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

REGINALD ANTONIO CHAVIS JR., an
individual, on behalf of himself and others
similarly situated

PLAINTIFF,

v.

GROCERY OUTLET INC.; and DOES 1 thru
50, inclusive,

DEFENDANTS.

CASE NO. 34-2021-00309003

[Amended as a matter of right, pursuant to
Labor Code § 2699.3(a)(2)(C)]

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay Wages and/or Overtime
Under Labor Code §§ 510, 1194, and
1199
2. Violation of Labor Code § 226(a)
3. Penalties Pursuant to Labor Code § 203
4. Violation of Business & Professions Code
§ 17200
5. Penalties Pursuant to Labor Code § 2699,
et seq.

BY FAX

1 Plaintiff REGINALD ANTONIO CHAVIS JR., an individual, on behalf of himself, all
2 others similarly situated, and on behalf of the people of the State of California and as an “aggrieved
3 employee” under Labor Code Private Attorneys General Act of 2004, §2699, et seq. (hereafter
4 “PAGA”), complains of Defendant GROCERY OUTLET INC. (“Defendant”) and each of them,
5 as follows:

6 **I.**

7 **INTRODUCTION**

8 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure §
9 382 and Labor Code §2699, et seq., on behalf of Plaintiff and the Proposed Class defined as:

10
11 All persons currently and formerly employed by Defendant as non-
12 exempt employees at Defendant’s Regional Fulfillment Centers in
13 California from September 29, 2017 to December 31, 2022.
14 (“Proposed Class”)

15 2. Any limitations period referenced in this complaint is extended pursuant to
16 Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the
17 California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of
18 limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020
19 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action
20 that exceed 180 days are tolled from April 6, 2020 until October 1, 2020.”] Any reference to the
21 relevant time period or statute of limitations referenced in this complaint is extended into the past
22 by the number of days in which this tolling was in effect.

23 3. For at least four (4) years prior to the filing of this action continuing to the present,
24 Defendant has had a consistent policy of failing to pay wages and/or overtime to all Proposed Class
25 members when they work more than eight (8) hours in a day or forty (40) hours in a week. Plaintiff
26 and the Proposed Class were not properly compensated at the appropriate rate of pay because
27 Defendant failed to include premium pay when calculating Plaintiff and all Proposed Class
28 member’s regular rate of pay in pay periods where they were paid premium pay and were also paid
overtime. As such, Plaintiff and the Proposed Class were paid at an overtime rate less than the

1 rate required under California law.

2 4. For at least one (1) year prior to the filing of this action continuing to the present,
3 Defendant has failed to comply with Labor Code § 226(a). Plaintiff and the Proposed Class are
4 issued wage statements that do not accurately show the number total hours worked by the
5 employee and all applicable hourly rates in effect during the pay period and the corresponding
6 number of hours worked at each hourly rate by the employee in violation of Labor Code
7 §226(a)(9).

8 5. For at least three (3) years prior to the filing of this action continuing to the present,
9 Defendant has failed to pay all wages due at the time of termination or resignation to Plaintiff and
10 the Proposed Class.

11 6. Plaintiff, on behalf of himself and all Proposed Class members, brings this action
12 pursuant to Labor Code §§ 201, 202, 203, 226(a), 510, 1194, and 1199; Wage Order 7-2001; and
13 California Code of Regulations, Title 8, Section 11070, seeking unpaid wages/overtime, rest
14 period penalties, accurate itemized wage statements, other penalties, injunctive and other equitable
15 relief, and reasonable attorneys' fees and costs.

16 7. Plaintiff, on behalf of himself and all Proposed Class members, pursuant to
17 Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and
18 disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

19 8. For at least one (1) year prior to the date of the letter sent to the Labor Workforce
20 and Development Agency ("LWDA") and Defendant giving notice of the claims pursuant to
21 PAGA and continuing to the present and as extended by Emergency Rule 9 referenced in paragraph
22 2 above, Defendant has violated Labor Code provisions, as detailed below, giving rise to a claim
23 pursuant to PAGA. Plaintiff, on behalf of himself and all aggrieved employees presently or
24 formerly employed by Defendant during the liability period as defined in his PAGA notice letter
25 (*see* Exhibit "1"), brings this representative action pursuant to Labor Code §2699, et seq. seeking
26 penalties for Defendant's failure to pay all wages and/or overtime, failure to provide lawful rest
27 periods, failure to provide accurate itemized wage statements, and failure to pay all wages due at
28 the time of termination.

1 **II.**

2 **JURISDICTION AND VENUE**

3 9. This Court has subject matter jurisdiction over all causes of action asserted herein
4 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
5 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive
6 of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the
7 State of California or is subject to adjudication in the courts of the State of California.

8 10. This Court has personal jurisdiction over Defendant because Defendant has caused
9 injuries in the County of Sacramento and the State of California through their acts, and by their
10 violation of the California Labor Code, California state common law, and California Business &
11 Professions Code § 17200, *et seq.*

12 11. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
13 Civil Procedure § 395. Defendant operates within California and does business within Sacramento
14 County. The unlawful acts alleged herein have a direct effect on Plaintiff and all Proposed Class
15 members within the State of California and the county of Sacramento.

16 12. This case should be classified as complex according to Rule 3.400 of the California
17 Rules of Court, and assigned to a complex litigation judge and department, as it will involve
18 substantial documentary evidence, a large number of witnesses, and is likely to involve extensive
19 motion practice raising difficult or novel issues that will be time-consuming to resolve and would
20 require substantial post judgment judicial supervision.

21 13. Plaintiff files this amended complaint adding a claim for penalties pursuant to
22 Labor Code §2699, et seq. as a matter of right, pursuant to Labor Code § 2699.3(a)(2)(C)].

23 **III.**

24 **PARTIES**

25 **A. PLAINTIFF**

26 14. Plaintiff REGINALD ANTONIO CHAVIS JR. is a resident of California.

27 15. Plaintiff and all Proposed Class members, were regularly required to:

28 a. Work without being paid for all hours at the appropriate rate of pay;

1 b. Work without being provided compliant rest periods; and,

2 c. Work without being provided itemized wage statements in writing that
3 accurately report all hours worked and the corresponding rate of pay for all hours.

4 16. As a result of this conduct, Defendant has engaged in unfair competition and
5 unlawful business practices.

6 17. Plaintiff and all aggrieved employees as defined in his notice letter to the LWDA
7 are “aggrieved employees” within the meaning of Labor Code § 2699, *et seq.* (see Labor Code
8 §2699(c).)

9 **B. DEFENDANTS**

10 18. Defendant GROCERY OUTLET INC. is believed to be a California corporation
11 operating within the State of California. Defendant’s corporate address is believed to be 5650
12 Hollis Street, Emeryville, CA 94608. Upon information and belief, Defendant employed Plaintiff
13 and similarly situated persons as hourly employees within California. Defendant has done and
14 does business throughout the State of California.

15 19. The true names and capacities, whether individual, corporate, associate, or
16 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
17 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
18 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
19 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
20 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
21 capacities of the Defendants designated hereinafter as DOES when such identities become known.

22 20. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
23 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
24 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
25 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
26 employer and/or joint employer of Plaintiff and the Proposed Class members.

27 21. Furthermore, Defendants acted in all respects as the employers or joint employers
28 of the Proposed Class. Defendants, and each of them, exercised control over the wages, hours or

1 working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work, or
2 engaged, thereby creating a common law employment relationship, with the Proposed Class.
3 Therefore, Defendants, and each of them, employed or jointly employed the Proposed Class.

4 **IV.**

5 **FACTUAL BACKGROUND**

6 22. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been
7 classified as non-exempt employees by Defendant. Defendant hires employees who work as
8 hourly employees who are paid on an hourly basis.

9 23. Upon information and belief, Plaintiff and the Proposed Class are covered by
10 California Industrial Welfare Commission Occupational Wage Order No. 7-2001 (Title 8 Cal.
11 Code of Regs. § 11070).

12 24. On a regular and consistent basis, Plaintiff and the Proposed Class members were
13 not paid at the proper rate of compensation. Plaintiff and Proposed Class members were not
14 properly compensated at the correct overtime rate of pay for hours in excess of eight (8) in one
15 day and/or forty (40) hours in one week because Defendant failed to include premium pay when
16 calculating Plaintiff and all Proposed Class members' regular rate of pay for the purposes of
17 determining the correct overtime rate in pay periods where they were paid premium pay and were
18 also paid overtime. As such, Plaintiff and the Proposed Class were paid at a rate less than the rate
19 required under California law.

20 25. Defendant has failed to comply with Labor Code § 226(a) by failing to provide
21 accurate itemized wage statements that accurately report total hours and applicable rates of pay
22 and the corresponding number of hours worked at that rate for Plaintiff and the Proposed Class.

23 26. As a result of the acts alleged herein, Defendant violated Labor Code §2699, *et seq.*

24 **V.**

25 **CLASS ACTION ALLEGATIONS**

26 Plaintiff brings this action on behalf of himself, and all others similarly situated as a Class Action
27 pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent a proposed class
28 composed of and defined as follows:

1 All persons currently and formerly employed by Defendant as non-
2 exempt employees at Defendant's Regional Fulfillment Centers in
3 California from September 29, 2017 to December 31, 2022.
4 ("Proposed Class")

5 27. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to
6 amend or modify the class description with greater specificity, by division into subclasses, or by
7 limitation to particular issues.

8 28. This action has been brought and may properly be maintained as a class action
9 under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined
10 community of interest in the litigation and the Proposed Class are easily ascertainable.

11 **A. NUMEROSITY**

12 29. The potential members of the Proposed Class as defined are so numerous that
13 joinder of all the members of the Proposed Class is impracticable. While the precise number of
14 Proposed Class members has not been determined at this time, Plaintiff is informed and believes
15 that Defendant currently employ, and during the relevant time periods employed over 50 members
16 of the Proposed Class.

17 30. Plaintiff alleges that Defendant's employment records would provide information
18 as to the number and location of all Proposed Class members. Joinder of all members of the
19 Proposed Class is not practicable.

20 **B. COMMONALITY**

21 31. There are questions of law and fact common to the Proposed Class that predominate
22 over any questions affecting only individual Proposed Class members. These common questions
23 of law and fact include, without limitation:

24 a. Whether Defendant failed to pay wages and/or overtime compensation as
25 required by the Labor Code and Wage Orders under Labor Code §§ 510, 1194, and 1199;

26 b. Whether Defendants violated Labor Code § 226(a) by failing to provide
27 accurate itemized wage statements that accurately report the total hours worked and all applicable
28 hourly rates in effect during the pay period and the corresponding number of hours worked at each
hourly rate by the employee;

1 c. Whether Defendant violated §§ 201-203 of the Labor Code by failing to pay
2 compensation due and owing at the time that any Proposed Class member's employment with
3 Defendant terminated;

4 d. Whether Defendant violated § 17200, *et seq.* of the Business & Professions
5 Code by engaging in the acts previously alleged; and

6 e. Whether Plaintiff and the members of the Proposed Class are entitled to
7 equitable relief pursuant to Business & Professions Code § 17200, *et seq.*

8 f. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in the
9 acts alleged herein.

10 **C. TYPICALITY**

11 32. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff and
12 all members of the Proposed Class sustained injuries and damages arising out of and caused by
13 Defendant's common course of conduct in violation of laws, regulations that have the force and
14 effect of law, and statutes as alleged herein.

15 **D. ADEQUACY OF REPRESENTATION**

16 33. Plaintiff will fairly and adequately represent and protect the interests of the
17 members of the Proposed Class.

18 34. Counsel who represent Plaintiff and the Proposed Class are competent and
19 experienced in litigating large employment class actions.

20 **E. SUPERIORITY OF CLASS ACTION**

21 35. A class action is superior to other available means for the fair and efficient
22 adjudication of this controversy. Individual joinder of all Proposed Class members is not
23 practicable, and questions of law and fact common to the Proposed Class predominate over any
24 questions affecting only individual members of the Proposed Class. Each member of the Proposed
25 Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or
26 practice of failing to pay all wages due, failing to provide rest periods, and failing to provide
27 accurate itemized wage statements.

28 36. Class action treatment will allow those similarly situated persons to litigate their

1 claims in the manner that is most efficient and economical for the parties and the judicial system.
2 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
3 action that would preclude its maintenance as a class action.

4 **VI.**

5 **FIRST CAUSE OF ACTION**

6 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

7 **FAILURE TO PAY WAGES AND/OR OVERTIME UNDER**

8 **LABOR CODE §§ 510, 1194, AND 1199**

9 37. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
10 by reference all previous paragraphs.

11 38. Labor Code §§ 1194 and 1199 require an employer to pay its employees the legal
12 minimum wage and the legal overtime compensation applicable. Labor Code § 510(a) states that
13 eight (8) hours of labor constitutes a day's work and any work in excess of eight (8) hours in one
14 workday and any work in excess of forty (40) hours in any one workweek must be compensated
15 at the rate of no less than one and one-half times the regular rate of pay for an employee. Any
16 work in excess of twelve (12) hours in one day shall be compensated at the rate of no less than
17 twice the regular rate of pay. California law also requires that any compensation, including
18 premium pay, must be included in the regular rate of pay for the purposes of determining the
19 correct overtime and double-time rates.

20 39. Plaintiff and the Proposed Class were forced to work on a regular and consistent
21 basis without receiving compensation for all hours worked at proper overtime rate when they were
22 working more than eight (8) hours in one day or forty (40) hours in one week.

23 40. Plaintiff and the Proposed Class were not properly compensated at the appropriate
24 overtime rate of pay because Defendant failed to include the \$1.00 premium pay when calculating
25 Plaintiff and all Proposed Class member's regular rate for the purpose of determining the correct
26 overtime rate in pay periods where they were paid premium pay and were also paid overtime. As
27 such, Plaintiff and the Proposed Class were paid at a regular rate less than the rate required under
28 California law for all work in excess of eight (8) hours in a workday and/or forty (40) hours in a

workweek.

41. By their policy of failing to include premium pay when calculating the regular rate of pay, Defendant willfully violated the provisions of Labor Code §§ 510, 1194, and 1199.

42. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class members have been deprived of wages and/or overtime in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

VII.

SECOND CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS

VIOLATION OF LABOR CODE § 226(A)

43. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates by reference all previous paragraphs.

44. Labor Code §226(a) requires employers to issue accurate itemized wage statements in writing that show total hours worked by the employee and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. (Labor Code §§ 226(a)(2) and (9) respectively.)

45. Defendant issues Plaintiff and the Proposed Class members itemized wage statements that do not accurately show total hours worked or all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

46. Defendants' failure to provide accurate itemized wages statements according to Labor Code § 226(a) was all done on a regular and consistent basis.

47. An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorneys' fees.

1 **VIII.**

2 **THIRD CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

4 **WAITING TIME PENALTIES UNDER LABOR CODE § 203**

5 48. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
6 by reference all previous paragraphs.

7 49. Numerous members of the Proposed Class including the Plaintiff are no longer
8 employed by Defendant. They were either fired or quit Defendant's employ.

9 50. Defendant's failure to pay wages, as alleged above was willful in that Defendant
10 knew wages to be due but failed to pay them, thus entitling Plaintiff and the Proposed Class to
11 penalties under Labor Code § 203, which provides that an employee's wages shall continue as a
12 penalty until paid for a period of up to thirty (30) days from the time they were due.

13 51. Defendant has failed to pay Plaintiff and others a sum certain at the time of
14 termination or within seventy-two (72) hours of their resignation, and have failed to pay those
15 sums for thirty (30) days thereafter.

16 52. Pursuant to the provisions of Labor Code § 203, Plaintiff and the Proposed Class
17 are entitled to a penalty in the amount of Plaintiff's and the Proposed Class members' daily wage
18 multiplied by thirty (30) days.

19 **IX.**

20 **FOURTH CAUSE OF ACTION**

21 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

22 **UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200**

23 53. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
24 by reference all previous paragraphs.

25 54. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of himself,
26 on behalf of the general public, and on behalf of the Proposed Class, bring this claim pursuant to
27 Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged in this
28 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general

1 public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the public
2 interest within the meaning of Code of Civil Procedure § 1021.5.

3 55. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204,
4 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
5 appropriate equitable relief.

6 56. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair business
7 practices.

8 57. California’s wage and hour laws express fundamental public policies. Providing
9 employees with proper wages and compensation are fundamental public policies of this State and
10 of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce
11 vigorously minimum labor standards, to ensure that employees are not required or permitted to
12 work under substandard and unlawful conditions, and to protect law-abiding employers and their
13 employees from competitors who lower their costs by failing to comply with minimum labor
14 standards.

15 58. Defendant has violated statutes and public policies as alleged herein. Through the
16 conduct alleged in this Complaint, Defendant has acted contrary to these public policies, have
17 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
18 business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving Plaintiff,
19 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
20 guaranteed to all employees under law.

21 59. Defendant’s conduct, as alleged hereinabove, constitutes unfair competition in
22 violation of § 17200, *et seq.* of the Business & Professions Code.

23 60. Defendant, by engaging in the conduct herein alleged, either knew or in the exercise
24 of reasonable care, should have known that the conduct was unlawful. As such it is a violation of
25 § 17200, *et seq.* of the Business & Professions Code.

26 61. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and
27 others similarly situated have been damaged in a sum as may be proven.

28 62. Unless restrained, Defendant will continue to engage in the unlawful conduct as

1 alleged above. Pursuant to the Business & Professions Code, this court should make such orders
2 or judgments, including the appointment of a receiver, as may be necessary to prevent the use or
3 employment by Defendant, its agents, or employees, of any unlawful or deceptive practices
4 prohibited by the Business & Professions Code, and/or, including but not limited to, restitution
5 and disgorgement of profits which may be necessary to restore Plaintiff and members of the
6 Proposed Class the money Defendant has unlawfully failed to pay.

7 **X.**

8 **FIFTH CAUSE OF ACTION**

9 **PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.**

10 63. Plaintiff, on behalf of himself and all aggrieved employees, realleges and
11 incorporates by reference all previous paragraphs.

12 64. As a result of the acts alleged above and specifically incorporated herein, Plaintiff
13 seeks penalties under Labor Code §2699, et seq use of Defendant's violation of Labor Code §§
14 201, 202, 203, 226(a), 510, 1194, 1199; Wage Order 7-2001; and California Code of Regulations,
15 Title 8, Section 11070, which call for civil penalties.

16 65. For each such penalty, Plaintiff and the aggrieved employees are entitled to
17 penalties in an amount to be shown at trial, subject to the following formula:

18 a. \$100 for the initial violation per employee per pay period.

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

20 66. These penalties shall be allocated seventy-five percent (75%) to the LWDA and
21 twenty-five percent (25%) to the affected employees.

22 67. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the
23 LWDA¹ and mailed a letter by certified mail to Defendant Grocery Outlet Inc.'s entity address,
24 which is 5650 Hollis Street, Emeryville, CA 94608, as proscribed by the Code on September 29,
25 2021, describing Defendant's conduct in violation of Labor Code §§ 201, 202, 203, 226(a), 510,
26 1194, and 1199. (*see* Exhibit "1.") On October 1, 2021, Plaintiff received a signed green return

27 ¹ Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California
28 Labor and Workforce Development Agency / Department of Industrial Relations website
(<https://dir.tfaforms.net/308>).

1 receipt from Defendant, indicating that it received Plaintiff's notice letter. (*see* Exhibit "2.")
2 Plaintiff also obtained an e-filing confirmation from the LWDA confirming receipt of the notice
3 (*see* Exhibit "3").

4 68. As no letter evidencing the LWDA's intention to investigate was received by
5 Plaintiff's Counsel within sixty-five (65) calendar days, Plaintiff is entitled to commence a civil
6 action as though the LWDA had not chosen to investigate pursuant to Labor Code
7 §2699.3(a)(2)(A). Plaintiff will also provide the LWDA with a filed-stamped copy of the
8 Second Amended Class and Representative Action Complaint immediately.

9 **RELIEF REQUESTED**

10 **WHEREFORE**, Plaintiff prays for the following relief:

11 1. For compensatory damages in the amount of unpaid wages and/or overtime not paid
12 to Plaintiff and each Proposed Class member from at least four (4) years prior to the filing of this
13 action to the present as may be proven;

14 2. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code § 226(a)
15 in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs and one
16 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding
17 an aggregate penalty of four thousand dollars (\$4,000);

18 3. For penalties pursuant to Labor Code § 203 for all employees who were terminated
19 or resigned equal to their daily wage times thirty (30) days.

20 4. An award of prejudgment and post judgment interest;

21 5. An order enjoining Defendant and its agents, servants, and employees, and all
22 persons acting under, in concert with, or for it from providing Plaintiff with proper wages and/or
23 overtime, rest periods, and accurate itemized wage statements pursuant to Labor Code §§ 226(a),
24 510, 1194, 1199, and IWC 7-2001;

25 6. For restitution for unfair competition pursuant to Business & Professions Code
26 § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

27 7. For penalties under Labor Code §2699, *et seq.* for Defendant's violation of Labor
28 Code §§ 201, 202, 203, 226(a), 510, 1194, 1199, and Wage Order 7-2001;

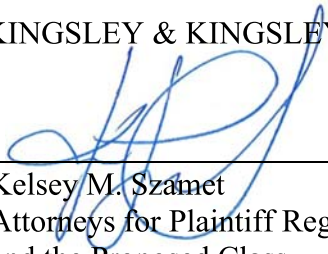
- 1 8. An award providing for payment of costs of suit;
2 9. An award of attorneys' fees; and
3 10. Such other and further relief as this Court may deem proper and just.

4 **DEMAND FOR JURY TRIAL**

5 Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

6
7 DATED: December 20, 2022

KINGSLEY & KINGSLEY, APC

8
9 By: 

Kelsey M. Szamet
Attorneys for Plaintiff Reginald Antonio Chavis Jr.
and the Proposed Class

EXHIBIT "1"



September 29, 2021

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

GROCERY OUTLET INC.
5650 Hollis Street
Emeryville, CA 94608

Re: REGINALD ANTONIO CHAVIS JR. v. GROCERY OUTLET INC.
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents REGINALD ANTONIO CHAVIS JR. ("Plaintiff") and two proposed groups of current and former employees working for GROCERY OUTLET INC. ("Defendant") in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant's aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of two groups of aggrieved employees defined as follows:

1. All persons who are employed or have been employed as an hourly employee by GROCERY OUTLET INC., in the State of California who worked one or more pay periods with overtime and were paid premium pay and overtime since one (1) year prior to the date of this letter and continuing to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the 'Emergency Rules Related to COVID-19'. ("Regular Rate Aggrieved Employees")
2. All persons who are employed or have been employed as an hourly employee by GROCERY OUTLET INC., in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the 'Emergency Rules Related to COVID-19'. ("Rest Break Aggrieved Employees").

Any limitations period referenced in this letter is extended pursuant to Emergency Rule 9 (a) of the "Emergency Rules Related to COVID-19," Appendix I to the California Rules of Court,

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

September 29, 2021

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adopted effective April 6, 2020, which provides that the statutes of limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020.”] Any reference to the relevant time period or statute of limitations referenced in this letter is extended into the past by the number of days in which this tolling was in effect.

Defendant has violated Labor Code §§ 510, 1194, and 1199. Labor Code §§ 1194 and 1199 require an employer to pay its employees the legal minimum wage and the legal overtime compensation applicable. Labor Code § 510(a) states that eight (8) hours of labor constitutes a day’s work and any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek must be compensated at the rate of no less than one and one-half times the *regular rate of pay* for an employee. Any work in excess of twelve (12) hours in one day shall be compensated at the rate of no less than twice the *regular rate of pay*. California law also requires that any compensation, including premium pay, must be included in the regular rate of pay for the purpose of determining the correct overtime and double-time rates.

Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and all Regular Rate Aggrieved Employees. Plaintiff and the Regular Rate Aggrieved Employees were not properly compensated at the appropriate rate of pay because Defendant failed to include Plaintiff’s and the Regular Rate Aggrieved Employees’ \$1.00 premium pay when calculating their regular rate for the purpose of determining the correct overtime rate in pay periods where they were paid premium pay and were also paid overtime. As such, Plaintiff and the Regular Rate Aggrieved Employees were paid at a regular rate less than the rate required under California law.

Pursuant to Labor Code § 226.7 and Wage Order 7-2001, Defendant failed to provide Plaintiff and the Rest Break Aggrieved Employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Defendant failed to maintain a valid policy informing Plaintiff and the Rest Break Aggrieved Employees of these rest period rights. Plaintiff and all Rest Break Aggrieved Employees have been required to work four-hour increments (or major fractions thereof) without being provided with a ten (10) minute rest period. In addition, Defendant maintains an unlawful policy of requiring Plaintiff and the Rest Break Aggrieved Employees to remain on the premises during rest periods in violation of *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257, 269 (2016) (an employer that limits where an employee can take a break does not “relinquish control over how employees spend their time”). As Such, Defendant failed to provide Plaintiff and the Rest Break Aggrieved Employees with compliant rest periods.

Further, Plaintiff and the Rest Break Aggrieved Employees were not compensated with one (1) hour of wages at the regular rate of compensation for each missed rest period in violation of *Ferra v. Loews Hollywood Hotel, LLC* and as required by Labor Code § 226.7. Very recently, on July 15, 2021, in *Ferra*, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

September 29, 2021

Page 3 of 3

break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Here, Defendant has had a consistent policy of paying rest period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7.

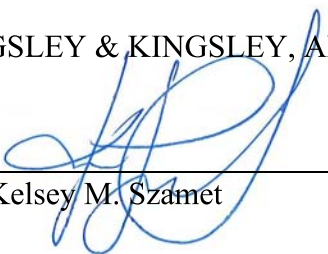
Labor Code §226(a) requires that every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing the total hours worked by the employee and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Section 226(a)(2) and (9). Plaintiff and the aggrieved employees are issued wage statements that do not accurately show the total hours worked by the employee and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. As such, Plaintiff is an aggrieved employee within the meaning PAGA and Defendant has violated Labor Code §226(a) with respect to Plaintiff and all aggrieved employees.

Labor Code § 203 provides that if "an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days." Here, Plaintiff and all aggrieved employees were not paid all wages due upon their separation from Defendant's employ. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 1194, and 1199 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet

KMS/jl

- Cc:
1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/308>
 2. GROCERY OUTLET INC. via USPS Certified Mail # 7019 1640 0000 8115 0645
 3. Davtyan Law Firm, Inc., 880 E. Broadway, Glendale, CA 91205

EXHIBIT "2"

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

GROCERY OUTLET INC.

5650 Hollis Street

Emeryville, CA 94608



9590 9402 6114 0209 6136 45

2. Article Number (Transfer from service label)

7019 1640 0000 8115 0645

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☒ Agent☐ Addressee

B. Received by (Printed Name)

James Jefferson

C. Date of Delivery

1/6

D. Is delivery address item #

If YES, enter

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☒ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Insured Mail | |
| ☐ Insured Mail Restricted Delivery (over \$500) | |

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

Domestic Return Receipt

USPS TRACKING#



OAKLAND, CA 945

1 OCT 2021 PM 5 L

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

9590 9402 6114 0209 6136 45

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box •

KINGSLEY & KINGSLEY
A PROFESSIONAL CORPORATION
CITY NATIONAL BANK BUILDING
16133 VENTURA BOULEVARD, SUITE 1200
ENCINO, CALIFORNIA 91436

PAGA LETTER
GROCERY OUTLET INC.

6-241600

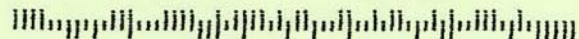


EXHIBIT "3"



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Kelsey

Your Last Name *

Szamet

Firm Name (if any) *

Kingsley & Kingsley

(Enter "in pro per" if you are representing yourself)

Your Email Address *

service@kingsleykingsley.

Your Street Name, Number and Suite/Apt *

16133 Ventura Boulevard

Your Mobile Phone Number

8189908300

Your City *

Encino

Your Work Phone Number

Your State *

California

Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Reginald Antonio Chavis Jr.

Plaintiff/Aggrieved Employee Occupation *

Warehouse Worker

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Corporation

Employer Name *

Grocery Outlet Inc.

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

Employer City *

Employer State *



Employer Zip/Postal Code *

Employer Industry *

**Add additional defendants**

- ☐ Add any entity other than an individual
- ☐ Add an individual/sole proprietor employer

Notice General Information

Estimated Number of Employees Impacted by Violations *

Notice Violations – Check All that Apply *

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☐ Minimum Wage
- ☒ Overtime
- ☒ Not paid for all hours worked
- ☒ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☐ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☒ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☒ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☐ Other

Child Labor – Specify Ages

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☐ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice.

IFP

☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

Billing information

Billing First Name *

Eric

Billing Last Name *

Kingsley

Billing Email *

service@kingsleykingsley.

Billing Phone

Billing Street Name, Number and Suite/Apt *

16133 Ventura Boulevard Suite 1200

Billing City *

Encino

Billing State *

California

Billing Zip/Postal Code *

91436

Credit Card Type *

Master Card

Credit Card Number *

CVV Number *

Credit Card Expiration Month *

mm

Credit Card Expiration Year *

YYYY

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

Choose File

PAGA Letter- G...utlet Inc..pdf

Other Attachment - (if any) (must be a .pdf)

Choose File

No file chosen

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; &

financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

[Previous Page](#)[Submit](#)

Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

[Click Here](#) to Search Case

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Wednesday, September 29, 2021 9:59 AM
To: Service Email
Subject: Thank you for submission of your PAGA Case.

External Email!

9/29/2021

LWDA Case No. LWDA-CM-846435-21
Law Firm : Kingsley & Kingsley
Plaintiff Name : Reginald Antonio Chavis Jr.
Employer: Grocery Outlet Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website:
https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate_Attorneys_General_Act.htm&data=04%7C01%7CJulie%40kingsleykingsley.com%7Cd802e8557d9c4ecc411708d9836a730e%7C121a7875db4c0fb25c5baf6c6ac7a5%7C0%7C0%7C637685315526443232%7CUnknown%7CTWFPbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IklhaWwiLCJXVCi6Mn0%3D%7C1000&sdata=3GwkhNa%2FFxl8bqdo3BdTidv4l1ooC3Tn69kvs2ym2og%3D&reserved=0

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Wednesday, September 29, 2021 9:59 AM
To: Service Email
Subject: State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

External Email!

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-846435-21

Order Number: ORD-000136934

Total:\$75.00

Card Type: Master Card

Date: 9/29/2021

Billing Information

Name: Eric Kingsley

Email: service@kingsleykingsley.com

Billing Address:

16133 Ventura Boulevard Suite 1200

Encino, California

91436