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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA CLARA**

YURI MILON, individually, and on behalf of  
other members of the general public similarly  
situated; OLIMPIA MEZA PELAYO,  
individually, and on behalf of other members  
of the general public similarly situated and  
on behalf of other aggrieved employees  
pursuant to the California Private Attorneys  
General Act; EMILIO LOPEZ, individually,  
and on behalf of other members of the  
general public similarly situated and on  
behalf of other aggrieved employees pursuant  
to the California Private Attorneys General  
Act

Plaintiffs,

vs.

DAVID & ESPERANZA CHAVEZ  
FAMILY LIMITED PARTNERSHIP DBA  
CHAVEZ SUPERMARKET, a California  
limited partnership; and DOES 1 through  
100, inclusive,

Defendants.

Case No.: 20CV368379

Honorable Theodore C. Zayner  
Department 19

**[PROPOSED] FIRST AMENDED CLASS  
ACTION COMPLAINT FOR DAMAGES  
AND ENFORCEMENT 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 §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment);
- (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (8) Violation of California Labor Code § 1174(d) (Failure To Keep

- Requisite Payroll Records);  
(9) Violation of California Labor Code § 227.3 (Failure to Pay Vacation Wages)  
(10) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);  
(11) Violation of California Business & Professions Code §§ 17200, et seq.;  
(12) Violation of California Labor Code §§ 2698, et seq. (California Labor Code Private Attorneys General Act of 2004)

**DEMAND FOR JURY TRIAL**

COME NOW, Plaintiff YURI MILON (“Plaintiff MILON”), individually, and on behalf of other members of the general public similarly situated, OLIMPIA MEZA PELAYO (“Plaintiff PELAYO”), individually, and on behalf of other members of the general public similarly situated, the State of California and other aggrieved employees pursuant to the California Private Attorneys General Act (“PAGA”), and EMILIO LOPEZ (“Plaintiff LOPEZ”), individually, and on behalf of other members of the general public similarly situated, the State of California and other aggrieved employees pursuant to PAGA (collectively, “Plaintiffs”), and allege as follows:

**JURISDICTION AND VENUE**

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiffs exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendant because, upon information and belief, Defendant is a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendant maintains offices, has agents, employs individuals, and/or transacts business in the State of California, County of Santa Clara. The majority of acts and omissions alleged herein relating to Plaintiffs and the other class members took place in the State of California, including the County of Santa Clara.

**PARTIES**

5. Plaintiff YURI MILON is an individual residing in the State of California, County of Santa Clara.

6. Plaintiff OLIMPIA MEZA PELAYO is an individual residing in the State of California.

7. Plaintiff EMILIO LOPEZ is an individual residing in the State of California.

8. Defendant DAVID & ESPERANZA CHAVEZ FAMILY LIMITED PARTNERSHIP DBA CHAVEZ SUPERMARKET, at all times herein mentioned, was and is, upon information and belief, a California limited partnership, at all times herein mentioned, an employer whose employees are engaged throughout the State of California, including the County of Santa Clara.

9. At all relevant times, Defendant DAVID & ESPERANZA CHAVEZ FAMILY LIMITED PARTNERSHIP DBA CHAVEZ SUPERMARKET was the “employer” of Plaintiffs within the meaning of all applicable California laws and statutes.

10. At all times herein relevant, Defendants DAVID & ESPERANZA CHAVEZ FAMILY LIMITED PARTNERSHIP DBA CHAVEZ SUPERMARKET and DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint employers, representatives, servants, employees, successors-in-interest, co-conspirators and/or assigns, each of the other, and at all times relevant hereto were acting within the course and scope of their authority as such agents, partners, joint venturers, joint employers, representatives, servants, employees, successors, co-conspirators and/or assigns, and all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization

1 and/or consent of each defendant designated as a DOE herein.

2 11. The true names and capacities, whether corporate, associate, individual or  
3 otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiffs who sue said  
4 defendants by such fictitious names. Plaintiffs are informed and believe, and based on that  
5 information and belief allege, that each of the defendants designated as a DOE is legally  
6 responsible for the events and happenings referred to in this Complaint, and unlawfully caused  
7 the injuries and damages to Plaintiffs and the other class members as alleged in this Complaint.  
8 Plaintiffs will seek leave of court to amend this Complaint to show the true names and capacities  
9 when the same have been ascertained.

10 12. Defendant DAVID & ESPERANZA CHAVEZ FAMILY LIMITED  
11 PARTNERSHIP DBA CHAVEZ SUPERMARKET and DOES 1 through 100 will hereinafter  
12 collectively be referred to as “Defendants.”

13 13. Plaintiffs further allege that Defendants directly or indirectly controlled or  
14 affected the working conditions, wages, working hours, and conditions of employment of  
15 Plaintiffs, the other class members, and the other aggrieved employees so as to make each of  
16 said Defendants employers liable under the statutory provisions set forth herein.

17 **CLASS ACTION ALLEGATIONS**

18 14. Plaintiffs bring this action on their own behalf and on behalf of all other members  
19 of the general public similarly situated, and, thus, seek class certification under California Code  
20 of Civil Procedure section 382.

21 15. The proposed class is defined as follows:

22 All current and former hourly-paid or non-exempt employees who worked for any  
23 of the Defendants within the State of California at any time during the period from  
24 July 17, 2016 to final judgment and who reside in California.

25 16. Plaintiffs reserve the right to establish subclasses as appropriate.

26 17. The class is ascertainable and there is a well-defined community of interest in the  
27 litigation:  
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- 1 a. Numerosity: The class members are so numerous that joinder of all class  
2 members is impracticable. The membership of the entire class is unknown  
3 to Plaintiffs at this time; however, the class is estimated to be greater than  
4 fifty (50) individuals and the identity of such membership is readily  
5 ascertainable by inspection of Defendants' employment records.
- 6 b. Typicality: Plaintiffs' claims are typical of all other class members' as  
7 demonstrated herein. Plaintiffs will fairly and adequately protect the  
8 interests of the other class members with whom she has a well-defined  
9 community of interest.
- 10 c. Adequacy: Plaintiffs will fairly and adequately protect the interests of each  
11 class member, with whom she has a well-defined community of interest  
12 and typicality of claims, as demonstrated herein. Plaintiffs have no  
13 interest that is antagonistic to the other class members. Plaintiffs'  
14 attorneys, the proposed class counsel, are versed in the rules governing  
15 class action discovery, certification, and settlement. Plaintiffs have  
16 incurred, and during the pendency of this action will continue to incur,  
17 costs and attorneys' fees, that have been, are, and will be necessarily  
18 expended for the prosecution of this action for the substantial benefit of  
19 each class member.
- 20 d. Superiority: A class action is superior to other available methods for the  
21 fair and efficient adjudication of this litigation because individual joinder  
22 of all class members is impractical.
- 23 e. Public Policy Considerations: Certification of this lawsuit as a class action  
24 will advance public policy objectives. Employers of this great state violate  
25 employment and labor laws every day. Current employees are often afraid  
26 to assert their rights out of fear of direct or indirect retaliation. However,  
27 class actions provide the class members who are not named in the  
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complaint anonymity that allows for the vindication of their rights.

18. There are common questions of law and fact as to the class members that predominate over questions affecting only individual members. The following common questions of law or fact, among others, exist as to the members of the class:

- a. Whether Defendants' failure to pay wages, without abatement or reduction, in accordance with the California Labor Code, was willful;
- b. Whether Defendants had a corporate policy and practice of failing to pay their hourly-paid or non-exempt employees within the State of California for all hours worked and missed (short, late, interrupted, and/or missed altogether) meal periods and rest breaks in violation of California law;
- c. Whether Defendants required Plaintiffs and the other class members to work over eight (8) hours per day and/or over forty (40) hours per week and failed to pay the legally required overtime compensation to Plaintiffs and the other class members;
- d. Whether Defendants deprived Plaintiffs and the other class members of meal and/or rest periods or required Plaintiffs and the other class members to work during meal and/or rest periods without compensation;
- e. Whether Defendants failed to pay minimum wages to Plaintiffs and the other class members for all hours worked;
- f. Whether Defendants failed to pay all wages due to Plaintiffs and the other class members within the required time upon their discharge or resignation;
- g. Whether Defendants failed to timely pay all wages due to Plaintiffs and the other class members during their employment;
- h. Whether Defendants complied with wage reporting as required by the California Labor Code; including, *inter alia*, section 226;
- i. Whether Defendants kept complete and accurate payroll records as

required by the California Labor Code, including, *inter alia*, section 1174(d);

j. Whether Defendants failed to pay all vested vacation wages due to Plaintiffs and the other class members upon termination of their employment;

k. Whether Defendants failed to reimburse Plaintiffs and the other class members for necessary business-related expenses and costs;

l. Whether Defendants' conduct was willful or reckless;

m. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code section 17200, et seq.;

n. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law; and

o. Whether Plaintiffs and the other class members are entitled to compensatory damages pursuant to the California Labor Code.

#### **PAGA ALLEGATIONS**

19. At all times herein set forth, PAGA was applicable to Plaintiff PELAYO and Plaintiff LOPEZ's employment by Defendants.

20. At all times herein set forth, PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty to be assessed and collected by the LWDA for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of herself and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

21. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved employee," who is any person that was employed by the alleged violator and against whom one or more of the alleged violations was committed.

22. Plaintiff PELAYO was employed by Defendants and the alleged violations were committed against her during her time of employment and she is, therefore, an aggrieved

1 employee. Plaintiff LOPEZ was employed by Defendants and the alleged violations were  
2 committed against him during his time of employment and he is, therefore, an aggrieved  
3 employee. Plaintiff PELAYO, Plaintiff LOPEZ, and the other employees are “aggrieved  
4 employees” as defined by California Labor Code section 2699(c) in that they are all current or  
5 former employees of Defendants, and one or more of the alleged violations were committed  
6 against them.

7 23. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved  
8 employee, including Plaintiff PELAYO and Plaintiff LOPEZ, may pursue a civil action arising  
9 under PAGA after the following requirements have been met:

10 a. The aggrieved employee shall give written notice by online submission  
11 (hereinafter “Employee’s Notice”) to the Labor & Workforce  
12 Development Agency (hereinafter “LWDA”) and by U.S. Certified Mail  
13 to the employer of the specific provisions of the California Labor Code  
14 alleged to have been violated, including the facts and theories to support  
15 the alleged violations.

16 b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the  
17 employer and the aggrieved employee by certified mail that it does not  
18 intend to investigate the alleged violation within sixty (60) calendar days  
19 of the postmark date of the Employee’s Notice. Upon receipt of the  
20 LWDA Notice, or if the LWDA Notice is not provided within sixty-five  
21 (65) calendar days of the postmark date of the Employee’s Notice, the  
22 aggrieved employee may commence a civil action pursuant to California  
23 Labor Code section 2699 to recover civil penalties in addition to any other  
24 penalties to which the employee may be entitled.

25 24. On August 19, 2020, Plaintiff PELAYO provided written notice by online  
26 submission to the LWDA and to Defendant DAVID & ESPERANZA CHAVEZ FAMILY  
27 LIMITED PARTNERSHIP DBA CHAVEZ SUPERMARKET of the specific provisions of the  
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California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. On October 3, 2022, Plaintiff PELAYO and Plaintiff LOPEZ provided an amended written notice to the LWDA and Defendants. Plaintiffs PELAYO and LOPEZ have not received an LWDA Notice within sixty-five (65) calendar days of the date of their amended notice.

25. Therefore, Plaintiffs PELAYO and LOPEZ have satisfied the administrative prerequisites under California Labor Code section 2699.3(a) to recover civil penalties against Defendants for violations of California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 246, et seq., 510, 512., 1174, 1174.5, 1194, 1197, 1197.1, 1198.5, 2699, 2802, and 2810.5.

### **GENERAL ALLEGATIONS**

26. At all relevant times set forth herein, Defendants employed Plaintiffs and other persons as hourly-paid or non-exempt employees within the State of California, including the County of Santa Clara.

27. Defendants, jointly and severally, employed Plaintiff MILON as an hourly-paid, non-exempt employee, from approximately November 2018 to approximately March 2019, in the State of California, County of Santa Clara.

28. Defendants, jointly and severally, employed Plaintiff PELAYO as an hourly-paid, non-exempt employee, from approximately December 2016 to approximately January 2020, in the State of California, County of Santa Clara.

29. Defendants, jointly and severally, employed Plaintiff LOPEZ as an hourly-paid, non-exempt employee, from approximately February 2006 to the present, in the State of California, County of Santa Clara.

30. Defendants hired Plaintiffs and the other class members, classified them as hourly-paid or non-exempt employees, and failed to compensate them for all hours worked and missed, short, late, and/or interrupted meal periods and/or rest breaks.

31. Defendants had the authority to hire and terminate Plaintiffs and the other class

1 members, to set work rules and conditions governing Plaintiffs' and the other class members'  
2 employment, and to supervise their daily employment activities.

3 32. Defendants exercised sufficient authority over the terms and conditions of  
4 Plaintiffs' and the other class members' employment for them to be joint employers of Plaintiffs  
5 and the other class members.

6 33. Defendants directly hired and paid wages and benefits to Plaintiffs and the other  
7 class members.

8 34. Defendants continue to employ hourly-paid or non-exempt employees within the  
9 State of California.

10 35. Plaintiffs and the other class members worked over eight (8) hours in a day, forty  
11 (40) hours in a week, and/or over six (6) days in a workweek during their employment with  
12 Defendants.

13 36. Plaintiffs are informed and believe, and based thereon allege, that Defendants  
14 engaged in a uniform policy and systematic scheme of wage abuse against their hourly-paid or  
15 non-exempt employees within the State of California. This pattern and practice involved, *inter*  
16 *alia*, failing to pay them for all hours worked and missed, short, late and/or interrupted meal  
17 periods and rest breaks in violation of California law.

18 37. Plaintiffs are informed and believe, and based thereon allege, that Defendants  
19 knew or should have known that Plaintiffs and the other class members were entitled to receive  
20 certain wages for overtime compensation and that they were not receiving accurate overtime  
21 compensation for all overtime hours worked.

22 38. Plaintiffs are informed and believe, and based thereon allege, that Defendants  
23 failed to provide Plaintiffs and the other class members all required rest and meal periods during  
24 the relevant time period as required under the Industrial Welfare Commission Wage Orders and  
25 thus they are entitled to any and all applicable premium wages. Defendants' failure included,  
26 *inter alia*, failing to provide uninterrupted ten (10) minute rest periods and timely, uninterrupted  
27 thirty (30) minute meal periods to Plaintiffs and the other class members. Plaintiffs and the other  
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1 class members were required to perform work during meal periods and rest periods.

2 39. Plaintiffs are informed and believe, and based thereon allege, that Defendants  
3 failed to relieve Plaintiffs and the other class members of all duties, failed to relinquish control  
4 over Plaintiffs and the other class members' activities, failed to permit Plaintiffs and the other  
5 class members a reasonable opportunity to take, and impeded or discouraged them from taking  
6 thirty (30) minute uninterrupted meal breaks no later than the end of their fifth hour of work for  
7 shifts lasting at least (6) hours, and/or take second thirty (30) minute uninterrupted meal breaks  
8 no later than their tenth hour of work for shifts lasting more than ten (10) hours.

9 40. Plaintiffs are informed and believe, and based thereon allege, that Defendants  
10 knew or should have known that Plaintiffs and the other class members were entitled to receive  
11 all meal periods or payment of one additional hour of pay at Plaintiffs' and the other class  
12 member's regular rate of pay when a meal period was missed, and they did not receive all meal  
13 periods or payment of one additional hour of pay at Plaintiffs' and the other class member's  
14 regular rate of pay when a meal period was missed, short, late, and/or interrupted.

15 41. Plaintiffs are informed and believe, and based thereon allege, that Defendants  
16 knew or should have known that Plaintiffs and the other class members were entitled to receive  
17 all rest periods or payment of one additional hour of pay at Plaintiffs' and the other class  
18 member's regular rate of pay when a rest period was missed, and they did not receive all rest  
19 periods or payment of one additional hour of pay at Plaintiffs' and the other class members'  
20 regular rate of pay when a rest period was missed, short, late, and/or interrupted.

21 42. Plaintiffs are informed and believe, and based thereon allege, that Defendants  
22 knew or should have known that Plaintiffs and the other class members were entitled to receive  
23 at least minimum wages for compensation and that they were not receiving at least minimum  
24 wages for all hours worked.

25 43. Plaintiffs are informed and believe, and based thereon allege, that Defendants  
26 knew or should have known that Plaintiffs and the other class members were entitled to receive  
27 all wages owed to them upon discharge or resignation, including earned but unpaid overtime  
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1 wages, minimum wages, vested vacation wages, and meal and rest period premiums, and they  
2 did not, in fact, receive all such wages owed to them at the time of their discharge or resignation.

3 44. Plaintiffs are informed and believe, and based thereon allege, that Defendants  
4 knew or should have known that Plaintiffs and the other class members were entitled to receive  
5 all wages owed to them during their employment. Plaintiffs and the other class members did not  
6 receive payment of all wages, including overtime and minimum wages and meal and rest period  
7 premiums, within any time permissible under California Labor Code section 204.

8 45. Plaintiffs are informed and believe, and based thereon allege, that Defendants  
9 knew or should have known that Plaintiffs and the other class members were entitled to receive  
10 complete and accurate wage statements in accordance with California law, but, in fact, they did  
11 not receive complete and accurate wage statements from Defendants. The deficiencies included,  
12 *inter alia*, the failure to include the actual number of hours worked by Plaintiffs and the other  
13 class members, including work to be performed off-the-clock.

14 46. Plaintiffs are informed and believe, and based thereon allege, that Defendants  
15 knew or should have known that Defendants had to keep complete and accurate payroll records  
16 for Plaintiffs and the other class members in accordance with California law, but, in fact, did not  
17 keep complete and accurate payroll records.

18 47. Plaintiffs are informed and believe, and based thereon allege, that Defendants  
19 knew or should have known that Plaintiffs and the other class members were entitled to payment  
20 of their vested vacation wages at their final rate of pay upon termination of their employment.

21 48. Plaintiffs are informed and believe, and based thereon allege, that Defendants  
22 knew or should have known that Plaintiffs and the other class members were entitled to  
23 reimbursement for necessary business-related expenses.

24 49. Plaintiffs are informed and believe, and based thereon allege, that Defendants  
25 knew or should have known that they had a duty to compensate Plaintiffs and the other class  
26 members pursuant to California law, and that Defendants had the financial ability to pay such  
27 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented  
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1 to Plaintiffs and the other class members that they were properly denied wages, all in order to  
2 increase Defendants' profits.

3 50. During the relevant time period, Defendants intentionally and willfully failed to  
4 pay overtime wages to Plaintiffs and the other class members for all overtime hours worked.  
5 Plaintiffs and the other class members did not receive overtime compensation at one-and-one-  
6 half the regular rate of pay for all hours spent performing job duties in excess of eight (8) hours  
7 per day, forty (40) hours per week, and/or for the first eight (8) hours worked on the seventh day  
8 of work in a workweek.

9 51. During the relevant time period, Defendants failed to properly calculate the regular  
10 rate of pay, including, *inter alia*, failing to include non-discretionary bonuses, commissions,  
11 monetary and non-monetary incentives, production pay, performance pay, and/or shift differentials  
12 in the calculation of the regular rate of pay used to calculate the overtime rate for the payment of  
13 overtime wages where Plaintiffs and the other class members earned commissions, non-  
14 discretionary bonuses, monetary and non-monetary incentives, non-discretionary production  
15 and/or performance pay, and/or shift differentials and overtime wages in the same pay period.

16 52. During the relevant time period, Defendants failed to provide all requisite  
17 uninterrupted meal and rest periods to Plaintiffs and the other class members.

18 53. During the relevant time period, Defendants failed to pay Plaintiffs and the other  
19 class members at least minimum wages for all hours worked.

20 54. During the relevant time period, Defendants failed to pay Plaintiffs and the other  
21 class members all wages owed to them upon discharge or resignation.

22 55. During the relevant time period, Defendants failed to pay Plaintiffs and the other  
23 class members all wages within any time permissible under California law, including, *inter alia*,  
24 California Labor Code section 204.

25 56. During the relevant time period, Defendants failed to provide complete or  
26 accurate wage statements to Plaintiffs and the other class members.

27 57. During the relevant time period, Defendants failed to keep complete or accurate  
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1 payroll records for Plaintiffs and the other class members.

2 58. During the relevant time period, Defendants failed to pay Plaintiffs and the other  
3 class members their vested vacation wages at their final rate of pay upon termination of their  
4 employment.

5 59. During the relevant time period, Defendants failed to reimburse Plaintiffs and the  
6 other class members for all necessary business-related expenses and costs.

7 60. During the relevant time period, Defendants failed to properly compensate  
8 Plaintiffs and the other class members pursuant to California law in order to increase Defendants'  
9 profits.

10 61. California Labor Code section 218 states that nothing in Article 1 of the Labor  
11 Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty due  
12 to him [or her] under this article."

13 **FIRST CAUSE OF ACTION**

14 **(Violation of California Labor Code §§ 510 and 1198)**

15 **(Against DAVID & ESPERANZA CHAVEZ FAMILY LIMITED PARTNERSHIP DBA**  
16 **CHAVEZ SUPERMARKET and DOES 1 through 100)**

17 62. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1  
18 through 61, and each and every part thereof with the same force and effect as though fully set  
19 forth herein.

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

24 64. Specifically, the applicable IWC Wage Order provides that Defendants are and  
25 were required to pay Plaintiffs and the other class members employed by Defendants, and  
26 working more than eight (8) hours in a day or more than forty (40) hours in a workweek, and/or  
27 more than six (6) consecutive days in a workweek, at the rate of time-and-one-half for all hours  
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1 worked in excess of eight (8) hours in a day, more than forty (40) hours in a workweek, or for  
2 the first eight (8) hours worked on the seventh day of work in a workweek.

3 65. The applicable IWC Wage Order further provides that Defendants are and were  
4 required to pay Plaintiffs and the other class members overtime compensation at a rate of two  
5 times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

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

11 67. During the relevant time period, Plaintiffs and the other class members worked in  
12 excess of eight (8) hours in a day, forty (40) hours in a week, and/or for the first eight (8) hours  
13 worked on the seventh day.

14 68. During the relevant time period, Defendants intentionally and willfully failed to  
15 pay overtime wages owed to Plaintiffs and the other class members.

16 69. Defendants' failure to pay Plaintiffs and the other class members the unpaid  
17 balance of overtime compensation, as required by California laws, violates the provisions of  
18 California Labor Code sections 510 and 1198, and is therefore unlawful.

19 70. Pursuant to California Labor Code section 1194, Plaintiffs and the other class  
20 members are entitled to recover unpaid overtime compensation, as well as interest, costs, and  
21 attorneys' fees.

22 **SECOND CAUSE OF ACTION**

23 **(Violation of California Labor Code §§ 226.7 and 512(a))**

24 **(Against DAVID & ESPERANZA CHAVEZ FAMILY LIMITED PARTNERSHIP DBA**  
25 **CHAVEZ SUPERMARKET and DOES 1 through 100)**

26 71. Plaintiffs incorporate by reference the allegations contained in paragraphs 1  
27 through 70, and each and every part thereof with the same force and effect as though fully set  
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1 forth herein.

2 72. At all relevant times, the IWC Order and California Labor Code sections 226.7  
3 and 512(a) were applicable to Plaintiffs' and the other class members' employment by  
4 Defendants.

5 73. At all relevant times, California Labor Code section 226.7 provides that no  
6 employer shall require an employee to work during any meal or rest period mandated by an  
7 applicable order of the California IWC.

8 74. At all relevant times, the applicable IWC Wage Order and California Labor Code  
9 section 512(a) provide that an employer may not require, cause or permit an employee to work  
10 for a work period of more than five (5) hours per day without providing the employee with a  
11 meal period of not less than thirty (30) minutes, except that if the total work period per day of the  
12 employee is no more than six (6) hours, the meal period may be waived by mutual consent of  
13 both the employer and employee.

14 75. At all relevant times, the applicable IWC Wage Order and California Labor Code  
15 section 512(a) further provide that an employer may not require, cause or permit an employee to  
16 work for a work period of more than ten (10) hours per day without providing the employee with  
17 a second uninterrupted meal period of not less than thirty (30) minutes, except that if the total  
18 hours worked is no more than twelve (12) hours, the second meal period may be waived by  
19 mutual consent of the employer and the employee only if the first meal period was not waived.

20 76. During the relevant time period, Plaintiffs and the other class members who were  
21 scheduled to work for a period of time no longer than six (6) hours, and who did not waive their  
22 legally-mandated meal periods by mutual consent, were required to work for periods longer than  
23 five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes and/or  
24 rest period.

25 77. During the relevant time period, Plaintiffs and the other class members who were  
26 scheduled to work for a period of time in excess of six (6) hours were required to work for  
27 periods longer than five (5) hours without an uninterrupted meal period of not less than thirty  
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(30) minutes and/or rest period.

78. During the relevant time period, Defendants intentionally and willfully required Plaintiffs and the other class members to work during meal periods and failed to compensate Plaintiffs and the other class members the full meal period premium for work performed during meal periods.

79. During the relevant time period, Defendants failed to pay Plaintiffs and the other class members the full meal period premium due pursuant to California Labor Code section 226.7.

80. Defendants' conduct violates applicable IWC Wage Order and California Labor Code sections 226.7 and 512(a).

81. Pursuant to applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiffs and the other class members are entitled to recover from Defendants one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

### **THIRD CAUSE OF ACTION**

**(Violation of California Labor Code § 226.7)**

**(Against DAVID & ESPERANZA CHAVEZ FAMILY LIMITED PARTNERSHIP DBA CHAVEZ SUPERMARKET and DOES 1 through 100)**

82. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 81, and each and every part thereof with the same force and effect as though fully set forth herein.

83. At all times herein set forth, the applicable IWC Wage Order and California Labor Code section 226.7 were applicable to Plaintiffs' and the other class members' employment by Defendants.

84. 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.

85. 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.

86. During the relevant time period, Defendants required Plaintiffs and other class members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked.

87. During the relevant time period, Defendants willfully required Plaintiffs and the other class members to work during rest periods and failed to pay Plaintiffs and the other class members the full rest period premium for work performed during rest periods.

88. During the relevant time period, Defendants failed to pay Plaintiffs and the other class members the full rest period premium due pursuant to California Labor Code section 226.7.

89. Defendants’ conduct violates applicable IWC Wage Orders and California Labor Code section 226.7.

90. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(c), Plaintiffs and the other class members are entitled to recover from Defendants one additional hour of pay at the employees’ regular hourly rate of compensation for each work day that the rest period was not provided.

#### **FOURTH CAUSE OF ACTION**

**(Violation of California Labor Code §§ 1194, 1197, and 1197.1)**

**(Against DAVID & ESPERANZA CHAVEZ FAMILY LIMITED PARTNERSHIP DBA  
CHAVEZ SUPERMARKET and DOES 1 through 100)**

91. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 90, and each and every part thereof with the same force and effect as though fully set forth herein.

92. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1 provide that the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.

93. During the relevant time period, Defendants failed to pay minimum wage to Plaintiffs and the other class members as required, pursuant to California Labor Code sections 1194, 1197, and 1197.1.

94. Defendants' failure to pay Plaintiffs and the other class members the minimum wage as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to those sections Plaintiffs and the other class members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

95. Pursuant to California Labor Code section 1197.1, Plaintiffs and the other class members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each employee minimum wages.

96. Pursuant to California Labor Code section 1194.2, Plaintiffs and the other class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

#### **FIFTH CAUSE OF ACTION**

**(Violation of California Labor Code §§ 201 and 202)**

**(Against DAVID & ESPERANZA CHAVEZ FAMILY LIMITED PARTNERSHIP DBA  
CHAVEZ SUPERMARKET and DOES 1 through 100)**

97. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 96, and each and every part thereof with the same force and effect as though fully set forth herein.

98. At all relevant times herein set forth, California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of

1 discharge are due and payable immediately, and if an employee quits his or her employment, his  
2 or her wages shall become due and payable not later than seventy-two (72) hours thereafter,  
3 unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in  
4 which case the employee is entitled to his or her wages at the time of quitting.

5 99. During the relevant time period, Defendants intentionally and willfully failed to  
6 pay Plaintiffs and the other class members who are no longer employed by Defendants their  
7 wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.

8 100. Defendants' failure to pay Plaintiffs and the other class members who are no  
9 longer employed by Defendants' their wages, earned and unpaid, within seventy-two (72) hours  
10 of their leaving Defendants' employ, is in violation of California Labor Code sections 201 and  
11 202.

12 101. California Labor Code section 203 provides that if an employer willfully fails to  
13 pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall  
14 continue as a penalty from the due date thereof at the same rate until paid or until an action is  
15 commenced; but the wages shall not continue for more than thirty (30) days.

16 102. Plaintiffs and the other class members are entitled to recover from Defendants the  
17 statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum  
18 pursuant to California Labor Code section 203.

19 **SIXTH CAUSE OF ACTION**

20 **(Violation of California Labor Code § 204)**

21 **(Against DAVID & ESPERANZA CHAVEZ FAMILY LIMITED PARTNERSHIP DBA**  
22 **CHAVEZ SUPERMARKET and DOES 1 through 100)**

23 103. Plaintiffs incorporate by reference the allegations contained in paragraphs 1  
24 through 100, and each and every part thereof with the same force and effect as though fully set  
25 forth herein.

26 104. At all times herein set forth, California Labor Code section 204 provides that all  
27 wages earned by any person in any employment between the 1st and 15th days, inclusive, of any  
28

1 calendar month, other than those wages due upon termination of an employee, are due and  
2 payable between the 16th and the 26th day of the month during which the labor was performed.

3 105. At all times herein set forth, California Labor Code section 204 provides that all  
4 wages earned by any person in any employment between the 16th and the last day, inclusive, of  
5 any calendar month, other than those wages due upon termination of an employee, are due and  
6 payable between the 1st and the 10th day of the following month.

7 106. At all times herein set forth, California Labor Code section 204 provides that all  
8 wages earned for labor in excess of the normal work period shall be paid no later than the payday  
9 for the next regular payroll period.

10 107. During the relevant time period, Defendants intentionally and willfully failed to  
11 pay Plaintiffs and the other class members all wages due to them, within any time period  
12 permissible under California Labor Code section 204.

13 108. Plaintiffs and the other class members are entitled to recover all remedies  
14 available for violations of California Labor Code section 204.

15 **SEVENTH CAUSE OF ACTION**

16 **(Violation of California Labor Code § 226(a))**

17 **(Against DAVID & ESPERANZA CHAVEZ FAMILY LIMITED PARTNERSHIP DBA**  
18 **CHAVEZ SUPERMARKET and DOES 1 through 100)**

19 109. Plaintiffs incorporate by reference the allegations contained in paragraphs 1  
20 through 108, and each and every part thereof with the same force and effect as though fully set  
21 forth herein.

22 110. At all material times set forth herein, California Labor Code section 226(a)  
23 provides that every employer shall furnish each of his or her employees an accurate itemized  
24 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee,  
25 (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid  
26 on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of  
27 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive  
28

1 dates of the period for which the employee is paid, (7) the name of the employee and his or her  
2 social security number, (8) the name and address of the legal entity that is the employer, and (9)  
3 all applicable hourly rates in effect during the pay period and the corresponding number of hours  
4 worked at each hourly rate by the employee. The deductions made from payments of wages  
5 shall be recorded in ink or other indelible form, properly dated, showing the month, day, and  
6 year, and a copy of the statement or a record of the deductions shall be kept on file by the  
7 employer for at least three years at the place of employment or at a central location within the  
8 State of California.

9 111. Defendants have intentionally and willfully failed to provide Plaintiffs and the  
10 other class members with complete and accurate wage statements. The deficiencies include, but  
11 are not limited to: the failure to include the total number of hours worked by Plaintiffs and the  
12 other class members.

13 112. As a result of Defendants' violation of California Labor Code section 226(a),  
14 Plaintiffs and the other class members have suffered injury and damage to their statutorily-  
15 protected rights.

16 113. More specifically, Plaintiffs and the other class members have been injured by  
17 Defendants' intentional and willful violation of California Labor Code section 226(a) because  
18 they were denied both their legal right to receive, and their protected interest in receiving,  
19 accurate and itemized wage statements pursuant to California Labor Code section 226(a).

20 114. Plaintiffs and the other class 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 per employee.

23 115. Plaintiffs and the other class members are also entitled to injunctive relief to  
24 ensure compliance with this section, pursuant to California Labor Code section 226(h).

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**EIGHTH CAUSE OF ACTION**

**(Violation of California Labor Code § 1174(d))**

**(Against DAVID & ESPERANZA CHAVEZ FAMILY LIMITED PARTNERSHIP DBA  
CHAVEZ SUPERMARKET and DOES 1 through 100)**

116. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 115, and each and every part thereof with the same force and effect as though fully set forth herein.

117. Pursuant to California Labor Code section 1174(d), an employer shall keep, 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. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years.

118. Defendants have intentionally and willfully failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Plaintiffs and the other class members.

119. As a result of Defendants' violation of California Labor Code section 1174(d), Plaintiffs and the other class members have suffered injury and damage to their statutorily-protected rights.

120. More specifically, Plaintiffs and the other class members have been injured by Defendants' intentional and willful violation of California Labor Code section 1174(d) because they were denied both their legal right and protected interest, in having available, accurate and complete payroll records pursuant to California Labor Code section 1174(d).

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**NINTH CAUSE OF ACTION**

**(Violation of California Labor Code § 227.3)**

**(Against DAVID & ESPERANZA CHAVEZ FAMILY LIMITED PARTNERSHIP DBA  
CHAVEZ SUPERMARKET and DOES 1 through 100)**

121. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 120, and each and every part thereof with the same force and effect as though fully set forth herein.

122. According to Labor Code section 227.3, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served.

123. Plaintiffs are informed and believes, and based thereon allege that, at all times relevant hereto, Defendants promulgated and maintained a uniform policy providing for paid vacations, and that Plaintiffs' employment contract with Defendants included paid vacations.

124. During the relevant time period, Defendants have had a consistent policy of failing to provide Plaintiffs and similarly situated employees or former employees within the State of California with compensation at their final rate of pay for unused vested paid vacation days pursuant to Labor Code section 227.3.

125. As a proximate result of Defendants' failure to pay vested vacation at the final rate of Plaintiffs and Class Members upon their resignation or termination, Defendants violated Labor Code section 227.3, entitling Plaintiffs and Class Members to all vested and unused vacation pay at their final rate of pay, as set out in Defendants' policy or the contract of employment between Plaintiffs and Class Members, on the one hand, and Defendants, on the other hand.

126. As a further proximate result of Defendants' above-described acts and/or omissions, Plaintiffs and Class Members are entitled to recover reasonable attorneys' fees, costs

of suit and prejudgment interest.

**TENTH CAUSE OF ACTION**

**(Violation of California Labor Code §§ 2800 and 2802)**

**(Against DAVID & ESPERANZA CHAVEZ FAMILY LIMITED PARTNERSHIP DBA  
CHAVEZ SUPERMARKET and DOES 1 through 100)**

127. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 126, and each and every part thereof with the same force and effect as though fully set forth herein.

128. Pursuant to California Labor Code sections 2800 and 2802, an employer must reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

129. Plaintiffs and the other class members incurred necessary business-related expenses and costs that were not fully reimbursed by Defendants.

130. Defendants have intentionally and willfully failed to reimburse Plaintiffs and the other class members for all necessary business-related expenses and costs.

131. Plaintiffs and the other class members are entitled to recover from Defendants their business-related expenses and costs incurred during the course and scope of their employment, plus interest accrued from the date on which the employee incurred the necessary expenditures at the same rate as judgments in civil actions in the State of California.

**ELEVENTH CAUSE OF ACTION**

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

**(Against DAVID & ESPERANZA CHAVEZ FAMILY LIMITED PARTNERSHIP DBA  
CHAVEZ SUPERMARKET and DOES 1 through 100)**

132. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 131, and each and every part thereof with the same force and effect as though fully set forth herein.

1           133. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,  
2 unlawful and harmful to Plaintiffs, other class members, to the general public, and Defendants'  
3 competitors. Accordingly, Plaintiffs seek to enforce important rights affecting the public interest  
4 within the meaning of Code of Civil Procedure section 1021.5.

5           134. Defendants' activities as alleged herein are violations of California law, and  
6 constitute unlawful business acts and practices in violation of California Business & Professions  
7 Code section 17200, et seq.

8           135. A violation of California Business & Professions Code section 17200, et seq. may  
9 be predicated on the violation of any state or federal law. In this instant case, Defendants'  
10 policies and practices of requiring employees, including Plaintiffs and the other class members,  
11 to work overtime without paying them proper compensation violate California Labor Code  
12 sections 510 and 1198. Additionally, Defendants' policies and practices of requiring employees,  
13 including Plaintiffs and the other class members, to work through their meal and rest periods  
14 without paying them proper compensation violate California Labor Code sections 226.7 and  
15 512(a). Defendants' policies and practices of failing to pay minimum wages violate California  
16 Labor Code sections 1194, 1197, and 1197.1. Moreover, Defendants' policies and practices of  
17 failing to timely pay wages to Plaintiffs and the other class members violate California Labor  
18 Code sections 201, 202 and 204. Defendants also violated California Labor Code sections  
19 226(a), 227.3, 1174(d), 2800 and 2802.

20           136. As a result of the herein described violations of California law, Defendants  
21 unlawfully gained an unfair advantage over other businesses.

22           137. Plaintiffs and the other class members have been personally injured by  
23 Defendants' unlawful business acts and practices as alleged herein, including but not necessarily  
24 limited to the loss of money and/or property.

25           138. Pursuant to California Business & Professions Code sections 17200, et seq.,  
26 Plaintiffs and the other class members are entitled to restitution of the wages withheld and  
27 retained by Defendants during a period that commences four years preceding the filing of this  
28

Complaint; an award of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other applicable laws; and an award of costs.

**TWELFTH CAUSE OF ACTION**

**(Violation of California Labor Code §§ 2698, *et seq.*)**

**(Against DAVID & ESPERANZA CHAVEZ FAMILY LIMITED PARTNERSHIP DBA  
CHAVEZ SUPERMARKET and DOES 1 through 100)**

139. Plaintiffs PELAYO and LOPEZ incorporate by reference the allegations contained in paragraphs 1 through 138, and each and every part thereof with the same force and effect as though fully set forth herein.

140. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

141. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

142. Plaintiffs PELAYO and LOPEZ and the other hourly-paid or non-exempt employees are "aggrieved employees" as defined by California Labor Code section 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them.

**Failure to Pay Overtime**

143. Defendants' failure to pay legally required overtime wages to Plaintiffs PELAYO and LOPEZ and the other Aggrieved Employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code sections 510 and 1198.

**Failure to Provide Meal Periods**

144. Defendants' failure to provide legally required meal periods to Plaintiffs PELAYO and LOPEZ and the other Aggrieved Employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code sections 226.7 and 512(a).

**Failure to Provide Rest Periods**

145. Defendants' failure to provide legally required rest periods to Plaintiffs PELAYO and LOPEZ and the other Aggrieved Employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code section 226.7.

**Failure to Pay Minimum Wages**

146. Defendants' failure to pay legally required minimum wages to Plaintiffs PELAYO and LOPEZ and the other Aggrieved Employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code sections 1194, 1197 and 1197.1.

**Failure to Timely Pay Wages Upon Termination**

147. Defendants' failure to timely pay wages to Plaintiffs PELAYO and LOPEZ and the other Aggrieved Employees upon termination in accordance with Labor Code sections 201 and 202 constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 201 and 202.

**Failure to Timely Pay Wages During Employment**

148. Defendants' failure to timely pay wages to Plaintiffs PELAYO and LOPEZ and the other Aggrieved Employees during employment in accordance with Labor Code section 204 constitutes unlawful and/or unfair activity prohibited by California Labor Code section 204.

**Failure to Provide Complete and Accurate Wage Statements**

149. Defendants' failure to provide complete and accurate wage statements to Plaintiffs PELAYO and LOPEZ and the other Aggrieved Employees in accordance with Labor Code section 226(a) constitutes unlawful and/or unfair activity prohibited by California Labor

Code section 226(a).

**Failure to Keep Complete and Accurate Payroll Records**

150. Defendants' failure to keep complete and accurate payroll records relating to Plaintiffs PELAYO and LOPEZ and the other Aggrieved Employees in accordance with California Labor Code section 1174(d) constitutes unlawful and/or unfair activity prohibited by California Labor Code section 1174(d).

**Failure to Pay Vested Vacation Wages at Termination**

151. Defendants' failure to pay all vested vacation wages at the final rate of pay to Plaintiffs PELAYO and LOPEZ and the other Aggrieved Employees upon termination in accordance with California Labor Code section 227.3 constitutes unlawful and/or unfair activity prohibited by California Labor Code section 227.3.

**Failure to Provide Paid Sick Leave**

152. Defendants' failure to provide paid sick leave to Plaintiffs PELAYO and LOPEZ and the other Aggrieved Employees in accordance with California Labor Code section 246 constitutes unlawful and/or unfair activity prohibited by California Labor Code section 246.

**Failure to Provide Seating**

153. Defendants' failure to provide suitable seats to Plaintiffs PELAYO and LOPEZ and the other Aggrieved Employees in accordance with the Wage Orders constitutes unlawful or unfair activity prohibited by California Labor Code section 1198.

**Failure to Provide Notice of Rates of Pay**

154. Defendants' failure to provide written notice of rates of pay and overtime rates of pay applicable to employment, allowances claimed as part of the minimum wage, the regular payday designated by employer, the name of the employer, including any "doing business as" names used, the name, address and telephone number of the workers' compensation insurance carrier, information regarding paid sick leave, and other pertinent information required to be disclosed by an employer under California Labor Code section 2810.5 to Plaintiffs PELAYO and LOPEZ and the other Aggrieved Employees' in accordance California Labor Code section

2810.5 constitutes unlawful or unfair activity prohibited by California Labor Code section 2810.5.

**Failure to Reimburse Necessary Business-Related Expenses and Costs**

155. Defendants' failure to reimburse Plaintiffs PELAYO and LOPEZ and the other Aggrieved Employees for necessary business-related expenses and costs in accordance with California Labor Code sections 2800 and 2802 constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 2800 and 2802.

156. Pursuant to California Labor Code section 2699, Plaintiffs PELAYO and LOPEZ, individually, and on behalf of all Aggrieved Employees, request and are entitled to recover from Defendants and each of them, attorneys' fees and costs pursuant to California Labor Code section 218.5, as well as all penalties pursuant to PAGA against Defendants, and each of them, including but not limited to:

- a. Penalties under California Labor Code section 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- b. Penalties under California Code of Regulations Title 8 section 11010 et seq. in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;
- c. Penalties under California Labor Code section 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation; and
- d. Any and all additional penalties and sums as provided by the California

Labor Code and/or other statutes.

157. Pursuant to California Labor Code section 2699(i), civil penalties recovered by Aggrieved Employees shall be distributed as follows: seventy-five percent (75%) to the Labor and Workforce Development Agency for the enforcement of labor laws and education of employers and employees about their rights and responsibilities and twenty-five percent (25%) to the Aggrieved Employees.

158. Further, Plaintiffs PELAYO and LOPEZ are entitled to seek and recover reasonable attorneys' fees and costs pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable statute.

### **DEMAND FOR JURY TRIAL**

Plaintiff MILON, individually, and on behalf of other members of the general public similarly situated, and Plaintiffs PELAYO and LOPEZ, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act, request a trial by jury.

### **PRAYER FOR RELIEF**

WHEREFORE, MILON, individually, and on behalf of other members of the general public similarly situated, and Plaintiffs PELAYO and LOPEZ, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act, pray for relief and judgment against Defendants, jointly and severally, as follows:

### **Class Certification**

1. That this action be certified as a class action as to the first ten causes of action;
2. That Plaintiffs be appointed as the representatives of the Class as to the first ten causes of action;
3. That counsel for Plaintiffs be appointed as Class Counsel; and
4. That Defendants provide to Class Counsel immediately the names and most current/last known contact information (address, e-mail and telephone numbers) of all class

members.

**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 applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiffs and the other 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;

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

9. For such other and further relief as the Court may deem just and proper.

**As to the Second Cause of Action**

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods (including second meal periods) to Plaintiffs and the other class members;

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

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

13. For premium wages pursuant to California Labor Code section 226.7(c);

14. For pre-judgment interest on any unpaid wages from the date such amounts were due;

15. For reasonable attorneys' fees and costs of suit incurred herein; and

16. For such other and further relief as the Court may deem just and proper.

**As to the Third Cause of Action**

17. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiffs and the other class members;

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

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

20. For premium wages pursuant to California Labor Code section 226.7(c);

21. For pre-judgment interest on any unpaid wages from the date such amounts were due; and

22. For such other and further relief as the Court may deem just and proper.

**As to the Fourth Cause of Action**

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiffs and the other class members;

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

25. For statutory wage penalties pursuant to California Labor Code section 1197.1 for Plaintiffs and the other class members in the amount as may be established according to proof at trial;

26. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

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

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

1           29.     For such other and further relief as the Court may deem just and proper.

2                               **As to the Fifth Cause of Action**

3           30.     That the Court declare, adjudge and decree that Defendants violated California  
4 Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the  
5 time of termination of the employment of Plaintiffs and the other class members no longer  
6 employed by Defendants;

7           31.     For all actual, consequential, and incidental losses and damages, according to  
8 proof;

9           32.     For statutory wage penalties pursuant to California Labor Code section 203 for  
10 Plaintiffs and the other class members who have left Defendants' employ;

11          33.     For pre-judgment interest on any unpaid compensation from the date such  
12 amounts were due; and

13          34.     For such other and further relief as the Court may deem just and proper.

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

15          35.     That the Court declare, adjudge and decree that Defendants violated California  
16 Labor Code section 204 by willfully failing to pay all compensation owed at the time required  
17 by California Labor Code section 204 to Plaintiffs and the other class members;

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

20          37.     For pre-judgment interest on any unpaid compensation from the date such  
21 amounts were due; and

22          38.     For such other and further relief as the Court may deem just and proper.

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

24          39.     That the Court declare, adjudge and decree that Defendants violated the record  
25 keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders  
26 as to Plaintiffs and the other class members, and willfully failed to provide accurate itemized  
27 wage statements thereto;

- 1           40.     For actual, consequential and incidental losses and damages, according to proof;  
2           41.     For statutory penalties pursuant to California Labor Code section 226(e);  
3           42.     For injunctive relief to ensure compliance with this section, pursuant to California  
4 Labor Code section 226(h); and  
5           43.     For such other and further relief as the Court may deem just and proper.

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

- 7           44.     That the Court declare, adjudge and decree that Defendants violated California  
8 Labor Code section 1174(d) by willfully failing to keep accurate and complete payroll records  
9 for Plaintiffs and the other class members as required by California Labor Code section 1174(d);  
10          45.     For actual, consequential and incidental losses and damages, according to proof;  
11          46.     For statutory penalties pursuant to California Labor Code section 1174.5; and  
12          47.     For such other and further relief as the Court may deem just and proper.

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

- 14          48.     That the Court declare, adjudge and decree that Defendants violated California  
15 Labor Code section 227.3 by willfully failing to pay all vested vacation wages owed to Plaintiffs  
16 and the other class members at their final rate of pay upon termination of their employment;  
17          49.     For actual, consequential and incidental losses and damages, according to proof;  
18 and  
19          50.     For such other and further relief as the Court may deem just and proper.

20                           **As to the Tenth Cause of Action**

- 21          51.     That the Court declare, adjudge and decree that Defendants violated California  
22 Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiffs and the other  
23 class members for all necessary business-related expenses as required by California Labor Code  
24 sections 2800 and 2802;  
25          52.     For actual, consequential and incidental losses and damages, according to proof;  
26          53.     For the imposition of civil penalties and/or statutory penalties;  
27          54.     For reasonable attorneys' fees and costs of suit incurred herein; and  
28

1 55. For such other and further relief as the Court may deem just and proper.

2 **As to the Eleventh Cause of Action**

3 56. That the Court decree, adjudge and decree that Defendants violated California  
4 Business and Professions Code sections 17200, et seq. by failing to provide Plaintiffs and the  
5 other class members all overtime compensation due to them, failing to provide all meal and rest  
6 periods to Plaintiffs and the other class members, failing to pay at least minimum wages to  
7 Plaintiffs and the other class members, failing to pay Plaintiffs' and the other class members'  
8 wages timely as required by California Labor Code section 201, 202 and 204 and by violating  
9 California Labor Code sections 226(a), 1174(d), 2800 and 2802.

10 57. For restitution of unpaid wages to Plaintiffs and all the other class members and  
11 all pre-judgment interest from the day such amounts were due and payable;

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

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

18 60. For injunctive relief to ensure compliance with this section, pursuant to California  
19 Business and Professions Code sections 17200, et seq.; and

20 61. For such other and further relief as the Court may deem just and proper.

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

22 62. For civil penalties pursuant to California Labor Code sections 2699(a), (f) and  
23 (g), costs/expenses, and attorneys' fees for violation of California Labor Code sections 201, 202,  
24 203, 204, 210, 226, 226.3, 226.7, 227.3, 246, et seq., 510, 512, 1174, 1174.5, 1194, 1197, 1197.1,  
25 1198.5, 2699, 2802, and 2810.5; and

26 63. For such other and further relief as the Court may deem just and proper.

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1 Dated: February 6, 2024

**LAWYERS for JUSTICE, PC**

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3 By: \_\_\_\_\_

4 Edwin Aiwazian  
5 Yasmin Hosseini  
6 *Attorneys for Plaintiffs*

6 Dated: February 6, 2024

**BIBIYAN LAW GROUP, P.C.**

7  
8 By:  \_\_\_\_\_

9 David D. Bibiyan  
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