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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

JOHANA AVILA TORRES, individually
and on behalf of all others similarly situated,

Plaintiff,

v.

GTM WHOLESALE LIQUIDATORS,
INC., a California Corporation; and DOES
1-10, inclusive.

Defendants.

CASE NO: 37-2021-00051013-CU-OE-CTL

**PLAINTIFF'S CLASS AND REPRESENTATIVE
ACTION COMPLAINT FOR:**

**(1) FAILURE TO PAY MINIMUM WAGES
(LABOR CODE §§ 1194, 1197, 1197.1, 1198, 1199);
(2) FAILURE TO PROVIDE COMPLETE WAGE
STATEMENTS (LABOR CODE § 226);
(3) WAITING TIME PENALTIES (LABOR CODE
§§ 201-203);
(4) FAILURE TO PAY TIMELY WAGES
(LABOR CODE §§ 204, 210)
(5) UCL VIOLATIONS (BUS. & PROF. CODE §§
17200-17204);
(6) PAGA AND OTHER PENALTIES (LABOR
CODE §§ 2698 – 2699.5); AND**

DEMAND FOR JURY TRIAL

1 Plaintiff Johana Avila Torres (“Plaintiff”), on behalf of herself, the State of California, other
2 aggrieved employees, and all others similarly situated (hereinafter “Class Members”), complains
3 and alleges as follows:

4 OVERVIEW OF CLAIMS

5 1. Plaintiff brings this action on behalf of herself and all others similarly situated, as a
6 class action, as a representative action pursuant to Labor Code § 2699, *et seq.*, and on behalf of the
7 California general public, against Defendant GTM Wholesale Liquidators, Inc, dba GTM Discount
8 General Stores and DOES 1 to 100 (“Defendants”) for (1) failure to pay all minimum wages due for
9 time spent in pre-shift COVID temperature checks and security checks of personal belongings; (2)
10 failure to provide complete wage statements to its current and former employees in California within
11 the one year prior to the filing of this Complaint; (3) waiting time penalties; (4) failure to pay timely
12 wages to employees based on the foregoing; (5) unfair business practices based on the foregoing;
13 and (6) PAGA and other penalties based on the foregoing. As a result of the foregoing, Defendants
14 have violated California statutory laws as described below.

15 2. The “Class Period” is designated as the period from four years prior to the filing of
16 this action through the trial date. The PAGA Period is one year and six months¹ from the sending of
17 Plaintiff’s July 20, 2021, PAGA letter to the LWDA (i.e., from February 20, 2020) through the
18 present and on-going. Defendants’ violations of California’s wage- hour laws and unfair competition
19 laws, as described more fully below, have been ongoing throughout the Class Period and PAGA
20 Period.

21 VENUE

22 3. Venue is proper in this county under section 395.5 of the California Code of Civil
23 Procedure. Many of the putative Class Members were employed and/or performed work during the
24 Class Period by Defendants in San Diego County. Defendants operate discount retailer stores in the
25 county of San Diego. Many of the acts alleged herein including Defendants’ failure to pay minimum
26

27 _____
28 ¹ Emergency Rule 9 tolled the statute of limitations on all civil claims from April 16, 2020 to
October 1, 2020.

1 wages, its failure to issue complete and accurate wage statements, its failure to keep accurate payroll
2 records, its failure to pay all final wages, and its failure to pay wages on a timely basis, occurred in
3 San Diego County. Venue is therefore proper in San Diego County.

4 **JURISDICTION**

5 4. Defendants are within the jurisdiction of this Court. Defendants conduct business by
6 operating discount retailer stores in California. Thus, Defendants have obtained the benefits of the
7 laws of the State of California. In addition, Plaintiff asserts no claims arising under federal law.
8 Rather, Plaintiff brings causes of action based solely on, and arising from, California law. The
9 claims of the class are also based solely on California law described herein. Furthermore, the total
10 amount at issue in this case, inclusive of attorneys' fees, is less than \$5 million. Therefore,
11 jurisdiction is appropriate in San Diego County Superior Court.

12 **TOLLING AND PAGA NOTICE**

13 5. Plaintiff has duly exhausted her administrative remedies under PAGA and provided
14 notification of her PAGA claims to Defendants and to the Labor and Workforce Development
15 Agency ("LWDA") beginning on July 20, 2021.

16 6. On October 19, 2021, Plaintiff and Defendant entered into an agreement to toll the
17 statute of limitations for the claims alleged herein from September 24, 2021 through December 23,
18 2021.

19 **THE PARTIES**

20 7. Plaintiff is a California resident who worked for Defendants during the relevant time
21 period.

22 8. From at least four years from the filing of this complaint through the present, and
23 on-going, Defendants' employees, at various times throughout the Class Period, including Plaintiff
24 during her employment, were not paid all minimum wages owed for time spent in pre-shift COVID-
25 19 temperature checks and security checks of personal belongings post-shift after clocking out at the
26 end of their shifts; were not provided accurate and/or complete wage statement; did not receive all
27 final wages owed; and did not receive timely wages.

28 9. Plaintiff represents the state of California and the following group of aggrieved

1 employees defined as:

2 Plaintiff and all other California residents who are or were employed by Defendant GTM
3 Wholesale Liquidators, Inc. dba GTM Discount General Stores and who worked at least one
4 pay period in California from February 20, 2020 and ongoing (the "PAGA Period")
(hereinafter these workers are referred to as "Aggrieved Employees").

5 10. Plaintiff also seeks to represent a Class defined as:

6 Plaintiff and all other California residents who are or were employed by Defendant GTM
7 Wholesale Liquidators, Inc. dba GTM Discount General Stores and who worked at least one
8 pay period in California during the Class Period from September 24, 2017 through the
present (hereinafter these workers are referred to as the "Class" or "Class Members").

9 11. Defendant GTM Wholesale Liquidators, Inc. is a California corporation doing
10 business in San Diego County. Defendants operate discount retailer stores.

11 12. The true names and capacities, whether individual, corporate, associate, or otherwise,
12 of Defendants sued herein as DOES 1 to 100, inclusive, are currently unknown to Plaintiff, who
13 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff
14 is informed and believes, and based thereon alleges, that each of the Defendants designated herein
15 as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff
16 will seek leave of court to amend this Complaint to reflect the true names and capacities of the
17 Defendants designated hereinafter as DOES when such identities become known.

18 13. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
19 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
20 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
21 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
22 employer and/or joint employer of Plaintiff, the Class, and the Aggrieved Employees.

23 14. Defendants employed Plaintiff, the Class, and the Aggrieved Employees as non-
24 exempt, hourly-paid employees in California at various times during the Class Period and PAGA
25 Period. On information and belief, Defendants employed several hundred hourly-paid employees
26 in California during the Class Period.

27 **FACTUAL ALLEGATIONS**

28 15. Defendants operate and, at all times during the Class Period and PAGA Period, have

1 done business in California operating warehouse outlets as well as discount retailer stores, including
2 one store in San Diego County; GTM Otay Grocery and a warehouse outlet there too. Defendants,
3 in the course of operating their business in California during the Class Period and PAGA Period,
4 employed Plaintiff, the Class, and the Aggrieved Employees as hourly-paid workers.

5 16. Labor Code § 1197 states the California requirement that employees must be paid at
6 least the minimum wage fixed by the Commission or by any applicable state or local law, and any
7 payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles “any
8 employee receiving less than the legal minimum wage...to recover in a civil action the unpaid
9 balance of the full amount of this minimum wage.” IWC Wage Order No. 17-2001 obligates
10 employers to pay each employee minimum wages for all hours worked.

11 17. These minimum wage standards apply to each hour employees worked for which
12 they were not paid. Therefore, an employer’s failure to pay for any particular hour of time worked
13 by an employee is unlawful, even if averaging an employee’s total pay over all hours worked, paid
14 or not, results in an average hourly wage above minimum wage. *Armenta*, 135 Cal.App.4th at 324.

15 18. Here, Defendants required Plaintiff, the Class, and all Aggrieved Employees to
16 regularly perform work-off-the-clock for which they did not receive any compensation. Specifically,
17 as part of their employment Defendants required Plaintiff, the Class, and all Aggrieved Employees
18 to undergo COVID-19 temperature checks and security checks of personal belongings when entering
19 Defendant’s premises at the start of their shift. Although Defendants maintained a common policy
20 and practice of requiring Plaintiff, the Class, and the Aggrieved Employees to stand/wait in line for
21 COVID-19 temperature checks and security checks of personal belongings, Defendants failed to
22 compensate Plaintiff, the Class, and the other Aggrieved Employees for such time. Defendant also
23 failed to compensate Plaintiff, the Class, and the other Aggrieve Employees for the time walking to
24 their clocks after their COVID-19 temperature checks.

25 19. Employees must be paid for all “hours worked.” Hours worked is “the time during
26 which an employee is subject to the control of an employer, and includes all the time the employee
27 is suffered or permitted to work, whether or not required to do so.” *See* Wage Order 4-2001, Subd.
28 2(K); *see also Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal. 4th 833. “[I]t is only

1 necessary that the worker be subject to the control of the employer in order to be entitled to
2 compensation.” *Morillion v. Royal Packing Co.* 22 Cal. 4th 575, 584 (2000). An employee is under
3 the employer’s control and entitled to compensation when the employer ““directs, commands or
4 restrains’ an employee.” *Morillion*, 22 Cal. 4th at 583 (citation omitted).

5 20. As the California Supreme Court made clear in *Morillion*, when determining whether
6 an employee’s activity is under the employer’s control entitling him or her to compensation, the
7 touchstone is not whether the employer requires the activity and thus whether employees can avoid
8 it, but the level of control employers exert over employees during the activity: “The level of the
9 employer’s control, *rather than the mere fact that the employer requires the employees’ activity is*
10 *determinative.*” *Morillion*, 22 Cal.4th at 587 (emphasis added).

11 21. In *Frlekin v. Apple Inc.*, (2020) 8 Cal. 5th 1038, 1051 (citing *Morillion*, 22 Cal.4th at
12 587) the California Supreme Court reaffirmed its holding in *Morillion* that “[t]he level of the
13 employer’s control over its employees, rather than the mere fact that the employer requires the
14 employees’ activity, is determinative” concerning whether an activity is compensable under the
15 “hours worked” control clause. In *Frlekin*, the California Supreme Court found that time employees
16 spent undergoing bag searches on-site at the end of their shifts was compensable. The Court reasoned
17 its decision by analyzing factors in determining whether an employer has exerted compensable
18 control over employees:

19 We also emphasize that whether an activity is required remains probative in
20 determining whether an employee is subject to the employer’s control. But, at least
21 with regard to cases involving *onsite* employer-controlled activities, the mandatory
22 nature of an activity is not the only factor to consider. We conclude that courts may and
23 should consider additional relevant factors—including, but not limited to, the location
of the activity, the degree of the employer’s control, whether the activity primarily
benefits the employee or employer, and whether the activity is enforced through
disciplinary measures—when evaluating such employer-controlled conduct.

24 *Frlekin* at 1056.

25 22. To be free of the employer’s control for purposes of “hours worked,” the employee
26 must be free to use his or her time “effectively for his or her own purposes.” *Morillion*, 22 Cal.4th at
27 583.
28

23. Here, as in *Frlekin*, the Class and Aggrieved Employees could not avoid Defendant's COVID-19 temperature checks and security checks of personal (which took place on Defendant's premises and before they could clock in) and could not then use their time effectively for their own purposes during such checks. As such, Defendants exercised compensable control over Class Members and aggrieved employees undergoing and who underwent COVID-19 temperature checks and security checks of personal belongings and owes wages to the Class and Aggrieved Employees for this time. Notably, there is no de minimis defense for such time. *See, Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018) (the California Supreme Court held that the de minimis principle was not applicable in the context of an alleged policy requiring employees to work minutes off the clock routinely; *see also, Frlekin*, 2020 Cal. LEXIX 547 (February 13, 2020) (hours work is defined 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)..

24. Notably, through its policy and practice of requiring Plaintiff, the Class, and the Aggrieved Employees to undergo pre-shift COVID-19 temperature checks and security checks of personal belongings, Defendants clearly violated Labor Code § 1194. As a result of Defendants' policy and practices described above, Defendants regularly failed to pay Plaintiff, the Class, and all Aggrieved Employees for all hours worked in violation of Labor Code § 1194 and 1197.

25. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed by an applicable state or local law, or by an order of the commission a civil penalty, restitution of wages, and liquidate damages as follows: (1) for any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. As set forth above, Defendants failed to compensate Plaintiff, the Class, and all aggrieved employees for all hours worked. Accordingly, through PAGA and to the extent permitted by law Plaintiff, the Class, and all aggrieved employees are entitled to recover liquidated damages for violations of Labor Code § 1197.1. Based upon these same factual allegations, Plaintiff, the Class, and the other aggrieved

1 employees are entitled to penalties under Labor Code § 1199.

2 26. Similarly, Labor Code § 1194.2 authorizes employees to recover wages to recover
3 liquidated damages for violations of Labor Code § 1194. Where an employee, as Plaintiff, the Class,
4 and the other aggrieved employees experienced on a regular basis, are not paid for all hours worked
5 under Labor Code § 1194, the employees may recover minimum wages for the time for which they
6 received no compensation.

7 27. As to Plaintiff, the Wage Statement Subclass, and all aggrieved employees,
8 Defendants also failed to provide accurate itemized wage statements in accordance with Labor Code
9 § 226(a).

10 28. Defendants knowingly and intentionally failed to pay Plaintiff, all Wage Statement
11 Subclass Members, and all aggrieved employees all minimum wages associated with COVID-19
12 temperature checks and security checks of personal belongings. Moreover, Plaintiff, all Wage
13 Statement Subclass Members, and all aggrieved employees also suffered legal “injury” for purposes
14 of Labor Code section 226(e) insofar as they were unable to readily and easily determine the
15 information required to be set forth by Section 226(a). Specifically, Plaintiff, all Wage Statement
16 Subclass Members, and the aggrieved employees were unable to determine the actual and accurate
17 total hours worked by the employees, the gross wages earned, the net wages earned, since time spent
18 on COVID-19 temperature checks and security checks of personal belongings checks was always
19 done off the clock.

20 29. Plaintiff, the Wage Statement Subclass and the aggrieved employees will prevail on
21 their claim for PAGA penalties under Labor Code § 226(a) without having to show injury or
22 willfulness. *See Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017) (“hold[ing] a
23 plaintiff seeking civil penalties under PAGA for a violation of Labor Code section 226(a) does not
24 have to satisfy the ‘injury’ and ‘knowing and intentional’ requirements of section 226(e)(1).”);
25 *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667, 679 (2018) (finding that the
26 “requirements for a section 226(e) claim do not apply to a PAGA claim for a violation of section
27 226(a).”).

28 30. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of

1 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
2 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
3 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
4 deduction statement or fails to keep the required in subdivision (a) of Section 226.” As explained in
5 detail above, Defendants failed to provide Plaintiff, Wage Statement Subclass Members, and the
6 other aggrieved employees with accurate itemized wage statements. Accordingly, Plaintiff, Wage
7 Statement Subclass Members, and the other aggrieved employees may recover Labor Code § 226.3
8 penalties under PAGA for Defendants’ violations of Labor Code § 226(a) in addition to the normal
9 penalties provided for in Section 226.

10 31. By failing to record accurately all hours worked, Defendants failed to keep accurate
11 payroll records pertaining to Plaintiff, the Class, and Aggrieved Employees’ time worked. Therefore,
12 Defendants violate Labor Code section 1198 which requires employers to maintain payroll records.
13 Defendants are also violating section 6 of the applicable IWC Wage Order, which requires that an
14 employer maintain “[t]ime records showing when the employee begins and ends each work period.”
15 Due to the exclusion of temperature and security checks time, Defendants never accurately recorded
16 Plaintiff, the Class, and Aggrieved Employees hours worked.

17 32. Under Labor Code §§ 201-202, an employer must provide an employee wages at the
18 time or discharge or within up to seventy-two (72) hours of their resignation. Labor Code § 203
19 provides “if an employer willfully fails to pay . . . any wages of an employee who is discharged or
20 who quits, the wages of the employee shall continue as a penalty. . .” for up to 30 days. Lab. Code
21 § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

22 33. As described in detail above, Defendants failed to pay Plaintiff, the Class, and other
23 aggrieved employees whose employment with Defendants have now ended, all wages owed,
24 including but not limited to minimum wages for COVID-19 temperature checks and security checks
25 of personal belongings within the time constraints proscribed in Labor Code §§ 201-202 at the time
26 of their termination/separation. Thus, as result of Defendant’s faulty policies described above,
27 Plaintiff, the Class, and all aggrieved employees ended their employment with Defendants without
28 being compensated for each and every hour worked at the appropriate rate in violation of Labor

1 Code §§ 201, 202, 203.

2 34. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any
3 employment are due and payable twice during each calendar month, on days designated in advance
4 by the employer as the regular paydays.” Pursuant to Labor Code § 204(d), these requirements are
5 “deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the
6 wages are paid not more than seven calendar days following the close of the payroll period.”

7 35. Due to Defendant’s failure to pay all minimum wages due to Plaintiff, the Class, and
8 all aggrieved employees for time associated with COVID-19 temperature checks and security checks
9 of personal belongings, Defendants failed to timely pay Plaintiff, the Class, and all aggrieved
10 employees all wages owed within seven (7) days of the close of the payroll period in accordance
11 with Labor Code § 204(d) on a regular and consistent basis.

12 36. Pursuant to Labor Code Section 210, as amended,

13 (a) In addition to, and entirely independent and apart from, any other penalty provided
14 in this article, every person who fails to pay the wages of each employee as provided
15 in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be
16 subject to a penalty as follows:

17 (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each
18 employee.

19 (2) For each subsequent violation, or any willful or intentional violation, two
20 hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of
21 the amount unlawfully withheld.

22 (b) The penalty shall either be recovered by the employee as a statutory penalty
23 pursuant to Section 98 or by the Labor Commissioner as a civil penalty through
24 the issuance of a citation or pursuant to Section 98.3. The procedures for
25 issuing, contesting, and enforcing judgments for citations issued by the Labor
26 Commissioner under this section shall be the same as those set forth in
27 subdivisions (b) through (k), inclusive, of Section 1197.1.

28 (c) An employee is only entitled to either recover the statutory penalty provided
for in this section or to enforce a civil penalty as set forth in subdivision (a) of
Section 2699, but not both, for the same violation.

37. Here, Plaintiff seeks to recover all penalties available under Labor Code Section 210
for Defendant’s’ violations of Labor Code Section 204.

38. The administrative prerequisites of PAGA have been satisfied and Plaintiff has also
paid the \$75.00 fee and has otherwise satisfied the administrative prerequisites of PAGA.

39. Plaintiff by this action seeks to recover, on behalf of herself and all other current and

1 former Aggrieved Employees of Defendant, the civil penalties provided by PAGA, as specified in
2 Labor Code § 2699(f). Plaintiff seeks to recover the PAGA civil penalties through a representative
3 action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal.
4 4th 969 (2009). Class certification of the PAGA claims is not required. *Id.*

5 **CLASS ACTION ALLEGATIONS**

6 40. Plaintiff brings this action, on behalf of herself and all others similarly situated, as a
7 class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class composed
8 of and defined as: Plaintiff and all other California residents who are or were employed by Defendant
9 GTM Wholesale Liquidators, Inc. dba GTM Discount General Stores and who worked at least one
10 pay period in California during the Class Period (hereinafter “Class Members”). All such Class
11 Members were subject to Defendants’ unlawful policies including, Defendants’ failure to pay
12 minimum wages for all compensable time, Defendants’ failure to issue compliant wage statements,
13 Defendants’ failure to keep accurate payroll records, Defendants’ failure to pay final wages, and
14 Defendants’ failure to pay timely wages.

15 41. This action has been brought and may properly be maintained as a class action under
16 Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation,
17 the proposed class is easily ascertainable, and Plaintiff is a proper representative of the Class:

18 a. Numerosity: The potential members of the Class as defined are so numerous
19 that joinder of all the members of the Class is impracticable. While the precise number of Class
20 Members has not been determined at this time, Plaintiff is informed and believes that Defendants
21 have employed several hundred Class Members as hourly-paid workers in California who were
22 subject to Defendants’ unlawful compensation, wage statement, final pay, and reimbursement
23 policies. The Class Members are dispersed throughout California. Joinder of all members of the
24 proposed classes is therefore not practicable.

25 b. Commonality: There are questions of law and fact common to Plaintiff and
26 the Class that predominate over any questions affecting only individual members of the Class. These
27 common questions of law and fact include, without limitation:

28 i. Whether Defendants violated sections 1194 and 1197 of the Labor Code by

1 failing to pay minimum wages for all hours worked, including for pre-shift time associated with
2 COVID-19 temperature checks and security checks of personal belongings;

3 ii. Whether Defendants failed to provide Plaintiff and the members of the Class
4 compliant wage statements in violation of Labor Code Section 226(a);

5 iii. Whether Defendants violated Sections 201-203 of the Labor Code by failing
6 to pay all final wages to members of the Class whose employment with Defendants ended;

7 iv. Whether Defendants violated Sections 204 and 210 of the Labor Code by
8 failing to pay member of the Class all wages due on a timely basis;

9 v. Whether Defendants engaged in an unfair practice and violated section 17200
10 of the California Business and Professions Code by failing to pay Plaintiff and the members of the
11 Class all minimum wages owed during the Class Period;

12 vi. Whether Plaintiff and the Class are entitled to restitution under Business and
13 Professions Code § 17200;

14 vii. The proper formula(s) for calculating damages, interest, and restitution owed
15 to Plaintiff and the Class Members;

16 viii. The nature and extent of class-wide damages.

17 a. Typicality: Plaintiff's claims are typical of the claims of the Class. Both
18 Plaintiff and Class Members sustained injuries and damages, and were deprived of property rightly
19 belonging to them, arising out of and caused by Defendants' common course of conduct in violation
20 of law as alleged herein, in similar ways and for the same types of unpaid wages.

21 b. Adequacy of Representation: Plaintiff are members of the Class and will
22 fairly and adequately represent and protect the interests of the Class and Class Members. Plaintiff's
23 interests do not conflict with those of Class and Class Members. Counsel who represent Plaintiff
24 are competent and experienced in litigating large wage and hour class actions and will devote
25 sufficient time and resources to the case and otherwise adequately represent the Class and Class
26 Members.

27 c. Superiority of Class Action: A class action is superior to other available
28 means for the fair and efficient adjudication of this controversy. Individual joinder of all Class

Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each Class Member has been damaged or may be damaged in the future by reason of Defendants' unlawful policies and/or practices. Certification of this case as a class action will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Certifying this case as a class action is superior because it allows for efficient and full disgorgement of the ill-gotten gains Defendants have enjoyed by failing to pay all minimum wages due and will thereby effectuate California's strong public policy of protecting employees from deprivation or offsetting of compensation earned in their employment. If this action is not certified as a Class Action, it will be impossible as a practical matter, for many or most Class Members to bring individual actions to recover monies unlawfully withheld from their lawful compensation due from Defendants', due to the relatively small amounts of such individual recoveries relative to the costs and burdens of litigation.

FIRST CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
[Cal. Labor Code §§ 1194, 1197]
On behalf of Plaintiff and the Class

42. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

43. The actionable period for this cause of action is three years prior to the filing of the Complaint through the present, and on-going until the violations are corrected or the Class is certified.

44. Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles "any employee receiving less than the legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage." IWC Wage Order 17-2001 also obligates employers to pay each employee minimum wages *for all hours worked*. These minimum wage standards apply to each hour employees worked for which they were not paid. Therefore, an employer's failure to pay for any particular hour of time

1 worked by an employee is unlawful, even if averaging an employee's total pay over all hours
2 worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose,*
3 *Inc.* (2005) 135 Cal.App.4th 314, 324.

4 45. Furthermore, pursuant to Labor Code § 1198, "[t]he maximum hours of work and the
5 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
6 standard conditions of labor for employees. The employment of any employee for longer hours than
7 those fixed by the order or under conditions of labor prohibited by the order is unlawful."

8 46. Here, Defendants required Plaintiff and the Class to regularly perform work-off-the-
9 clock for which they did not receive any compensation. Specifically, as part of their uniform
10 employment policies Defendants required Plaintiff and all Class Members to undergo COVID-19
11 temperature checks before entering Defendant's premises at the start of their shift and to undergo
12 security checks of personal belongings after clocking out at the conclusion of their shift. Although
13 Defendant maintained a common policy and practice of requiring Plaintiff and the Class to
14 stand/wait in line for COVID-19 temperature checks and security checks of personal belongings,
15 Defendants failed to compensate Plaintiff and the other Class for such time.

16 47. Labor Code § 1194 provides, in part, that any employee receiving less than the legal
17 minimum wage is entitled to recover in a civil action the unpaid balance of the minimum wage,
18 including interest thereon, reasonable attorney's fees, and costs of suit.

19 48. Labor Code § 1194.2 allows an employee to recover liquidated damages in an amount
20 equal to the wages unlawfully unpaid and interest thereon for any action under Labor Code § 1194.
21 Where an employee, such as Plaintiff and the other Class members, is not paid for all hours worked
22 under Labor Code § 1194, the employee may recover minimum wages for the time associated with
23 the overtime for which they received no compensation. See *Sillah v. Command Int'l Sec. Servs.*
24 (N.D. Cal. 2015) 154 F. Supp. 3d 891 [holding that employees suing for failure to pay overtime
25 could recover liquidated damages under § 1194.2 if they also showed they were paid less than
26 minimum wage]; accord *Andrade v. Arby's Rest. Grp., Inc.* (N.D. Cal. Dec. 12, 2016) 2016 U.S.
27 Dist. LEXIS 172319, at *20-21.

28 49. Plaintiff and the other Class Members suffered and continue to suffer losses related

1 to the use and enjoyment of compensation due and owing to them as a direct result of Defendants'
2 unlawful acts and Labor Code violations in an amount to be shown according to proof at trial and
3 within the jurisdictional limitations of this Court.

4 50. Plaintiff seeks all available remedies for Defendants' violations including, but not
5 limited to, any and all wages due, monies, interest, liquidated damages, penalties attorney's fees,
6 and costs to the extent permitted by law.

7 **SECOND CAUSE OF ACTION**
8 **FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS**
9 **[Cal. Labor Code § 226(a) and (e)]**
10 **On behalf of Plaintiff and the Wage Statement and Penalty Subclass**

11 51. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
12 in the preceding paragraphs.

13 52. The actionable period for this cause of action is one year prior to the filing of this
14 Complaint through the present, and on-going until the violations are corrected or the subclass is
15 certified. The members of the Class who worked for Defendants during the actionable period for
16 this cause of action constitute the Wage Statement and Penalty Subclass.

17 53. Section 226(a) of the California Labor Code provides, in relevant part:

18 Every employer shall...furnish each of his or her employees...an accurate
19 itemized statement in writing showing (1) gross wages earned, (2) total hours
20 worked by the employee, except for any employee whose compensation is
21 solely based on a salary and who is exempt from payment of overtime under
22 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
23 Commission, (3) the number of piece-rate units earned and any applicable piece
24 rate if the employee is paid on a piece-rate basis, (4) all deductions, provided
25 that all -deductions made on written orders of the employee may be aggregated
and shown as one item, (5) net wages earned, (6) the inclusive dates of the
period for which the employee is paid, (7) the name of the employee and only
the last four digits of his or her social security number or an employee
identification number other than a social security number, (8) the name and
address of the legal entity that is the employer and (9) all applicable hourly rates
in effect during the pay period and the corresponding number of hours worked
at each hourly rate by the employee...

26 54. Defendants knowingly and intentionally failed to pay Plaintiff and all Wage
27 Statement Subclass Members all minimum wages associated with COVID-19 temperature checks
28 and security checks of personal belongings. Moreover, Plaintiff and all Wage Statement Subclass

1 Members also suffered legal “injury” for purposes of Labor Code section 226(e) insofar as they were
2 unable to readily and easily determine the information required to be set forth by Section 226(a).
3 Specifically, Plaintiff and the Wage Statement Subclass Members were unable to determine the
4 actual and accurate total hours worked by the employees, the gross wages earned, the net wages
5 earned, since time spent on COVID-19 temperature checks and security checks of personal
6 belongings temperature checks was always done off the clock.

7 55. Defendants’ violation of Labor Code § 226 was knowing and intentional. *See Garnett*
8 *v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the defendant
9 knowingly and intentionally violated Labor Code § 226 because the “[d]efendant knew that it was
10 not providing total hours worked to plaintiff or other employees paid on commission” even though
11 it believed that employees paid solely on commission or commission and salary “are exempt and
12 therefore we do not record hours on a wage statement”).

13 56. As a result of Defendants’ failure to issue compliant wage statements to Plaintiff and
14 the Wage Statement Subclass Members (i.e., those members of the class who were employed by
15 Defendants during the actionable period for this cause of action) in violation of section 226(a) of the
16 California Labor Code, Plaintiff and the Wage Statement Subclass Members are each entitled to
17 recover an initial penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding
18 an aggregate penalty of \$4,000 per Plaintiff and per every member of the wage statement subclass
19 from Defendants pursuant to section 226(e) of the Labor Code, costs and reasonable attorneys’ fees.

20 **THIRD CAUSE OF ACTION**
21 **WAITING TIME PENALTIES**
22 **[Cal. Labor Code §§ 201-203]**

23 **On behalf of Plaintiff and the Late Wages Subclass**

24 57. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
25 in the preceding paragraphs.

26 58. The actionable period for this cause of action is three years prior to the filing of the
27 Complaint through the present, and on-going until the violations are corrected or the Class is
28 certified.

1 59. Under Labor Code §§ 201-202, an employer must provide an employee wages at the
2 time or discharge or within up to seventy-two (72) hours of their resignation. Labor Code § 203
3 provides “if an employer willfully fails to pay . . . any wages of an employee who is discharged or
4 who quits, the wages of the employee shall continue as a penalty. . .” for up to 30 days. Lab. Code
5 § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

6 60. As described in detail above, Defendants failed to pay Plaintiff and Class Members
7 whose employment with Defendants has now ended, all wages owed, including but not limited to
8 minimum wages for COVID-19 temperature checks and security checks of personal belongings
9 within the time constraints proscribed in Labor Code §§ 201-202 at the time of their
10 termination/separation. Thus, as result of Defendants’ faulty policies described above, Plaintiff and
11 all Class Members left their employment with Defendant without being compensated for each and
12 every hour worked at the appropriate rate in violation of Labor Code §§ 201, 202, 203, thus
13 triggering 30 days of wage claims for each former employee.

14 **FOURTH CAUSE OF ACTION**
15 **FAILURE TO PAY WAGES ON A TIMELY BASIS**
16 **[Cal. Labor Code §§ 204, 210]**
 On behalf of Plaintiff and the Late Wages Subclass

17 61. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
18 in the preceding paragraphs.

19 62. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any
20 employment are due and payable twice during each calendar month, on days designated in advance
21 by the employer as the regular paydays.” Pursuant to Labor Code § 204(d), these requirements are
22 deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the wages
23 are paid not more than seven calendar days after the end of the pay period.

24 63. Due to Defendants’ failure to pay Plaintiff and the Class Members for time associated
25 with COVID-19 temperature checks and security checks of personal belongings, Defendants
26 violated Labor Code § 204 by failing to pay all wages due within seven (7) days of the close of the
27 payroll period on a regular and consistent basis. *See Parson v. Golden State FC, LLC*, 2016 U.S.
28 Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a

1 failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204).

2 64. Labor Code § 210 provides that “in addition to, an entirely independent and apart
3 from, any other penalty provided in this article, every person who fails to pay the wages of each
4 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any
5 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
6 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each
7 failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty
8 compensation policies and practices described in detail above, Plaintiff and the Class are entitled to
9 recover penalties under Labor Code § 210.

10 **FIFTH CAUSE OF ACTION**
11 **UNFAIR COMPETITION LAW VIOLATIONS**
12 **(BUS. & PROF. CODE § 17200, ET SEQ.)**
 On Behalf of Plaintiff and the Class

13 65. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
14 in the preceding paragraphs.

15 66. Section 17200 of the California Business & Professions Code prohibits any unlawful,
16 unfair, or fraudulent business practices. Business & Professions Code § 17204 allows “any person
17 who has suffered injury in fact and has lost money or property” to prosecute a civil action for
18 violation of the UCL. Such a person may bring such an action on behalf of herself and others
19 similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

20 67. Under section 17208 of the California Business and Professions Code, the statute of
21 limitations for a claim under Section 17200 is four years. Accordingly, the actionable period for this
22 cause of action is four years prior to the filing of this Complaint through the present, and on-going
23 until the violations are corrected or the Class is certified.

24 68. Section 90.5(a) of the Labor Code states that it is the public policy of California to
25 enforce vigorously minimum labor standards in order to ensure employees are not required to work
26 under substandard and unlawful conditions, and to protect employers who comply with the law from
27 those who attempt to gain competitive advantage at the expense of their workers by failing to comply
28 with minimum labor standards.

69. As a direct and proximate result of Defendants' unlawful business practices, Plaintiff and the Class Members have suffered economic injuries. Defendants have profited from its unlawful, unfair, and/or fraudulent acts and practices.

70. Plaintiff and similarly situated Class Members are entitled to monetary relief pursuant to Business & Professions Code §§ 17203 and 17208 for all unpaid minimum wages due and interest thereon, from at least four years prior to the filing of this complaint through to the date of such restitution, at rates specified by law. Defendants should be required to disgorge all the profits and gains it has reaped and restore such profits and gains to Plaintiff and Class Members, from whom they were unlawfully taken.

71. Through its actions alleged herein, Defendants have engaged in unfair competition within the meaning of section 17200 of the California Business & Professions Code, because Defendants' conduct, as herein alleged has damaged Plaintiff and the Class Members by wrongfully denying them minimum wages, and therefore was substantially injurious to Plaintiff and the Class Members.

72. Defendants engaged in unfair competition in violation of sections 17200 et seq. of the California Business & Professions Code by violating Section 1194 of the California Labor Code.

73. Defendants' course of conduct, act and practice in violation of the California laws mentioned above constitute independent violations of sections 17200 et seq. of the California Business and Professions Code.

74. Plaintiff and similarly situated Class Members are entitled to enforce all applicable penalty provisions of the Labor Code pursuant to Business & Professions Code § 17202.

75. Plaintiff has assumed the responsibility of enforcement of the laws and public policies specified herein by suing on behalf of themselves and other similarly situated Class Members previously or presently employed by Defendants in California. Plaintiff's success in this action will enforce important rights affecting the public interest. Plaintiff will incur a financial burden in pursuing this action in the public interest. Therefore, an award of reasonable attorneys' fees to Plaintiff is appropriate pursuant to Code of Civil Procedure §1021.5.

SIXTH CAUSE OF ACTION

LABOR CODE PRIVATE ATTORNEY GENERAL ACT
PAGA PENALTIES FOR LABOR CODE VIOLATIONS
(Labor Code §§ 2698-2699.5)
On Behalf of Plaintiff, the LWDA and the PAGA Covered Employees

76. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

77. Plaintiff and the “Aggrieved Employees” under PAGA, i.e., those employees who, during the PAGA Period, suffered the Labor Code violations alleged herein; specifically, violations of §§ 201, 202, 203, 204, 210, 226(a), 1174, 1174.5, 1194, 1197, 1197.1, 1198, and 1199 of the Labor Code bring claims under PAGA. Plaintiff was employed by Defendants during the one year and six months preceding the submission of a PAGA letter to the LDWA on or around February 20, 2021. As such, she seeks to recover, on behalf of herself and all other current and former aggrieved employees of Defendants, the civil penalties provided by PAGA.

78. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

\$100 for the initial violation per employee per pay period; and

\$200 for each subsequent violation per employee per pay period.

These penalties will be allocated 75% to the Labor Workforce Development Agency and 25% to the affected employees.

79. The aggrieved employees are Plaintiff and all other California residents who are or were employed by Defendant GTM Wholesale Liquidators, Inc. dba GTM Discount General Stores and who worked at least one pay period in California during the PAGA Period. These employees were subject to the aforementioned Labor Code violations, during the period of time from one 1.5 year prior to the submission of Plaintiff’s letter to the LDWA on July 20, 2021 through the present and on-going, i.e., from February 20, 2020 to the present.

80. In addition, as set forth above, Defendants failed to provide Plaintiff and all aggrieved employees with wage statements in compliance with Labor Code § 226(a). Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil

1 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial
2 violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation,
3 for which the employer fails to provide the employee a wage deduction statement or fails to keep
4 the required in subdivision (a) of Section 226.”

5 81. Further, Plaintiff, and the Aggrieved Employees, need not demonstrate or prove that
6 Defendants’ conduct in refusing to provide itemized wage statements was knowing, intentional, or
7 willful. *Lopez v. Friant & Assocs., LLC*, cited above; *see also Willner v. Manpower Inc.* 35 F. Supp.
8 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, “all [plaintiff] needs to
9 establish is a violation of section 226(a), which she has done, as discussed above.”); *McKenzie v.*
10 *Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that “for the purposes of
11 recovering PAGA penalties, one need only prove a violation of Section 226(a), and need not
12 establish a Section 226(e) injury.”); *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS 189815, at
13 *28 (C.D. Cal. July 3, 2013) (“Plaintiff do not need to establish a Cal. Lab. Code § 226(e) injury to
14 recover penalties under § 2699(f) of PAGA.”).

15 82. Plaintiff seeks to recover the PAGA civil penalties through a representative action as
16 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009), 46 Cal.4th
17 969. Therefore, class certification hereby of the PAGA claims is not required. *Id.*,

18 83. Pursuant to Labor Code § 2699.3 (a), on July 20, 2021, Plaintiff gave written notice
19 by certified mail to Defendants, and to the Labor and Workforce Development Agency (“LWDA”)
20 of her claims, including the facts and theories supporting all claims outlined in this Complaint.
21 Accordingly, Plaintiff has or soon will have fulfilled all administrative prerequisites to the pursuit
22 of her PAGA claim on behalf of herself and all other current and former aggrieved employees of
23 Defendants.

24 JURY DEMAND

25 84. Plaintiff hereby demands trial by jury of her and the Class’ claims against Defendants,
26 except for the PAGA and UCL claims which will be tried to the Court.

27 PRAYER FOR RELIEF

28 Wherefore, Plaintiff, on behalf of herself and the members of the Class, and the LWDA and

the Aggrieved Employees, prays for judgment against Defendants as follows:

1. An Order that this action may proceed and be maintained as a class action;

2. On the First Cause of Action:

a. A declaratory judgment that Defendants have violated California Labor Code sections 1194 and 1197 in failing to pay Plaintiff, the Class and the Aggrieved Employees all minimum wages due;

b. An award to Plaintiff and the other members of the Class in the amount of their unpaid minimum wages owed, plus interest and/or liquidated damages during the Class Period, as well as attorneys' fees under Labor Code section 1194;

3. On the Second Cause of Action:

a. A declaratory judgment that Defendants violated California Labor Code §226 by failing to issue compliant wage statements to Plaintiff, the Aggrieved Employees and the wage statement subclass members;

b. An award to Plaintiff and Wage Statement Subclass Members of \$50 for each initial pay period in which a violation of Section 226 occurred and \$100 for each subsequent pay period in which a violation of Section 226 occurred, not to exceed \$4,000 for each member of the Class, as well as an award of costs and reasonable attorney's fees, pursuant to Labor Code § 226(e).

4. On the Third Cause of Action:

a. A declaratory judgment that Defendants have violated California Labor Code sections 201-203 in failing to pay Plaintiff and the Class all final wages due;

b. An award to Plaintiff and the other members of the Class whose employment with Defendants ended in the amount 30 days wages under Labor Code sections 201-203;

6. On the Fourth Cause of Action:

a. A declaratory judgment that Defendants violated California Labor Code §§ 204 and 210;

b. Pursuant to Labor Code §§ 204 and 210, an award to Plaintiff and the Late Wage Subclass for penalties pursuant to Labor Code § 210.

7. On the Fifth Cause of Action:

1 a. That the Court find and declare that Defendants have violated the UCL and
2 committed unfair and unlawful business practices by failing to pay minimum wages to Plaintiff and
3 the Class;

4 b. Restitution, including, but not limited to, the relief permitted by section 1194
5 of the California Labor Code (i.e., unpaid minimum wages owed to Plaintiff and the members of the
6 Class during the Class Period).

7 9. On the Sixth Cause of Action:

8 a. A civil penalty against Defendants in the amount of \$100 for the initial
9 violation and \$200 for each subsequent violation as specified in section 2699(f)(2) of the California
10 Labor Code for Plaintiff and the Aggrieved Employees during all of the pay periods in the one year
11 preceding the submission of Plaintiff's LWDA letter through the present and on-going until the
12 violations are corrected or this subclass is certified;

13 b. A civil penalty against Defendants in the amount of \$250 per employee for
14 the initial violation and \$1,000 per employee for each subsequent violation as specified in section
15 226.3 of the California Labor Code for Plaintiff and the Aggrieved Employees during all of the pay
16 periods in the one year preceding the submission of Plaintiff's LWDA letter through the present and
17 on-going until the violations are correct or this subclass is certified;

18 c. An award of reasonable attorney's fees against Defendants as specified in
19 Labor Code § 2699(g)(1), for all the work performed by the undersigned counsel in connection with
20 the PAGA claims;

21 d. An award of all costs incurred by the undersigned counsel for Plaintiff in
22 connection with Plaintiff's and Class Members' PAGA claim against Defendants, as provided for in
23 Labor Code § 2699(g)(1).

24 10. All other relief as this Court deems proper.
25
26
27
28

1 Dated: December 6, 2021

Respectfully submitted,

2 ACKERMANN & TILAJEF, P.C.
3 LAW OFFICE OF TATIANA HERNANDEZ,
4 P.C.

5 By:



6 Craig Ackermann, Esq.
7 Tatiana Hernandez, Esq.
8 Counsel for Plaintiff, the Class, and the
9 Aggrieved Employees