, Plaintiff
25 and class members were impeded from taking all uninterrupted meal periods to which they were
26 entitled and were required to work off-the-clock. Moreover, as stated, Defendants had a
27 company-wide practice and/or policy of deducting meal periods from Plaintiff's and class
28 members' time records, even when meal periods were missed, short, and/or interrupted.

75. Defendants did not pay minimum wages for all hours by Plaintiff and class members. To the extent that these off-the-clock hours did not qualify for overtime premium payment, Defendants 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.

76. Defendants' failure to pay Plaintiff and class members minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California Labor Code section 1194.2, Plaintiff and class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

THIRD CAUSE OF ACTION

Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period

Violations

(Against all Defendants)

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

78. 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).

79. 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.

80. At all relevant times herein set forth, 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

1 hours worked is no more than twelve (12) hours, the second meal period may be waived by
2 mutual consent of the employer and the employee only if the first meal period was not waived.

3 81. Under California law, an employer cannot evade meal period requirements via
4 the use of “on-duty” meal agreements because it understaffs its locations. *Abdullah v. U.S. Sec.*
5 *Assocs.*, 2011 U.S. Dist. LEXIS 156685 (C.D. Cal. Jan. 11, 2011).

6 82. First, during the relevant time period, as stated, Defendants had, and continue to
7 have, company-wide policies and/or practices of understaffing their supermarket locations
8 based on labor budgets, which, combined with assigning heavy workloads and failing to
9 schedule meal periods, has resulted in a lack of meal period coverage and prevented Plaintiff
10 and class members from taking all compliant meal periods to which they were entitled. As a
11 result, Plaintiff and class members would be forced to work in excess of five (5) hours before
12 taking a meal period and, at times, had their meal periods cut short and/or had to forgo their
13 meal periods altogether. For example, six (6) times per week, Plaintiff was required to take his
14 meal period late (after having worked in excess of five (5) hours or more into his shift), in order
15 to keep up with customer demand. In addition, during peak seasons such as the local harvesting
16 season, Plaintiff’s meal periods were interrupted three (3) times per week in order to meet
17 heightened customer traffic while the store remained understaffed.

18 83. Second, as stated, during the relevant time period, Defendants did not have a
19 procedure in place to track the start and stop times of meal periods or to allow employees to
20 report a late, short, missed, or interrupted meal period, and instead automatically recorded that
21 compliant meal periods were taken. As a result of this policy, Defendants deducted 30 minutes
22 from Plaintiff’s and class members’ time records even when meal periods were missed, short,
23 and/or interrupted. Thus, Defendants systematically failed to correctly record meal periods.

24 84. Third, during the relevant time period, as described above, Defendants required
25 that Plaintiff and class members remain on the work premises during their meal periods.
26 Because Plaintiff and class members were restricted from leaving the premises during meal
27 periods, Plaintiff and class members were denied the ability to use meal periods freely for their
28 own purposes, such as running personal errands. Thus, Defendants effectively maintained

1 control over Plaintiff and class members during meal periods. To the extent Defendants
2 required Plaintiff and class members to sign written “on-duty” meal period agreements, such
3 agreements are invalid, as the nature of the work performed by Plaintiff and class members do
4 not necessitate an “on-duty” meal period under California law.

5 85. Fourth, Defendants did not provide Plaintiff and class members with second 30-
6 minute meal periods on days that they worked in excess of ten (10) hours in one day. During
7 his employment, Plaintiff worked shifts in excess of ten (10) hours or more hours per day but
8 was not provided an uninterrupted second 30-minute meal period. Plaintiff and class members
9 did not sign valid meal period waivers on days that they were entitled to meal periods and were
10 not relieved of all duties.

11 86. At all times herein mentioned, Defendants knew or should have known that, as a
12 result of these policies, Plaintiff and class members were not actually relieved of all duties to
13 take timely, uninterrupted meal periods. Defendants further knew or should have known that
14 Defendants did not pay Plaintiff and class members meal period premiums when meal periods
15 were late, interrupted, shortened, or missed.

16 87. Moreover, Defendants engaged in a company-wide practice and/or policy of not
17 paying all meal period premiums owed when compliant meal periods are not provided. Because
18 of Defendants’ practices and/or policies, Plaintiff and class members have not received premium
19 pay for all missed, late, and interrupted meal periods. As a result, Defendants failed to provide
20 Plaintiff and class members compliant meal periods in violation of California Labor Code
21 sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

22 88. Defendants’ conduct violates the applicable IWC Wage Order, and California
23 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
24 entitled to recover from Defendants one (1) additional hour of pay at the employee’s regular
25 rate of compensation for each work day that the meal period was not provided.

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FOURTH CAUSE OF ACTION
Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations
(Against all Defendants)

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

90. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and class members’ employment by Defendants.

91. At all relevant times, 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.

92. At all relevant times, 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. 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 v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(c), Plaintiff and class members are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

93. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants’ company-wide

1 practices, including understaffing and assigning heavy workloads, prevented Plaintiff and class
2 members from being relieved of all duty to take rest periods. Further, Defendants' management
3 erroneously informed Plaintiff and class members that they were only entitled to one (1) 10-
4 minute rest period per shift, regardless of the shift length. Defendants also failed to schedule
5 rest periods, which, coupled with Defendants' failure to provide adequate rest period coverage,
6 further led to Plaintiff and class members not being authorized and permitted to take compliant
7 rest periods.

8 94. Additionally, on information and belief, during the relevant time period,
9 Defendants maintained and implemented a company-wide on-premises rest period policy,
10 which mandated that Plaintiff and class members remain on the work premises during their rest
11 periods. Because Plaintiff and class members were restricted from leaving the premises during
12 rest periods, they were denied the ability to use their rest periods freely for their own purposes,
13 such as running personal errands. Thus, Defendants effectively maintained control over
14 Plaintiff and class members during rest periods.

15 95. As a result of Defendants' practices and policies, Plaintiff and class members
16 worked shifts in excess of 3.5 hours, in excess of 6 hours, and in excess of 10 hours without
17 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
18 throughout his employment, Plaintiff frequently worked through his rest periods due to the
19 heavy workload, the lack of coverage, and failure to schedule rest periods.

20 96. Defendants have also engaged in a company-wide policy and/or practice of not
21 paying all rest period premiums owed when compliant rest periods are not authorized and
22 permitted. As a result, Defendants denied Plaintiff and class members rest periods and failed
23 to pay them rest period premiums due, in violation of California Labor Code sections 226.7 and
24 516, and the applicable IWC Wage Order.

25 97. Defendants' conduct violates the applicable IWC Wage Order and California
26 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
27 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
28 compensation for each work day that a compliant rest period was not authorized and permitted.

1 **FIFTH CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage**
3 **Statements and Failure to Maintain Accurate Payroll Records**
4 **(Against all Defendants)**

5 98. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

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

12 100. At all relevant times, Defendants have knowingly and intentionally provided
13 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements. For
14 example, Defendants issued uniform wage statements to Plaintiff and Subclass members that
15 fail to correctly list: gross wages earned; total hours worked; net wages earned; the name and
16 address of the legal entity that is the employer; and all applicable hourly rates in effect during
17 the pay period, including overtime rates of pay, and the corresponding number of hours worked
18 at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5),
19 226(a)(8), and 226(a)(9).

20 101. Because Defendants did not record the time Plaintiff and Subclass members spent
21 working off-the-clock, improperly rounded their total hours worked, and deducted time from
22 their records for meal periods that were interrupted and/or missed (and therefore time for which
23 they should have been paid), Defendants did not list the correct amount of gross wages and net
24 wages earned by Plaintiff and Subclass members in compliance with section 226(a)(1) and
25 section 226(a)(5), respectively. For the same reason, Defendants failed to accurately list the
26 total number of hours worked by Plaintiff and Subclass members, in violation of section
27 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and
28 the corresponding accurate number of hours worked at each hourly rate, in violation of section

1 226(a)(9).

2 102. Additionally, and separate from these violations, Defendants issued uniform
3 wage statements to Plaintiff and Subclass members that failed to correctly list the name and
4 address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of
5 section 226(a)(8) is to provide California employees with transparency as to the true identity of
6 their employer, to allow the employee to contact their employer during employment in the future
7 for various reasons, including filing an administrative claim, judicial claim, or other action to
8 seek relief against their employer, to obtain unemployment benefits, etc. Plaintiff's and
9 Subclass members' wage statements incorrectly list the employer as "El Toro Loco Markets,"
10 and address of "21315 Highway 46, Lost Hills, CA 93249," but according to the California
11 Secretary of State's website, there is no such entity by that name or with that address. However,
12 a similarly named entity, "EL TORO LOCO MARKET, LLC," listed with the California
13 Secretary of State is located at "825 Central Valley Hwy, Shafter, CA 93263." Upon
14 information and belief, this is the true name and address of the employing entity.

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

22 104. California Labor Code section 1174(d) provides that "[e]very person employing
23 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
24 employed and the ages of all minors" and "[k]eep, at a central location in the state or at the
25 plants or establishments at which employees are employed, payroll records showing the hours
26 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
27 applicable piece rate paid to, employees employed at the respective plants or
28 establishments. . . ." At all relevant times, and in violation of Labor Code section 1174(d),

1 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
2 members showing the daily hours they worked and the wages paid thereto as a result of failing
3 to record the off-the-clock hours that they worked and improperly rounding Plaintiff's and
4 Subclass members' total hours worked.

5 105. California Labor Code section 1198 provides that the maximum hours of work
6 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set
7 forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment
8 of any employees for longer hours than those fixed by the order or under conditions of labor
9 prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers
10 are required to keep accurate time records showing when the employee begins and ends each
11 work period and meal period. During the relevant time period, Defendants failed, on a
12 company-wide basis, to keep accurate records of work period and meal period start and stop
13 times for Plaintiff and Subclass members, in violation of section 1198. Also, as stated,
14 Defendants engaged in a company-wide practice and/or policy of automatically deducting meal
15 periods from Plaintiff's and Subclass members' time records regardless of if or when meal
16 periods were actually taken, and thereby failed to keep accurate records of meal start and end
17 times for Plaintiff and Subclass members. Furthermore, in light of Defendants' failure to
18 provide Plaintiff and Subclass members with second 30-minute meal periods to which they were
19 entitled, Defendants kept no records of meal start and end times for second meal periods.

20 106. Plaintiff and Subclass members are entitled to recover from Defendants the
21 greater of their actual damages caused by Defendants' failure to comply with California Labor
22 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
23 employee.

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1 **SIXTH CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid**

3 **Upon Termination**

4 **(Against all Defendants)**

5 107. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

7 108. This cause of action is dependent upon, and wholly derivative of, the overtime
8 wages, minimum wages, and/or meal and rest period premiums, that were not timely paid to
9 Plaintiff and those class members no longer employed by Defendants upon their termination.

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

17 110. Defendants willfully failed to pay Plaintiff and class members who are no longer
18 employed by Defendants the earned and unpaid wages set forth above, including but not limited
19 to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time
20 of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

21 111. Defendants' failure to pay Plaintiff and class members who are no longer
22 employed by Defendants their wages earned and unpaid at the time of discharge, or within
23 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
24 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
25 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
26 thirty (30) day maximum pursuant to California Labor Code section 203.

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SEVENTH CAUSE OF ACTION
Violation of California Labor Code § 204—Failure to Timely Pay Wages During
Employment
(Against all Defendants)

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

113. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, and/or meal and rest period premiums, that were not timely paid to Plaintiff and those class members.

114. At all times relevant herein set forth, Labor Code section 204 provides that all wages earned by any person in any employment between the first (1st) and the fifteenth (15th) days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the labor was performed.

115. At all times relevant herein, Labor Code section 204 provides that all wages earned by any person in any employment between the sixteenth (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 first (1st) and the tenth (10th) day of the following month.

116. At all times relevant herein, Labor Code section 204 provides 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, at all times relevant herein, 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.

117. During the relevant time period, Defendants willfully failed to pay Plaintiff and class members 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.

118. Defendants' failure to pay Plaintiff and class members all wages due violates Labor Code section 204. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages pursuant to California Labor Code section 210.

EIGHTH CAUSE OF ACTION

Violation of California Labor Code §§ 551, 552, and 558—Failure to Provide One Day's Rest in Seven (Against all Defendants)

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

120. At all relevant times herein, California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day's rest in seven. Additionally, California Labor Code section 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest.

121. Further, at all times relevant herein set forth, California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six hours in any one day thereof.

122. 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 in addition to an amount sufficient to recover underpaid wages. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid . . . in addition to an amount sufficient to recover underpaid wages." Labor Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law."

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1 123. During the relevant period, Defendants required Plaintiff and class members to
2 work eight (8) or more hours per day and seven (7) consecutive days in a workweek. For
3 example, Plaintiff was required to work approximately thirty (30) consecutive days. Because
4 Plaintiff and class members worked over thirty (30) hours per week and over six (6) hours per
5 day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that
6 Plaintiff and class members signed purported waivers of their right to a day's rest in seven, such
7 waivers are invalid.

8 124. Thus, during the relevant time period, and in violation of Labor Code sections
9 551 and 552, Defendants willfully caused Plaintiff and class members to work more than six
10 days in seven. Plaintiff and class members are therefore entitled to recover civil penalties
11 pursuant to Labor Code section 558.

12 **NINTH CAUSE OF ACTION**

13 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses** 14 **(Against all Defendants)**

15 125. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
16 and every allegation set forth above.

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

27 127. First, Defendants, on a company-wide basis, required that Plaintiff and class
28 members use their own personal cellular phones and/or cellular data to carry out their job duties,

1 but failed to reimburse them for the costs of their work-related cellular phone expenses. For
2 example, Plaintiff and class members were required to use their personal cellular phones before
3 or after their shifts to complete their work-related tasks, such as communicating with
4 supervisors and third-party vendors about the status of orders. Although Defendants required
5 Plaintiff and class members to utilize their personal cellular phones to carry out their work-
6 related responsibilities, Defendants failed to fully reimburse them for this cost.

7 128. Second, Defendants had a company-wide policy of requiring Plaintiff and class
8 members to utilize their own personal vehicles for work purposes, such as obtaining additional
9 ingredients and inventory from other supermarket locations owned and operated by Defendants,
10 but failed to reimburse them for all costs of travel, including mileage. For example, about every
11 other month, Plaintiff was required to drive 92 miles roundtrip to Defendants' El Toro Loco
12 supermarket location on 3001 Taft Way in Bakersfield to obtain food or restaurant supplies,
13 such as additional meat product. Although Defendants required Plaintiff and class members to
14 utilize their own vehicles to carry out their work-related responsibilities, Defendants did not
15 reimburse them for all of their travel expenses.

16 129. Third, during the relevant time period, Defendants required Plaintiff and class
17 members to wear uniforms bearing the company logo, including uniform shirts. However,
18 Defendants did not provide their employees with sufficient uniforms to wear for their shifts
19 throughout the week. For example, Defendants only provided Plaintiff and class members with
20 three (3) shirts during their employment. Because Defendants failed to provide Plaintiff and
21 class members with an adequate number of uniform items in relation to their scheduled shifts
22 and for the tasks they were required to perform, Plaintiff and class members were forced to
23 wash their uniforms more frequently than they otherwise do laundry, and incur expenses in
24 doing so. Furthermore, due to the nature of butchery and/or food preparation work, Plaintiff's
25 and class members' uniforms would become stained with grease, sweaty, soiled, and/or acquire
26 an unpleasant odor such that they were unable to mix these clothes in with other laundry. As a
27 result, they had to wash their uniform items separately from their other clothing items, thus
28 incurring additional laundry expenses for the upkeep of their uniforms. Specifically, Plaintiff

1 was required to wash his uniform items separately from any other clothing items and thus
2 incurred additional utility and laundry expenses.

3 130. Defendants could have provided Plaintiff and class members with the actual tools
4 for use on the job, such as company vehicles and company phones, as well as an adequate
5 number of uniforms and/or access to laundering services. Or, Defendants could have fully
6 reimbursed employees for the costs of their mileage, travel expenses, cellular phone usage, and
7 laundering expenses. Instead, Defendants passed these operating costs off onto Plaintiff and
8 class members. At all relevant times, Plaintiff did not earn at least two (2) times the minimum
9 wage.

10 131. Defendants' company-wide policy and/or practice of passing on their operating
11 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
12 have intentionally and willfully failed to reimburse Plaintiff and class members for necessary
13 business-related expenses and costs.

14 132. Plaintiff and class members are entitled to recover from Defendants their
15 business-related expenses incurred during the course and scope of their employment, plus
16 interest.

17 **TENTH CAUSE OF ACTION**

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

19 **(Against all Defendants)**

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

22 134. 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 section
24 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 226(a), 226.7,
25 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section
26 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for
27 violations of those Labor Code sections not found in section 2699.5, including sections 516 and
28 1182.12.

1 135. 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 aggrieved employees with all required overtime pay and failure to
6 properly calculate the overtime rates paid to Plaintiff and other aggrieved
7 employees, as alleged herein;
- 8 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198,
9 and the applicable IWC Wage Order for Defendants' failure to
10 compensate Plaintiff and other aggrieved employees with at least
11 minimum wages for all hours worked, as alleged herein;
- 12 (c) Violation of Labor Code sections 226.7, 512, 516, and 1198, and the
13 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
14 and other aggrieved employees with meal periods, as alleged herein;
- 15 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable
16 IWC Wage Order for Defendants' failure to authorize and permit Plaintiff
17 and other aggrieved employees to take rest periods, as alleged herein;
- 18 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
19 IWC Wage Order for failure to provide accurate and complete wage
20 statements to Plaintiff and other aggrieved employees, as alleged herein;
- 21 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable
22 IWC Wage Order for failure to maintain payroll records as alleged herein;
- 23 (g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
24 earned wages upon termination, as alleged herein;
- 25 (h) Violation of Labor Code section 204 for failure to pay all earned wages
26 during employment, as alleged herein;
- 27 (i) Violation of Labor Code sections 551 and 552 for failure to provide
28 Plaintiff and other aggrieved employees with one day's rest in seven, as

alleged herein;

- (j) Violation of Labor Code section 1198 the applicable IWC Wage Order for failing to provide suitable seating to Plaintiff and other aggrieved employees, as set forth below;
- (k) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failure to pay reporting time pay when other aggrieved employees were put to work for less than half of their regular scheduled shifts, as set forth below;
- (l) Failing to pay or other aggrieved employees a split-shift premium wage of an additional hour of pay at the minimum wage, when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour, in violation of California Labor Code section 1198 and the applicable IWC Wage Order, as set forth below; and
- (m) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other aggrieved employees for all business expenses necessarily incurred, as alleged herein.

136. At all relevant times herein, 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.”

137. 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.”

138. Plaintiff alleges that Defendants’ supermarkets are generally similar in their layout and design and there is ample space behind each cash wrap to allow for the presence and use of a seat or stool by other aggrieved employees during the performance of their work duties. Defendants could have provided other aggrieved employees with a seat or stool at their cash

1 wraps, with reasonable or no modification to these work areas, but instead denied them seating
2 and forced other aggrieved employees to stand throughout the day.

3 139. Other aggrieved employees have spent a substantial portion of their day behind
4 these cash wraps. The nature of the work of an employee performing cashier duties can
5 reasonably be accomplished from a seated position. However, Defendants systematically, and
6 on a company-wide basis, did not provide seats or stools at or near each cash register, forcing
7 other aggrieved employees to stand throughout their work shifts.

8 140. During the relevant time period, Defendants violated California Labor Code
9 section 1198 and California Code of Regulations, Title 8, section 11070(14)(A), because other
10 aggrieved employees were not allowed to sit, even when the nature of their work would
11 reasonably permit the use of seats, nor were they provided with suitable seats. Defendants'
12 management did not inform other aggrieved employees that they are allowed to sit down,
13 provide any means for them to sit down, or mention any policy regarding sitting.

14 141. As a result of Defendants' company-wide policy and/or practice prohibiting
15 employees performing cashier duties from sitting during their shifts and failure to provide
16 suitable seating, other aggrieved employees were forced to stand during shifts and denied seats.
17 Defendants' failure to provide suitable seating to other aggrieved employees violated and
18 continues to violate California Labor Code section 1198 and IWC Wage Order No. 7-2001,
19 subdivision 14(A). Other aggrieved employees are therefore entitled to recover civil penalties
20 pursuant to Labor Code sections 2699(a), (f), and (g).

21 142. At all relevant times herein, California Labor Code section 1198 makes it illegal
22 to employ an employee under conditions of labor that are prohibited by the applicable wage
23 order. California Labor Code section 1198 requires that "... the standard conditions of labor
24 fixed by the commission shall be the ... standard conditions of labor for employees. The
25 employment of any employee ... under conditions of labor prohibited by the order is unlawful."

26 143. California Code of Regulations, Title 8, section 11070(14)(B) provides that
27 "[w]hen employees are not engaged in the active duties of their employment and the nature of
28 the work requires standing, an adequate number of suitable seats shall be placed in reasonable

1 proximity to the work area and employees shall be permitted to use such seats when it does not
2 interfere with the performance of their duties.”

3 144. During the relevant time period, Defendants violated California Labor Code
4 section 1198 and California Code of Regulations, Title 8, section 11070(14)(B), because
5 Plaintiff and other aggrieved employees are not allowed to sit, even during lulls in their work
6 duties, nor are they provided with suitable seats in reasonable proximity to their work areas.

7 145. As stated, Plaintiff alleges that Defendant’ supermarkets are generally similar in
8 their layout and design and there was, and continues to be, space near their work areas (with
9 reasonable or no modification to these work areas) to allow for the presence and use of a seat
10 or stool by Plaintiff and other aggrieved employees during lulls in operation. Defendants could
11 provide Plaintiff and other aggrieved employees with a seat or stool in its work areas, but instead
12 denies employees seating and forces Plaintiffs and other aggrieved employees to stand
13 throughout the day

14 146. Defendants did not provide Plaintiff and other aggrieved employees with seats
15 or stools in reasonable proximity to their work area to allow them to use seats when it would
16 not interfere with the performance of their duties for times when they were not engaged in active
17 duties that require standing. In other words, to the extent Plaintiff and other aggrieved
18 employees have engaged in duties in which the nature of the work required standing, Defendants
19 denied them the use of seats nearby when they were not engaged in their work duties. Moreover,
20 Defendants did not inform Plaintiff and other aggrieved employees of their rights to a seat or
21 stool under California law.

22 147. As a result of Defendants’ company-wide policy and/or practice prohibiting
23 employees from sitting at any time, even when they are not engaged in active duties requiring
24 standing, and company-wide failure to provide seats in reasonable proximity to their work areas,
25 Plaintiff and other aggrieved employees were forced to stand during shifts and denied seats.
26 Defendants’ failure to provide suitable seating to Plaintiff and other aggrieved employees
27 violated and continues to violate California Labor Code section 1198 and IWC Wage Order No.
28 7-2001, subdivision 14(B). Plaintiff and other aggrieved employees are therefore entitled to

1 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

2 148. At all times relevant herein, California Labor Code section 1198 makes it illegal
3 to employ an employee under conditions of labor that are prohibited by the applicable wage
4 order. California Labor Code section 1198 requires that “. . . the standard conditions of labor
5 fixed by the commission shall be the . . . standard conditions of labor for employees. The
6 employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

7 149. California Code of Regulations, Title 8, section 11070(5)(A) provides that
8 “[e]ach workday an employee is required to report for work and does report, but is not put to
9 work or is furnished less than half said employee’s usual or scheduled day’s work, the employee
10 shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2)
11 hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be
12 less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to
13 guarantee at least partial compensation for employees who report to work expecting to work a
14 specified number of hours, and who are deprived of that amount because of inadequate
15 scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal.
16 App. 4th 556 (2012).

17 150. During the relevant time period, Defendants violated California Labor Code
18 section 1198 and California Code of Regulations, Title 8, section 11070(5), because Defendants
19 failed to pay other aggrieved employees reporting time pay when they reported to work for their
20 scheduled shift but were put to work for less than half of the regularly scheduled day’s work.

21 151. Defendants had a company-wide practice of sending other aggrieved employees
22 home early from their shifts, including before they had worked at least half of their regular shift,
23 but would not pay other aggrieved employees for half of their scheduled shift. Although other
24 aggrieved employees would report to work based on the schedule that Defendants provided to
25 them, Defendants would send them home before they had worked at least half of their scheduled
26 shifts without giving them reporting time pay. Accordingly, other aggrieved employees were
27 not properly compensated with reporting time pay in violation of California Labor Code section
28 1198 and California Code of Regulations, Title 8, section 11070(5).

152. Other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

153. At all times relevant herein, Labor Code section 1198 provides that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Code of Regulations, Title 8, section 11070(4)(C) provides that, “When an employee works a split shift, one (1) hour’s pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.” California Code of Regulations, Title 8, defines a split shift as “a work schedule, which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.”

154. Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(4)(C), because Defendants failed to pay other aggrieved employees a split-shift premium when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour. At all relevant times, other aggrieved employees did not reside at Defendants’ retail locations.

155. Accordingly, Defendants required other aggrieved employees to work split shifts but failed to pay them the split-shift premium wage in violation of California Labor Code section 1198. Defendants’ failure to compensate other aggrieved employees with split-shift pay when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour, violates California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(4)(C). Other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

ELEVENTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* –

Unlawful Business Practices

(Against all Defendants)

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

1 157. Defendants are “persons” as defined by California Business & Professions Code
2 sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or
3 associations.

4 158. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
5 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
6 suffered injury in fact and has lost money as a result of Defendants’ unlawful business practices.
7 Plaintiff seeks to enforce important rights affecting the public interest within the meaning of
8 Code of Civil Procedure section 1021.5.

9 159. Defendants’ activities, as alleged herein, are violations of California law, and
10 constitute unlawful business acts and practices in violation of California Business & Professions
11 Code sections 17200, *et seq.*

12 160. A violation of California Business & Professions Code sections 17200, *et seq.*
13 may be predicated on the violation of any state or federal law. In the instant case, Defendants’
14 policies and practices have violated state law in at least the following respects:

- 15 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
16 class members, to work overtime without paying them proper
17 compensation in violation of California Labor Code sections 510 and
18 1198, and the applicable IWC Wage Order, as alleged herein;
- 19 (b) Failing to pay at least minimum wage to Plaintiff and class members in
20 violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1,
21 and 1198, and the applicable IWC Wage Order, as alleged herein;
- 22 (c) Failing to provide uninterrupted meal periods to Plaintiff and class
23 members in violation of California Labor Code sections 226.7, 512(a),
24 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- 25 (d) Failing to authorize and permit Plaintiff and class members to take
26 uninterrupted rest periods in violation of California Labor Code sections
27 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged
28 herein;

- 1 (e) Failing to provide Plaintiff and class members with accurate wage
2 statements and failing to maintain accurate payroll records in violation of
3 California Labor Code sections 226(a), 1174(d), and 1198, and the
4 applicable IWC Wage Order, as alleged herein;
- 5 (f) Failing timely to pay all earned wages to Plaintiff and class members in
6 violation of California Labor Code section 204, as alleged herein;
- 7 (g) Failing to authorize and permit Plaintiff and class members to take one
8 day's rest in seven in violation of California Labor Code sections 551 and
9 552, as alleged herein; and
- 10 (h) Failing to reimburse Plaintiff and class members for all business expenses
11 necessarily incurred in violation of California Labor Code sections 2802,
12 as alleged herein.

13 161. As a result of the violations of California law herein described, Defendants
14 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members have
15 suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

16 162. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
17 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
18 Defendants during a period that commences four years prior to the filing of this complaint; a
19 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
20 class members; and an award of attorneys' fees pursuant to California Code of Civil Procedure
21 section 1021.5 and other applicable laws; and an award of costs.

22 **TWELFTH CAUSE OF ACTION**

23 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

24 **Unfair Business Practices**

25 **(Against all Defendants)**

26 163. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
27 and every allegation set forth above.

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1 164. Defendants are “persons” as defined by California Business & Professions Code
2 sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or
3 associations.

4 165. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair, and
5 harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in
6 fact and has lost money as a result of Defendants’ unfair business practices. Plaintiff seeks to
7 enforce important rights affecting the public interest within the meaning of Code of Civil
8 Procedure section 1021.5.

9 166. Defendants’ activities, namely Defendants’ company-wide practice and/or policy
10 of not paying Plaintiff and class members meal and rest period premiums due to them under
11 Labor Code section 226.7, deprived Plaintiff and class members of the compensation guarantee
12 and enhanced enforcement implemented by section 226.7. The statutory remedy provided by
13 section 226.7 is a “‘dual-purpose’ remedy intended primarily to compensate employees, and
14 secondarily to shape employer conduct.” *Safeway, Inc. v. Superior Court*, 238 Cal. App. 4th
15 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to Plaintiff and
16 class members as part of their employment with Defendants, and thus Defendants’ practice
17 and/or policy of denying these statutory benefits constitutes an unfair business practice in
18 violation of California Business & Professions Code sections 17200, *et seq.* (*Id.*)

19 167. A violation of California Business & Professions Code sections 17200, *et seq.*
20 may be predicated on any unfair business practice. In the instant case, Defendants’ policies and
21 practices have violated the spirit of California’s meal and rest period laws and constitute acts
22 against the public policy behind these laws.

23 168. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
24 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
25 benefits implemented by section 226.7 withheld and retained by Defendants during a period that
26 commences four years prior to the filing of this complaint; a permanent injunction requiring
27 Defendants to pay all statutory benefits implemented by section 226.7 due to Plaintiff and class
28 members; an award of attorneys’ fees pursuant to California Code of Civil Procedure section

1021.5 and other applicable laws; and an award of costs.

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

Plaintiff, on behalf of all others similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

Class Certification

2. That this case be certified as a class action;

3. That Plaintiff be appointed as the representative of the Class and Subclass;

4. That counsel for Plaintiff be appointed as class counsel.

As to the First Cause of Action

5. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 510 and 1198, and the applicable IWC Wage Order by willfully failing to pay all overtime wages due to Plaintiff and class members;

6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due, or as otherwise provided by law;

8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a); and

9. For such other and further relief as the Court may deem equitable and appropriate.

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage

Order by willfully failing to pay minimum wages to Plaintiff and class members;

11. For general unpaid wages and such general and special damages as may be appropriate;

12. For pre-judgment interest on any unpaid compensation from the date such amounts were due, or as otherwise provided by law;

13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a);

14. For liquidated damages pursuant to California Labor Code section 1194.2; and

15. For such other and further relief as the Court may deem equitable and appropriate.

As to the Third Cause of Action

16. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order by willfully failing to provide all meal periods to Plaintiff and class members;

17. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a meal period was not provided;

18. For all actual, consequential, and incidental losses and damages, according to proof;

19. For premiums pursuant to California Labor Code section 226.7(c);

20. For pre-judgment interest on any unpaid meal period premiums from the date such amounts were due, or as otherwise provided by law;

21. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

22. For such other and further relief as the Court may deem equitable and appropriate.

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1 35. For such other and further relief as the Court may deem equitable and
2 appropriate.

3 **As to the Sixth Cause of Action**

4 36. That the Court declare, adjudge and decree that Defendants violated California
5 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
6 and/or meal and rest period premiums, owed at the time of termination of the employment of
7 Plaintiff and other terminated class members;

8 37. For all actual, consequential and incidental losses and damages, according to
9 proof;

10 38. For waiting time penalties according to proof pursuant to California Labor Code
11 section 203 for all employees who have left Defendants' employ;

12 39. For pre-judgment interest on any unpaid wages from the date such amounts were
13 due, or as otherwise provided by law;

14 40. For attorneys' fees pursuant to California Code of Civil Procedure section
15 1021.5, or as otherwise provided by law; and

16 41. For such other and further relief as the Court may deem equitable and
17 appropriate.

18 **As to the Seventh Cause of Action**

19 42. That the Court declare, adjudge and decree that Defendants violated California
20 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members overtime
21 wages, minimum wages, and/or meal and rest period premiums, during their employment;

22 43. For all actual, consequential and incidental losses and damages, according to
23 proof;

24 44. For statutory penalties according to proof pursuant to California Labor Code
25 section 210;

26 45. For pre-judgment interest on any unpaid wages from the date such amounts were
27 due, or as otherwise provided by law;

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1 46. For attorneys' fees pursuant to California Code of Civil Procedure section
2 1021.5, or as otherwise provided by law; and

3 47. For such other and further relief as the Court may deem equitable and
4 appropriate.

5 **As to the Eighth Cause of Action**

6 48. That the Court declare, adjudge and decree that Defendants violated California
7 Labor Code sections 551 and 552 by failing to provide one day's rest in seven; and that
8 Defendants committed said violations of the Labor Code against Plaintiff and class members;

9 49. For civil penalties for conduct occurring any time between one year prior to the
10 filing of this complaint and judgment, pursuant to California Labor Code section 558;

11 50. For pre-judgment and post-judgment interest as provided by law; and

12 51. For such other and further relief as the Court may deem equitable and
13 appropriate.

14 **As to the Ninth Cause of Action**

15 52. That the Court declare, adjudge and decree that Defendants violated California
16 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-related
17 expenses and costs incurred by Plaintiff and class members;

18 53. For unpaid business-related expenses and such general and special damages as
19 may be appropriate;

20 54. For pre-judgment interest on any unpaid business-related expenses from the date
21 such amounts were due, or as otherwise provided by law;

22 55. For all actual, consequential, and incidental losses and damages, according to
23 proof;

24 56. For attorneys' fees and costs pursuant to California Labor Code section 2802(c),
25 or as otherwise provided by law; and

26 57. For such other and further relief as the Court may deem equitable and
27 appropriate.

28 ///

As to the Tenth Cause of Action

58. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d) and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201, 202, 203 (by failing to timely pay all earned wages upon termination); 204 (by failing to timely pay all earned wages during employment); 551 and 552 (by failing to provide one day's rest in seven); 1198 and the applicable IWC Wage Order (by failing to provide suitable seating); 1198 and the applicable IWC Wage Order (by failing to provide reporting time pay); 1198 and the applicable IWC Wage Order (by failing to pay split-shift premiums); and 2802 (by failing to reimburse business expenses);

59. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 558, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

60. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 558, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

61. For pre-judgment and post-judgment interest as provided by law; and

62. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eleventh Cause of Action

63. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiff and class members all overtime wages due to them, failing to provide

1 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and
2 class members all meal periods, failing to authorize and permit Plaintiff and class members to
3 take all rest periods, failing to provide Plaintiff and class members accurate and complete wage
4 statements, failing to maintain accurate payroll records for Plaintiff and class members, failing
5 to timely pay Plaintiff and class members all earned wages during employment, failing to
6 provide one day's rest in seven, and failing to reimburse Plaintiff and class members for
7 business-related expenses, constitutes an unlawful business practice in violation of California
8 Business and Professions Code sections 17200, *et seq.*;

9 64. For restitution of unpaid wages to Plaintiff and all class members and
10 prejudgment interest from the day such amounts were due and payable;

11 65. For the appointment of a receiver to receive, manage and distribute any and all
12 funds disgorged from Defendants and determined to have been wrongfully acquired by
13 Defendants as a result of violations of California Business & Professions Code sections 17200,
14 *et seq.*;

15 66. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
16 California Code of Civil Procedure section 1021.5; and

17 67. For such other and further relief as the Court may deem equitable and
18 appropriate.

19 **As to the Twelfth Cause of Action**

20 68. That the Court declare, adjudge and decree that Defendants' conduct of denying
21 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes an
22 unfair business practice in violation of California Business and Professions Code sections
23 17200, *et seq.*;

24 69. For restitution of the statutory benefits under section 226.7 unfairly withheld
25 from Plaintiff and class members and prejudgment interest from the day such amounts were due
26 and payable;

27 70. For the appointment of a receiver to receive, manage and distribute any and all
28 funds disgorged from Defendants and determined to have been wrongfully acquired by

1 Defendants as a result of violations of California Business & Professions Code sections 17200,
2 *et seq.*;

3 71. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
4 California Code of Civil Procedure section 1021.5;

5 72. For pre-judgment and post-judgment interest as provided by law; and

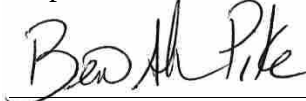
6 73. For such other and further relief as the Court may deem equitable and
7 appropriate.

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9 Dated: August 9, 2021

Respectfully submitted,

Capstone Law APC

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12 By:



Bevin Allen Pike
Daniel Jonathan
Trisha K. Monesi

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14 Attorneys for Plaintiff Jose Ceja
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EXHIBIT “1”

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

June 2, 2021

VIA ONLINE SUBMISSION

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

Subject: *Jose Ceja v. El Toro Loco Market, LLC, et al.*

Dear PAGA Administrator:

This office represents Jose Ceja in connection with his claims under the California Labor Code. Mr. Ceja was an employee of EL TORO LOCO MARKET, LLC; TORO LOCO LINDA LLC; and/or EXPRESS WHOLESALE LLC. For the purpose of this letter, Mr. Ceja collectively refers to these entities as “EL TORO.”

The employers may be contacted directly at the addresses below:

EL TORO LOCO MARKET, LLC
825 CENTRAL VALLEY HWY
SHAFTER CA 93263

TORO LOCO LINDA LLC
825 CENTRAL VALLEY HWY
SHAFTER CA 93263

TORO LOCO LINDA LLC
1822 N BEALE RD
MARYSVILLE CA 95901

EXPRESS WHOLESALE LLC
825 CENTRAL VALLEY HWY
SHAFTER CA 93263

Mr. Ceja 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”). Mr. Ceja seeks relief on behalf of himself, the State of California, and other persons who are or were employed by EL TORO 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.

EL TORO employed Mr. Ceja as an hourly paid, non-exempt Meat Department Supervisor, Butcher, and Cashier, from approximately March 2016 to December 2020. Mr. Ceja worked for EL TORO at its location in Lost Hills, California. During his employment, Mr. Ceja typically worked ten (10) hours or more per day, and five (5) or more days per week. At the time Mr. Ceja’s employment with EL TORO ended, he earned approximately \$17.00 per hour. His job duties included, without

limitation, butchering, stocking, labelling, organizing, and displaying meat product; attending to customers; and grilling and cooking foods.

EL TORO committed one or more of the following Labor Code violations against Mr. Ceja, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

EL TORO’s Company-Wide and Uniform Payroll and HR Practices

EL TORO LOCO MARKET, LLC; TORO LOCO LINDA LLC; and EXPRESS WHOLESALE LLC are California limited liability companies that own and operate a chain of specialty supermarkets focused on Mexican foods and ingredients. Upon information and belief, EL TORO maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Shafter, California for all non-exempt, hourly paid employees working for EL TORO in California, including Mr. Ceja and other aggrieved employees. At all relevant times, EL TORO issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Ceja and other aggrieved employees, regardless of its location or position.

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

¹ These facts, theories, and claims are based on Mr. Ceja’s experience and counsel’s review of those records currently available relating to Mr. Ceja’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, Mr. Ceja reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

EL TORO willfully failed to pay all overtime wages owed to Mr. Ceja and other aggrieved employees. During the relevant time period, Mr. Ceja 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 (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, EL TORO had, and continues to have, a policy and/or practice of requiring Mr. Ceja and other aggrieved employees to continue to perform work-related tasks while off-the-clock, such as communicating with EL TORO's management via their personal cellular phones or continuing to perform their assigned duties. For example, about once per week, Mr. Ceja's supervisor would call him to discuss assignments and the execution of tasks, which took up to five (5) minutes per instance. As a further example, at least once per week, while off-the-clock, Mr. Ceja would receive phone calls from EL TORO's third-party vendors and suppliers to discuss purchasing inventory, which took up to 20 minutes. EL TORO failed to track this time Mr. Ceja and other aggrieved employees spent working off-the-clock, and thus, Mr. Ceja and other aggrieved employees received no compensation for this time.

Second, EL TORO's company-wide closing procedures required Mr. Ceja and other aggrieved employees to perform work after clocking out for their shifts. For example, on closing shifts, the designated Manager on Duty (MOD) would lock the store at closing time, while the remaining employees completed their closing duties. The MOD, who was the only person with a key to let other employees out, would then complete his or her closing duties. Meanwhile, per EL TORO's store procedures, Mr. Ceja and other aggrieved employees would finish their own closing tasks, clock out, and then gather near the store's entrance to wait for the MOD to complete his or her closing duties and let them out of the store. This process could take five (5) minutes or more per instance, time that Mr. Ceja and other aggrieved employees spent under EL TORO's control and off-the-clock.

Third, during the relevant period, on information and belief, EL TORO had a company-wide policy and/or practice of improperly rounding employees' clock-in and clock-out times in its timekeeping system to the nearest half (0.5) of an hour. EL TORO's rounding policy resulted in the failure to compensate Mr. Ceja and other aggrieved employees fully for all hours worked, causing Mr. Ceja and other aggrieved employees to not be paid overtime wages for all of the overtime hours they actually worked. EL TORO's policy of rounding was unfair and has, over time, resulted in the underpayment of wages to Mr. Ceja and other aggrieved employees. To the extent EL TORO's rounding policy took away time worked that was eligible for overtime, Mr. Ceja and other aggrieved employees were denied overtime pay for all hours worked.

Fourth, on information and belief, EL TORO had, and continues to have, a company-wide policy staffing its supermarket locations strictly based on the labor hours or labor budget set by corporate for each location. EL TORO's uniform use of labor budgets, combined with the assignment of heavy workloads, resulted in chronic understaffing and a failure to provide Mr. Ceja and other aggrieved employees with adequate meal period coverage, because there were too few employees on duty to handle the workload and attend to customers. EL TORO also had a practice of failing to schedule meal periods, which further caused Mr. Ceja and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of this lack of meal period coverage, Mr. Ceja and other aggrieved employees were not always afforded 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Mr. Ceja was required to work through his meal periods three (3) days per week to meet customer demand and take and prepare customers'

orders. Accordingly, Mr. Ceja and other aggrieved employees missed meal periods and/or had meal periods cut short or interrupted in order to handle their workloads.

Fifth, during the relevant time period, EL TORO maintained and implemented a company-wide on-premises meal period policy, which mandated that Mr. Ceja and other aggrieved employees remain on the work premises during their meal periods. Because Mr. Ceja and other aggrieved employees were restricted from leaving the premises during meal periods, Mr. Ceja and other aggrieved employees were denied the ability to use meal periods freely for their own purposes, such as running personal errands. Thus, EL TORO effectively maintained control over Mr. Ceja and other aggrieved employees during meal periods.

Sixth, during the relevant time period, EL TORO did not have a procedure in place to track the start and stop times of meal periods or to allow employees to report a short, missed, or interrupted meal period. Instead, EL TORO automatically recorded that employees, including Mr. Ceja and other aggrieved employees, took 30-minute meal periods. Thus, EL TORO would record that compliant meal periods were taken, even if that was not the case. Because EL TORO failed to implement any sort of timekeeping system for tracking and recording meal periods and automatically recorded that compliant meal periods were taken, even when they were not, Mr. Ceja and other aggrieved employees were not paid for all hours worked.

EL TORO knew or should have known that as a result of these company-wide practices and/or policies, Mr. Ceja and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Ceja 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, Mr. Ceja and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, EL TORO did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, EL TORO paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, EL TORO failed to incorporate all compensation, including 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, EL TORO failed to pay all overtime wages by paying a lower overtime rate than required.

EL TORO's failure to pay Mr. Ceja 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. Mr. Ceja 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”).

As stated, EL TORO required that Mr. Ceja and other aggrieved employees perform work off-the-clock, including communicating with EL TORO’s supervisors and vendors on their personal cellular phones and waiting to leave the store premises after closing. As also stated, EL TORO had a company-wide policy and/or practice of rounding Mr. Ceja’s and other aggrieved employees’ hourly clock-in and clock-out times in its timekeeping system to the nearest half-hour, resulting in the failure to compensate them for all hours worked.

Additionally, as set forth above, due to EL TORO’s uniform policies and/or practices of utilizing labor budgets while assigning heavy workloads, failing to schedule meal periods, and requiring employees to stay on the work premises during meal periods, Mr. Ceja and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. Moreover, as stated, EL TORO had a company-wide practice and/or policy of deducting meal periods from Mr. Ceja’s and other aggrieved employees’ time records, even when meal periods were missed, short, and/or interrupted.

Thus, EL TORO did not pay at least minimum wages for all hours worked by Mr. Ceja and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, EL TORO 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, and 1197.1.

Accordingly, EL TORO regularly failed to pay at least minimum wages to Mr. Ceja 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. Mr. Ceja 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.

Under California law, an employer cannot evade meal period requirements via the use of “on-duty” meal agreements because it understaffs its locations. *Abdullah v. U.S Sec. Assocs.*, 2011 U.S. Dist. LEXIS 156685 (C.D. Cal. Jan. 11, 2011).

First, during the relevant time period, as stated, EL TORO had, and continues to have, company-wide policies and/or practices of understaffing its supermarket locations based on labor budgets, which, combined with assigning heavy workloads and failing to schedule meal periods, has resulted in a lack of meal period coverage and prevented Mr. Ceja and other aggrieved employees from taking all compliant meal periods to which they were entitled. As a result, Mr. Ceja and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods cut short and/or had to forgo their meal periods altogether. For example, six (6) times per week, Mr. Ceja was required to take his meal period late (after having worked in excess of five (5) hours or more into his shift), in order to keep up with customer demand. In addition, during peak seasons such as the local harvesting season, Mr. Ceja’s meal periods were interrupted three (3) times per week in order to meet heightened customer traffic while the store remained understaffed.

Second, as stated, during the relevant time period, EL TORO did not have a procedure in place to track the start and stop times of meal periods or to allow employees to report a late, short, missed, or interrupted meal period, and instead automatically recorded that compliant meal periods were taken. As a result of this policy, EL TORO deducted 30 minutes from Mr. Ceja’s and other aggrieved employees’ time records even when meal periods were missed, short, and/or interrupted. Thus, EL TORO systematically failed to correctly record meal periods.

Third, as described above, EL TORO required that Mr. Ceja and other aggrieved employees remain on the work premises during their meal periods. Because Mr. Ceja and other aggrieved employees were restricted from leaving the premises during meal periods, Mr. Ceja and other aggrieved employees were denied the ability to use meal periods freely for their own purposes, such as running personal errands. Thus, EL TORO effectively maintained control over Mr. Ceja and other aggrieved employees during meal periods. To the extent EL TORO required Mr. Ceja and other aggrieved employees to sign written “on-duty” meal period agreements, such agreements are invalid, as the nature of the work performed by Mr. Ceja and other aggrieved employees do not necessitate an “on-duty” meal period under California law.

Fourth, EL TORO did not provide Mr. Ceja and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During his employment, Mr. Ceja worked shifts in excess of ten (10) hours or more hours per day but was not provided an uninterrupted second 30-minute meal period. Mr. Ceja 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.

At all times herein mentioned, EL TORO knew or should have known that as a result of its policies and/or practices, that Mr. Ceja and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. EL TORO further knew or should have known that it did not pay Mr. Ceja and other aggrieved employees meal period premiums when meal periods were missed, late, short, and/or interrupted.

Furthermore, EL TORO 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, Mr. Ceja and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that EL TORO did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, EL TORO did not pay other aggrieved employees at the correct rate of pay for premiums because EL TORO systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, EL TORO failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Ceja 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 (3½) 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, EL TORO regularly failed to authorize and permit Mr. Ceja 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, EL TORO's company-wide practices, including understaffing and assigning heavy workloads, prevented Mr. Ceja and other aggrieved employees from being relieved of all duty to take rest periods. Further, EL TORO's management erroneously informed Mr. Ceja and other aggrieved employees that they were only entitled to one (1) 10-minute rest period per shift, regardless of the shift length. EL TORO also failed to schedule rest periods, which, coupled with EL TORO's failure to provide adequate rest period coverage, further led to Mr. Ceja and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Additionally, on information and belief, during the relevant time period, EL TORO maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Ceja and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Ceja

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, EL TORO effectively maintained control over Mr. Ceja and other aggrieved employees during rest periods.

As a result of EL TORO's practices and policies, Mr. Ceja and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, throughout his employment, Mr. Ceja frequently worked through his rest periods due to the heavy workload, the lack of coverage, and failure to schedule rest periods.

EL TORO 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 EL TORO did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, EL TORO did not pay other aggrieved employees at the correct rate of pay for premiums because EL TORO failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, EL TORO failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Ceja 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. EL TORO has not provided Mr. Ceja 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, EL TORO has knowingly and intentionally provided Mr. Ceja and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, EL TORO issued uniform wage statements to Mr. Ceja and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the name and address of the legal entity that is the employer; 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, EL TORO violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because EL TORO did not record the time Mr. Ceja and other aggrieved employees spent working off-the-clock, improperly rounded their total hours worked, and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they

should have been paid), EL TORO did not list the correct amount of gross wages and net wages earned by Mr. Ceja and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, EL TORO failed to accurately list the total number of hours worked by Mr. Ceja 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).

Second, because EL TORO did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, EL TORO did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, EL TORO also failed to list the correct amount of net wages in violation of section 226(a)(5). EL TORO 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).

Third, and separate from these violations, EL TORO issued uniform wage statements to Mr. Ceja and other aggrieved employees that failed to correctly list the name and address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. Mr. Ceja's and other aggrieved employees' wage statements incorrectly list the employer as "El Toro Loco Markets," and address of "21315 Highway 46, Lost Hills, CA 93249," but according to the California Secretary of State's website, there is no such entity by that name or with that address. However, a similarly named entity, "EL TORO LOCO MARKET, LLC," listed with the California Secretary of State is located at "825 Central Valley Hwy, Shafter, CA 93263." Upon information and belief, this is the true name and address of the employing entity.

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 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), EL TORO willfully failed to maintain accurate payroll records for Mr. Ceja 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 Mr. Ceja'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 Orders. 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, EL TORO failed, on a company-wide basis, to keep accurate records of work and meal period start and stop times for Mr. Ceja and other aggrieved employees, in violation of section 1198. Also, as stated, EL TORO engaged in a company-wide practice and/or policy of falsifying Mr. Ceja’s and other aggrieved employees’ time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Mr. Ceja and other aggrieved employees. Furthermore, in light of EL TORO’s failure to provide Mr. Ceja and other aggrieved employees with second 30-minute meal periods to which they were entitled, EL TORO kept no records of meal start and end times for second meal periods.

Because EL TORO failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Ceja 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, Mr. Ceja 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.

Mr. Ceja 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, EL TORO willfully failed to pay Mr. Ceja 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.

Mr. Ceja 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.

On information and belief, EL TORO willfully failed to pay Mr. Ceja and other aggrieved employees who are no longer employed by EL TORO 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 EL TORO's employ.

Mr. Ceja 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 §§ 551 and 552 – Failure to Provide One Day's Rest in Seven

California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day's rest in seven. California Labor Code section 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest. California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six hours in any one day thereof.

During the relevant period, EL TORO required Mr. Ceja and other aggrieved employees to work eight (8) or more hours per day and seven (7) consecutive days in a workweek. For example, Mr. Ceja was required to work approximately thirty (30) consecutive days. Because Mr. Ceja and other aggrieved employees worked over thirty (30) hours per week and over six (6) hours per day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that Mr. Ceja and other aggrieved employees signed purported waivers of their right to a day's rest in seven, such waivers are invalid.

Thus, EL TORO caused Mr. Ceja and other aggrieved employees to work more than six days in seven, in violation of Labor Code sections 551 and 552. Mr. Ceja 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 § 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.*

EL TORO’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 other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. EL TORO could provide other aggrieved employees with a seat or stool at its cash wraps, but instead has denied employees seating and forces other aggrieved employees to stand throughout the day.

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, EL TORO systematically, and on a company-wide basis, does not provide seats or stools at or near the cash wraps, forcing other aggrieved employees to stand throughout their work shifts.

EL TORO violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because 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. EL TORO’s management did not inform 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 EL TORO’s company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, other aggrieved employees were forced to stand during shifts and denied seats. EL TORO’s failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(A).

Other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring EL TORO 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.*

EL TORO’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 Mr. Ceja and/or other aggrieved employees during lulls in operation. EL TORO could provide Mr. Ceja and/or other aggrieved employees with a seat or stool in its work areas, but instead denies employees seating and forces Mr. Ceja and/or other aggrieved employees to stand throughout the day.

EL TORO did not provide Mr. Ceja and/or 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 Mr. Ceja and/or other aggrieved employees engaged in duties in which the nature of the work required standing, EL TORO denied them the use of seats nearby during lulls in their work duties. Moreover, EL TORO did not inform Mr. Ceja and/or other aggrieved employees of their rights to a seat or stool under California law.

As a result of EL TORO’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, Mr. Ceja and/or other aggrieved employees were forced to stand during shifts and denied seats. EL TORO’s failure to provide suitable seating to Mr. Ceja and/or other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

Mr. Ceja and/or other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring EL TORO 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 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further 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(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012)

EL TORO violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(5), because EL TORO failed to pay other aggrieved employees reporting time pay when they reported to work for their scheduled shifts, but were put to work for less than half of the regular schedule. EL TORO had a company-wide practice of sending other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay other aggrieved employees for half of their scheduled shift. Although other aggrieved employees reported to work based on the schedule that EL TORO provided to them, EL TORO would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. Accordingly, other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198.

Other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 4(C) – Failure to Pay Split-Shift Premiums

California Labor Code section 1198 provides that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further 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(4)(C) provides that, “When an employee works a split shift, one (1) hour’s pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.” California Code of Regulations, Title 8, defines a split shift as “a work schedule, which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.”

EL TORO willfully violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(4)(C), because EL TORO failed to pay other aggrieved employees a split-shift premium when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour. Accordingly, EL TORO required other aggrieved employees to work split shifts but failed to pay them an additional hour at minimum wage, in violation of California Labor Code section 1198.

EL TORO's failure to provide other aggrieved employees with split-shift pay when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour, violates California Labor Code section 1198 and California Code of Regulations Title 8, Section 11070(4)(C). Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 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."

First, EL TORO, on a company-wide basis, required that Mr. Ceja and other aggrieved employees use their own personal cellular phones and/or cellular data to carry out their job duties, but failed to reimburse them for the costs of their work-related cellular phone expenses. For example, Mr. Ceja and other aggrieved employees were required to use their personal cellular phones before or after their shifts to complete their work-related tasks, such as communicating with supervisors and third-party vendors about the status of orders. Although EL TORO required Mr. Ceja and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, EL TORO failed to fully reimburse them for this cost.

Second, EL TORO had a company-wide policy of requiring Mr. Ceja and other aggrieved employees to utilize their own personal vehicles for work purposes, such as obtaining additional ingredients and inventory from other supermarket locations owned and operated by EL TORO, but failed to reimburse them for all costs of travel, including mileage. For example, about every other month, Mr. Ceja was required to drive 92 miles roundtrip to EL TORO's supermarket location on 3001 Taft Way in Bakersfield to obtain food or restaurant supplies, such as additional meat product. Although EL TORO required Mr. Ceja and other aggrieved employees to utilize their own vehicles to carry out their work-related responsibilities, EL TORO did not reimburse them for all of their travel expenses.

Third, during the relevant time period, EL TORO required Mr. Ceja and other aggrieved employees to wear uniforms bearing the company logo, including uniform shirts. However, EL TORO did not provide their employees with sufficient uniforms to wear for their shifts throughout the week. For example, EL TORO only provided Mr. Ceja and other aggrieved employees with three (3) shirts during their employment. Because EL TORO failed to provide Mr. Ceja 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, Mr. Ceja and other aggrieved employees were forced to wash their uniforms more frequently than they otherwise do laundry, and incur expenses in doing so. Furthermore, due to the nature of butchery and/or food preparation work, Mr. Ceja's and other aggrieved employees' uniforms would become stained with grease, sweaty, soiled, and/or acquire an unpleasant odor such that they were unable to mix these clothes in with other laundry. As a result, they had to wash their uniform items separately from their other clothing items, thus incurring additional laundry expenses for the upkeep of their uniforms. Specifically, Mr. Ceja was required to wash his uniform items separately from any other clothing items and thus incurred additional utility and laundry expenses.

EL TORO could have provided Mr. Ceja and other aggrieved employees with the actual tools for use on the job, such as company vehicles and company phones, as well as an adequate number of uniforms and/or access to laundering services. Or, EL TORO could have fully reimbursed employees for the costs of their mileage, travel expenses, cellular phone usage, and laundering expenses. Instead, EL TORO passed these operating costs off onto Mr. Ceja and other aggrieved employees. At all relevant times, Mr. Ceja did not earn at least two (2) times the minimum wage. Thus, EL TORO had, and continues to have, a company-wide policy and/or practice of not reimbursing Mr. Ceja and other aggrieved employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Ceja 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." EL TORO, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Ceja's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Ceja seeks the remedies set forth in Labor Code section 558 for himself, 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, Mr. Ceja, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against EL TORO for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

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

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

Best Regards,



Anthony Castillo

Copy: EL TORO LOCO MARKET, LLC (via U.S. Certified Mail); TORO LOCO LINDA LLC (via U.S. Certified Mail); EXPRESS WHOLESALE LLC (via U.S. Certified Mail)



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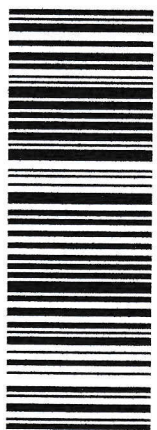
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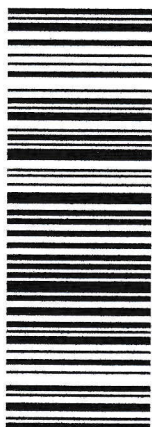
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Loco Linda LLC

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

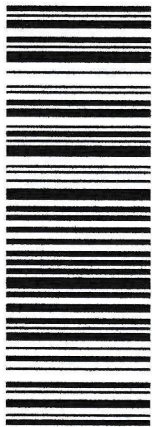
See Reverse for Instructions

Stone

LAW APC

1000
Park East, Ste 1000
s, CA 90067

CERTIFIED MAIL



7020 1290 0001 8879 4976

one
LAW APC
ry Park East, Ste 1000
, CA 90067



SENDER: COMPLETE THIS SECTION

- 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:

TORO LOCO LINDA LLC
1822 N BEALE RD
MARYSVILLE CA 95901



9590 9402 5816 0034 8456 35

2. Article Number (Transfer from service label)

7020 1290 0001 8879 4976

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

Insured Mail

Insured Mail Restricted Delivery

(over \$500)

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Return Receipt for Merchandise

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

TORO LOCO LINDA LLC
1822 N BEALE RD
MARYSVILLE CA 95901

**U.S. Postal Service™
CERTIFIED MAIL® RECEIPT**

Domestic Mail Only

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

OFFICIAL USE

Certified Mail Fee

\$ 3.60

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

☒ Return Receipt (hardcopy) \$ 2.85

☐ Return Receipt (electronic) \$

☐ Certified Mail Restricted Delivery \$

☐ Adult Signature Required \$

☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 8.08

Sent To

TORO LOCO LINDA LLC

Street and Apt. No. PO Box

1822 N BEALE RD

City, State, ZIP+4

MARYSVILLE CA 95901

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

See Reverse for Instructions

Postmark
Here

Ceja v. Toro
Loco Linda LLC

7020 1290 0001 8879 4976



SENDER: COMPLETE THIS SECTION

- 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:

EL TORO LOCO MARKET, LLC
825 CENTRAL VALLEY HWY
SHAFTER CA 93263



9590 9402 5816 0034 8456 28

2. Article Number (Transfer from service label)

7020 1290 0001 8879 4983

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

☐ Adult Signature☐ Priority Mail Express®☐ Adult Signature Restricted Delivery☐ Registered Mail™☒ Certified Mail®☐ Registered Mail Restricted Delivery☐ Certified Mail Restricted Delivery☐ Return Receipt for Merchandise☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Signature Confirmation™

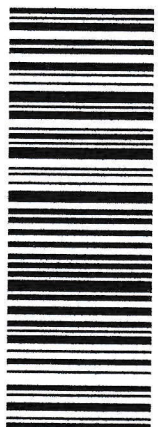
Insured Mail

Insured Mail Restricted Delivery over \$500

☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

CERTIFIED MAIL



7020 1290 0001 8879 4983

EL TORO LOCO MARKET, LLC
825 CENTRAL VALLEY HWY
SHAFTER CA 93263

U.S. Postal Service™

CERTIFIED MAIL® RECEIPT

Domestic Mail Only

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

OFFICIAL USE

Certified Mail Fee

\$ 3.60

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

☒ Return Receipt (hardcopy) \$ 2.85☐ Return Receipt (electronic) \$☐ Certified Mail Restricted Delivery \$☐ Adult Signature Required \$☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 8.08

Sent To

EL TORO LOCO MARKET, LLC

825 CENTRAL VALLEY HWY

SHAFTER CA 93263

Postmark

Here

Ceja v. El Toro
Loco Market, LLC

one

LAW APC

1000 Park East, Ste 1000
CA 90067

SENDER: COMPLETE THIS SECTION

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EL TORO LOCO MARKET, LLC
825 CENTRAL VALLEY HWY
SHAFTER CA 93263



9590 9402 5816 0034 8456 28

2. Article Number (Transfer from service label)

7020 1290 0001 8879 4983

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☒ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

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1. Article Addressed to:

TORO LOCO LINDA LLC
825 CENTRAL VALLEY HWY
SHAFTER CA 93263



9590 9402 5816 0034 8456 42

2. Article Number (Transfer from service label)

7020 1290 0001 8879 4969

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☒ Agent

☐ Addressee

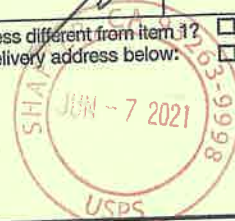
B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?
If YES, enter delivery address below:

☐ Yes

☒ No



3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Return Receipt for Merchandise

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

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1. Article Addressed to:

TORO LOCO LINDA LLC
1822 N BEALE RD
MARYSVILLE CA 95901



9590 9402 5816 0034 8456 35

2. Article Number (Transfer from service label)

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

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☐ Agent☐ Addressee

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- ☐ Collect on Delivery
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- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **August 9, 2021**, I served the document described as: **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Jay L. Rosenlieb, (SBN: 109737)
jrosenli@kleinlaw.com
KLEIN DeNATALE GOLDNER
Attorneys at Law
4550 California Avenue, 2nd Floor
Bakersfield, CA 93309
Tel.: (661) 395-1000
Fax: (661) 326-0418

Attorneys for Defendant
EL TORO LOCO MARKET, LLC; TORO
LOCO LINDA LLC and EXPRESS
WHOLESALE LLC

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☐ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

☒ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the counsel for Defendant.

☐ **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **August 9, 2021**, at Los Angeles, California.

Pouneh Porooshani
Type/Print Name


Signature