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County of Stanislaus
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF STANISLAUS
11

12 MAYRA TORRES, individually, and on
13 behalf of other members of the general
public similarly situated,

14 Plaintiff,

15 vs.

16 MANUEL VILLA ENTERPRISES, INC., a
17 California corporation; MV3, INC., a
California corporation; and DOES 1
18 through 10, inclusive,

19 Defendants.
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Case No.: CV-21-004762

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

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (9) Civil Penalties for Violations of California

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- Labor Code, Pursuant to PAGA §§2698, *et seq.*
- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

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

4 JURISDICTION AND VENUE

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

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

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

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

10 **THE PARTIES**

11 4. Plaintiff MAYRA TORRES is a resident of Hughson, in Stanislaus County,
12 California. Defendants employed Plaintiff as an hourly, non-exempt Cashier from
13 approximately September 2020 to February 2021. During her employment, Plaintiff worked
14 for Defendants at their supermarket location in Hughson, California. Plaintiff worked
15 approximately six (6) to eight (8) hours or more per day, five (5) to six (6) days per week, and
16 forty (40) hours or more per week. At the time Plaintiff's employment with Defendants ended,
17 she earned approximately \$14.50 per hour. Her job duties as a Cashier included, without
18 limitation, attending to customers, unloading inventory, re-stocking produce, and cashiering.

19 5. MANUEL VILLA ENTERPRISES, INC. was and is, upon information and
20 belief, a California corporation, and at all times hereinafter mentioned, an employer whose
21 employees are engaged throughout this county, the State of California, or the various states of
22 the United States of America.

23 6. MV3, INC. was and is, upon information and belief, a California corporation,
24 and at all times hereinafter mentioned, an employer whose employees are engaged throughout
25 this county, the State of California, or the various states of the United States of America.

26 7. Plaintiff is unaware of the true names or capacities of the Defendants sued herein
27 under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the
28 complaint and serve such fictitiously named Defendants once their names and capacities

1 become known.

2 8. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
3 were the partners, agents, owners, or managers of MANUEL VILLA ENTERPRISES, INC. and
4 MV3. INC. at all relevant times.

5 9. Plaintiff is informed and believes, and thereon alleges, that each and all of the
6 acts and omissions alleged herein was performed by, or is attributable to, MANUEL VILLA
7 ENTERPRISES, INC.; MC3, INC.; and/or DOES 1 through 10 (collectively, “Defendants” or
8 “LA PERLA”), each acting as the agent, employee, alter ego, and/or joint venturer of, or
9 working in concert with, each of the other co-Defendants and was acting within the course and
10 scope of such agency, employment, joint venture, or concerted activity with legal authority to
11 act on the others’ behalf. The acts of any and all Defendants were in accordance with, and
12 represent, the official policy of Defendants.

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

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

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

1 class members under the law.

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

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

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

23 15. MANUEL VILLA ENTERPRISES, INC.; MV3, INC.; and/or DOES 1 through
24 10 are therefore alter egos of each other.

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

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17. Plaintiff further alleges, upon information and belief, that Defendants MANUEL VILLA ENTERPRISES, INC. and MV3, INC. are alter egos of each other for the following reasons:

- (a) On the California Secretary of State’s website (<https://businesssearch.sos.ca.gov/>), MANUEL VILLA ENTERPRISES, INC. and MV3, INC. share the same entity address, mailing address, and address of Agent for Service of Process, “710 LANDER AVENUE, TURLOCK, CA 95380”;
- (b) According to the most recent “Statement of Information” forms filed with the California Secretary of State, MANUEL VILLA ENTERPRISES, INC. and MV3, INC. share the same officers and directors, including, but not limited to:
 - i. Manuel R. Villa [Jr.], who serves as Chief Executive Officer, Secretary, Chief Financial Officer, and Director of MANUEL VILLA ENTERPRISES, INC. and Chief Financial Officer and Director MV3, INC.;
 - ii. Maria Romo, who serves as Agent for Service of Process for MANUEL VILLA ENTERPRISES, INC. and “OFFICE MANAGER” of MV3, INC.; and
- (c) On information and belief, MANUEL VILLA ENTERPRISES, INC. and MV3, INC. utilize the same standardized employment forms and issue the same employment policies.

GENERAL ALLEGATIONS

18. Defendants are a supermarket chain located in the Central Valley of California that specializes in Mexican food and products. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their company headquarters in Turlock, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies,

1 including timekeeping policies and meal and rest period policies, to employees throughout
2 California.

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

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

18 21. Defendants continue to employ non-exempt or hourly paid employees in
19 California.

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

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

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

1 compensation.

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

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

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

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

27 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that they had a duty to maintain accurate and complete payroll records in

1 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
2 knowingly, and intentionally failed to do so.

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

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

14 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and class members were entitled to receive full reimbursement
16 for all business-related expenses and costs they incurred during the course and scope of their
17 employment and that they did not receive full reimbursement of applicable business-related
18 expenses and costs incurred.

19 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and class members were entitled to suitable seating and/or
21 were entitled to sit when it did not interfere with the performance of their duties and also have
22 seats nearby to use during a lull in tasks that do require moving about or standing.

23 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and/or class members were entitled to be paid at a regular rate
25 of pay, and corresponding overtime rate of pay and meal and rest period premiums, that included
26 as eligible income all remuneration required by law, including but not limited to, all income
27 derived from incentive pay, nondiscretionary bonuses, and/or other forms of compensation.

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1 35. Plaintiff is informed and believes, and thereon alleges, that at all times herein
2 mentioned, Defendants knew or should have known that Defendants had a duty to provide
3 Plaintiff and class members with written notice of the material terms of their employment with
4 Defendants as required by the California Wage Theft Prevention Act, but failed to do so.

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

11 **PAGA REPRESENTATIVE ALLEGATIONS**

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

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

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

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

- 27 (a) The aggrieved employee or representative shall give written notice by
28 online filing with the LWDA and by certified mail to the employer of the

specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violation.

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

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

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

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

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

(c) The employer may cure the alleged violation within thirty-three (33) calendar days of the postmark date of the notice sent by the aggrieved employee or representative. The employer shall give written notice within that period of time by certified mail to the aggrieved employee or

1 representative and by online filing with the LWDA if the alleged violation
2 is cured, including a description of actions taken, and no civil action
3 pursuant to Section 2699 may commence. If the alleged violation is not
4 cured within the 33-day period, the aggrieved employee may commence
5 a civil action pursuant to Section 2699.

6 42. On September 7, 2021, Plaintiff provided written notice by online filing to the
7 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
8 Code alleged to have been violated, including facts and theories to support the alleged
9 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice
10 was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA
11 PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned Plaintiff
12 PAGA Case Number LWDA-CM-843753-21. A true and correct copy of Plaintiff's written
13 notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

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

17 44. Thus, Plaintiff has satisfied the administrative prerequisites under California
18 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
19 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a),
20 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

21 45. Labor Code section 558(a) provides "[a]ny employer or other person acting on
22 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
23 provision regulating hours and days of work in any order of the Industrial Welfare Commission
24 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
25 each underpaid employee for each pay period for which the employee was underpaid. . . . (2)
26 For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
27 each pay period for which the employee was underpaid. . . ." Labor Code section 558(c)
28 provides "[t]he civil penalties provided for in this section are in addition to any other civil or

1 criminal penalty provided by law.”

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

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

8 48. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
9 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
10 private attorney general, seeks assessment and collection of civil penalties for himself, all other
11 aggrieved employees, and the State of California against Defendants for violations of California
12 Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12,
13 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

14 **CLASS ACTION ALLEGATIONS**

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

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

20 51. Plaintiff’s proposed class consists of and is defined as follows:

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

23 52. Plaintiff’s proposed subclass consists of and is defined as follows:

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

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

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1 54. Plaintiff reserves the right to redefine the Class and Subclass and to add
2 additional subclasses as appropriate based on further investigation, discovery, and specific
3 theories of liability.

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

- 6 (a) Whether Defendants required Plaintiff and class members to work over
7 eight (8) hours per day, over twelve (12) hours per day, or over forty (40)
8 hours per week and failed to pay all legally required overtime
9 compensation to Plaintiff and class members;
- 10 (b) Whether Defendants failed to pay Plaintiff and class members at least
11 minimum wages for all hours worked;
- 12 (c) Whether Defendants failed to provide Plaintiff and class members with
13 meal periods;
- 14 (d) Whether Defendants failed to authorize and permit Plaintiff and class
15 members to take rest periods;
- 16 (e) Whether Defendants provided Plaintiff and class members with complete
17 and accurate wage statements as required by California Labor Code
18 section 226(a);
- 19 (f) Whether Defendants maintained accurate payroll records as required by
20 California Labor Code section 1174(d);
- 21 (g) Whether Defendants failed to pay earned overtime wages, minimum
22 wages, and/or meal and rest period premiums due to Plaintiff and class
23 members upon their discharge;
- 24 (h) Whether Defendants failed timely to pay overtime wages, minimum
25 wages, and/or meal and rest period premiums due to Plaintiff and class
26 members during their employment;
- 27 (i) Whether Defendants failed to reimburse Plaintiff and class members for
28 necessary and required business-related expenditures and/or losses

incurred by them in the scope of their employment;

(j) Whether Defendants failed to provide Plaintiff and class members suitable seating;

(k) Whether Defendants failed to properly calculate the “regular rate” of pay on which Plaintiff’s and/or class members’ overtime rate of pay was based;

(l) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and

(m) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants’ violations of California law.

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

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

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

(c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom she has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that she has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff’s attorneys, the proposed class counsel, are versed in the rules

governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

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

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

FIRST CAUSE OF ACTION

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

(Against all Defendants)

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

58. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall

1 be the . . . standard conditions of labor for employees. The employment of any employee . . .
2 under conditions of labor prohibited by the order is unlawful.”

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

7 60. Specifically, the applicable IWC Wage Order provides that Defendants are and
8 were required to pay Plaintiff and class members working more than eight (8) hours in a day or
9 more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all hours
10 worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

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

16 62. California Labor Code section 510 codifies the right to overtime compensation
17 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
18 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
19 (7th) day of work, and to overtime compensation at twice the employee’s regular rate of pay for
20 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
21 the seventh (7th) day of work.

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

27 64. First, during the relevant time period, Defendants had, and continue to have, a
28 company-wide policy and/or practice of discouraging and impeding Plaintiff and class members

1 from recording hours worked that were outside of their scheduled shifts, in order to limit the
2 amount of overtime employees could accrue. This policy of limiting overtime, coupled with
3 Defendants' practice of understaffing and assignment of heavy workloads and deadlines, led
4 Plaintiff and class members to work off-the-clock after their scheduled shift times in order to
5 complete their assigned tasks. For example, about once a month, Plaintiff was required to
6 continue performing work duties after she clocked out, including having to stay and assist other
7 cashiers with attending to a rush of customers waiting to be checked out, especially when the
8 following shift's cashier was running late, which could take up to 30 minutes. As another
9 example, because Plaintiff was required to complete her duties within her scheduled hours,
10 Plaintiff would clock out at the end of her of scheduled shift but continue working for at least
11 30 minutes off-the-clock to ensure she completed her assigned tasks before leaving, such as
12 restocking produce (approximately once per month), and/or assessing the store's produce
13 inventory needs and drafting inventory orders for vendors (approximately once per week). As
14 a result of this policy and/or practice, Defendants failed to track this time spent working after
15 scheduled shifts, and Plaintiff and class members received no compensation for this time.

16 65. Second, Defendants had, and continue to have, a company-wide policy and/or
17 practice of calling employees off-the-clock to discuss work-related matters. For example, about
18 once per week, Plaintiff's supervisor would call her to discuss assignments and execution of
19 tasks, which took up to five (5) minutes per instance. As a further example, at least once per
20 week, Plaintiff would be required to make phone calls to Defendants' third-party vendors and
21 suppliers to discuss purchasing inventory, which took up to 30 minutes to discuss. Defendants
22 failed to track this time Plaintiff and class members spent working off-the-clock, and thus,
23 Plaintiff and class members received no compensation for this time.

24 66. Third, Defendants had, and continue to have, a company-wide policy of
25 understaffing, such that there were too few employees on duty to handle the heavy workload
26 and provide uninterrupted meal period coverage. As a result, Plaintiff and class members were
27 not provided adequate meal period coverage to allow them to be relieved of their duties for
28 compliant meal periods. In conjunction with understaffing their supermarkets, Defendants had

1 a company-wide practice or policy of failing to schedule meal periods, which exacerbated the
2 lack of meal period coverage. For example, approximately five (5) times per month, Plaintiff
3 would miss her meal period entirely to meet the demands of her workload due to understaffing
4 and lack of meal period coverage. For the same reasons, Plaintiff would have her meal periods
5 interrupted once per week, and/or shortened by 15 minutes to help unload inventory delivered
6 from vendors. Defendants did not compensate Plaintiff and class members for the time they
7 spent working off the clock during meal periods.

8 67. Further, on information and belief, because Defendants frowned upon employees
9 accruing meal period penalties, Defendants pressured Plaintiff and class members to clock out
10 for meal periods, on threat of discipline, and/or adjusted their time records to reflect compliant
11 meal periods, even when they did not receive a compliant meal period, in order to strictly limit
12 meal penalties that Defendants would otherwise owe. Thus, Plaintiff and class members
13 performed work during meal periods for which they were not paid.

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

21 69. Defendants' failure to pay Plaintiff and class members the balance of overtime
22 compensation as required by California law, violates the provisions of California Labor Code
23 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
24 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,
25 and attorneys' fees.

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SECOND CAUSE OF ACTION
Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid
Minimum Wages
(Against all Defendants)

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

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

72. As set forth above, due to Defendants’ restrictions on overtime accrual, Plaintiff and class members were forced to work off-the-clock after their scheduled shifts to complete assigned tasks, such as attending to a rush of customers waiting to be checked out, restocking produce, and assessing the store’s produce inventory needs and drafting inventory orders for vendors. As also stated, Defendants had a company-wide policy and/or practice of calling employees off-the-clock to discuss work-related matters and requiring employees to make phone calls to Defendants’ third-party vendors and suppliers to discuss purchasing inventory. Defendants failed to track this time Plaintiff and class members spent working off-the-clock, and thus, Plaintiff and class members received no compensation for this time.

73. Additionally, as stated above, due to Defendants’ uniform policies and/or practices of understaffing, assigning heavy workloads, failure to schedule meal periods, and subsequent lack of meal period coverage, Plaintiff and class members were forced to forego meal periods and/or had their meal periods interrupted by work. Further, to limit the meal penalties that Defendants would otherwise owe, Defendants pressured Plaintiff and class members to clock out for meal periods, on threat of discipline, and/or adjusted employee time

1 records to reflect compliant meal periods, but required them to continue working, time for which
2 they were not paid.

3 74. Defendants did not pay minimum wages for all hours worked by Plaintiff and
4 class members. To the extent that these off-the-clock hours did not qualify for overtime
5 premium payment, Defendants did not pay at least minimum wages for those hours worked off-
6 the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

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

11 **THIRD CAUSE OF ACTION**

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

13 **Violations**

14 **(Against all Defendants)**

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

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

24 78. At all relevant times herein set forth, California Labor Code sections 226.7,
25 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
26 meal period mandated by an applicable order of the IWC.

27 79. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
28 the applicable IWC Wage Order also require employers to provide a second meal period of not

1 less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
2 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
3 hours worked is no more than twelve (12) hours, the second meal period may be waived by
4 mutual consent of the employer and the employee only if the first meal period was not waived.

5 80. During the relevant time period, as stated, Defendants had, and continue to have,
6 a company-wide policy and/or practice of understaffing their supermarkets while assigning
7 heavy workloads, which created a lack of adequate meal period coverage and prevented Plaintiff
8 and class members from taking all timely, uninterrupted meal periods to which they were
9 entitled. In conjunction with understaffing their locations, Defendants had a company-wide
10 practice or policy of failing to schedule employees for meal periods, which exacerbated the lack
11 of meal period coverage. As a result of Defendants' practices and/or policies, Plaintiff and class
12 members were forced to work in excess of five (5) hours before taking a meal period and, at
13 times, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For
14 example, approximately five (5) times per month, Plaintiff was unable to take her meal period
15 until the sixth hour after the start of her scheduled shift.

16 81. Furthermore, during the relevant time period, Defendants had, and continue to
17 have, a company-wide policy and/or practice of not providing Plaintiff and class members with
18 second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day.
19 During her employment, Plaintiff worked shifts in excess of ten (10) hours or more per day, but
20 was not provided a second 30-minute meal period on those days. Plaintiff and class members
21 did not sign valid meal period waivers on days that they were entitled to meal periods and were
22 not relieved of all duties.

23 82. Moreover, on information and belief, because Defendants frowned upon
24 employees accruing meal period penalties, Defendants' management pressured Plaintiff and
25 class members to clock out for meal periods and/or adjusted their time records to reflect
26 compliant meal periods, even when they did not receive a compliant meal period, in order to
27 strictly limit meal penalties that Defendants would otherwise owe. For example, at Defendants'
28 management's direction, Plaintiff would log that her meal period was taken within the first five

(5) hours of her shift, even though she was only able to take her meal periods until her sixth hour.

83. At all times herein mentioned, Defendants knew or should have known that, as a result of these policies, Plaintiff and class members were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. Defendants further knew or should have known that Defendants did not pay Plaintiff and class members meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

84. Furthermore, Defendants engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Plaintiff and class members have not received premium pay for missed, late, and/or interrupted meal periods. As a result, Defendants failed to provide Plaintiff and class members compliant meal periods in violation of California Labor Code sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

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

FOURTH CAUSE OF ACTION

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

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

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

88. 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

1 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
2 hours or major fraction thereof” unless the total daily work time is less than three and one-half
3 (3 ½) hours.

4 89. At all relevant times, California Labor Code section 226.7 provides that no
5 employer shall require an employee to work during any rest period mandated by an applicable
6 order of the California IWC. To comply with its obligation to authorize and permit rest periods
7 under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer
8 must “relinquish any control over how employees spend their break time, and relieve their
9 employees of all duties—including the obligation that an employee remain on call. A rest
10 period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th
11 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code
12 section 226.7(c), Plaintiff and class members are entitled to recover from Defendants one (1)
13 additional hour of pay at their regular rates of pay for each work day that a required rest period
14 was not authorized and permitted.

15 90. During the relevant time period, Defendants regularly failed to authorize and
16 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
17 period worked or major fraction thereof. Defendants maintained and implemented, on a
18 company-wide basis, a non-compliant written rest period policy that prevented Plaintiff and
19 class members from taking compliant rest periods. The policy states in relevant part:
20 “Employees are given rest periods or breaks. One 10 minute paid break period is given for four
21 (4) hours of working. Generally this means that in an eight hours shift, an employee will be
22 given two 10 minute paid breaks.” Defendants’ written rest period policy incorrectly states that
23 employees are entitled to two paid 10-minute rest periods “in an eight hours shift,” rather than
24 stating that employees are entitled to two 10-minute rest periods for shifts in excess of 6 hours.

25 91. In addition, Defendants’ non-compliant policy fails to correctly state the timing
26 of when rest periods must occur. Defendants’ policy states, “If you work at least 3.5 hours in a
27 day, you are entitled to a one (1) 10 minute paid break period. If you work up to 10 hours in a
28 day, you are entitled to receive two (2) breaks of 10 minutes that are paid.” However, under

1 California law, an employee is entitled to rest periods for every 4 hours worked or major fraction
2 thereof. Thus, Defendants' written rest period policy is non-compliant on its face, as it fails to
3 authorize and permit employees to take a first rest period for shifts between 3.5 and 6 hours,
4 and a second rest period for shifts between 6 and 10 hours.

5 92. Additionally, as with meal periods, Defendants' company-wide practices,
6 including understaffing and heavy workloads, prevented Plaintiff and class members from being
7 relieved of all duty to take rest periods. Defendants also failed to schedule rest periods, which,
8 coupled with Defendants' failure to provide adequate rest period coverage, further led to
9 Plaintiff and class members not being authorized and permitted to take compliant rest periods.
10 Further, contrary to Defendants' written policy discussed above, Defendants' management
11 erroneously informed Plaintiff and class members that they were only entitled to one (1) 10-
12 minute rest period per shift, regardless of the shift length, and thus only authorized and
13 permitted Plaintiff and class members to take one (1) rest period even when they worked shifts
14 exceeding six (6) hours in length.

15 93. Furthermore, on information and belief, during the relevant time period,
16 Defendants maintained and implemented a company-wide on-premises rest period policy,
17 which mandated that Plaintiff and class members remain on the work premises during their rest
18 periods. Because Plaintiff and class members were restricted from leaving the premises during
19 rest periods, they were denied the ability to use their rest periods freely for their own purposes,
20 such as running personal errands. Thus, Defendants effectively maintained control over
21 Plaintiff and class members during rest periods.

22 94. As a result of Defendants' practices and policies, Plaintiff and class members
23 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
24 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
25 Plaintiff was never authorized or permitted to take second rest periods on shifts she was entitled
26 to receive them, and had her first rest periods cut short and/or interrupted once per week due to
27 a heavy workload and/or lack of coverage.

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

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

FIFTH CAUSE OF ACTION

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

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

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

99. At all relevant times, Defendants have knowingly and intentionally provided Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements. For example, Defendants issued uniform wage statements to Plaintiff and Subclass members that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

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100. Because Defendants did not record the time Plaintiff and Subclass members spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff and Subclass members in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, Defendants failed to accurately list the total number of hours worked by Plaintiff and Subclass members, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

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

102. California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass members showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

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

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

SIXTH CAUSE OF ACTION

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

Upon Termination

(Against all Defendants)

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

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

1 Plaintiff and those class members no longer employed by Defendants upon their termination.

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

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

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

19 **SEVENTH CAUSE OF ACTION**

20 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During**
21 **Employment**
22 **(Against all Defendants)**

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

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

28 ///

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

113. At all times relevant herein, Labor Code section 204 provides that all wages earned by any person in any employment between the sixteenth (16th) and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the first (1st) and the tenth (10th) day of the following month.

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

115. During the relevant time period, Defendants willfully failed to pay Plaintiff and class members all wages due including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within the time periods specified by California Labor Code section 204. Defendants' failure to pay Plaintiff and class members all wages due violates Labor Code section 204. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages pursuant to California Labor Code section 210.

EIGHTH CAUSE OF ACTION

Violation of California Labor Code § 2802—Unpaid Business-Related Expenses

(Against all Defendants)

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

117. At all times herein set forth, California Labor Code section 2802 provides that an employer must reimburse employees for all necessary expenditures and losses incurred by

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

9 118. First, Defendants, on a company-wide basis, required that Plaintiff and class
10 members use their own personal cellular phones and/or cellular data to carry out their job duties,
11 but failed to reimburse them for the costs of their work-related cellular phone expenses. For
12 example, Plaintiff and class members were required to use their personal cellular phones before
13 or after their shifts to complete their work-related tasks, such as communicating with
14 supervisors and third-party vendors about the status of orders. Although Defendants required
15 Plaintiff and class members to utilize their personal cellular phones to carry out their work-
16 related responsibilities, Defendants failed to fully reimburse them for this cost.

17 119. Second, Defendants had a company-wide policy of requiring Plaintiff and class
18 members to utilize their own personal vehicles for work purposes, such as obtaining additional
19 ingredients and inventory from other supermarket locations Defendants owned and operated,
20 but failed to reimburse them for all costs of travel, including mileage. For example, Plaintiff
21 was required to drive 10 miles roundtrip to Defendants’ La Perla Tapatia supermarket location
22 on 1460 Mitchell Road in Modesto, California, to obtain food or inventory, such as additional
23 boxes of lettuce heads. Although Defendants required Plaintiff and class members to utilize
24 their own vehicles to travel to and from Defendants’ other supermarket locations, Defendants
25 did not reimburse them for all of their travel expenses.

26 120. Third, during the relevant time period, Defendants required Plaintiff and class
27 members to report to work in clean and presentable uniforms, including an apron bearing the
28 company logo, that is to be “washed and ironed daily.” However, Defendants did not provide

1 their employees with sufficient uniform items to wear for their shifts throughout the week. For
2 example, Defendants only provided Plaintiff and class members with one (1) apron during their
3 employment. Because Defendants failed to provide Plaintiff and class members with an
4 adequate number of uniform items in relation to their scheduled shifts, Plaintiff and class
5 members were forced to wash their uniforms more frequently than they otherwise do laundry,
6 and incur expenses in doing so. Specifically, Plaintiff was required to wash her uniform apron
7 at a laundromat, usually at a cost of \$10 per week. Thus, Defendants failed to maintain uniforms
8 they required Plaintiff and class members to wear during their shifts and forced them to incur
9 the cost of maintaining employee uniforms.

10 121. Defendants could have provided Plaintiff and class members with the actual tools
11 for use on the job, such company vehicles, company phones, and an adequate number of
12 uniforms or access to laundering services. Or, Defendants could have reimbursed employees
13 for the costs of their cellular phone usage, mileage, travel expenses, and uniform expenses or
14 provided a uniform maintenance allowance. Instead, Defendants passed these operating costs
15 off onto Plaintiff and class members. At all relevant times, Plaintiff did not earn at least two
16 (2) times the minimum wage.

17 122. Defendants' company-wide policy and/or practice of passing on their operating
18 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
19 have intentionally and willfully failed to reimburse Plaintiff and other class members for
20 necessary business-related expenses and costs.

21 123. Plaintiff and class members are entitled to recover from Defendants their
22 business-related expenses incurred during the course and scope of their employment, plus
23 interest.

24 **NINTH CAUSE OF ACTION**

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

26 **(Against all Defendants)**

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

1 125. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
2 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
3 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 226(a), 226.7,
4 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c)
5 permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of
6 those Labor Code sections not found in section 2699.5, including sections 516 1182.12, and
7 2810.5.

8 126. Defendants’ conduct, as alleged herein, violates numerous sections of the
9 California Labor Code, including, but not limited to, the following:

- 10 (f) Violation of Labor Code sections 510, 1198, and the applicable IWC
11 Wage Order for Defendants’ failure to compensate Plaintiff and other
12 aggrieved employees with all required overtime pay and failure to
13 properly calculate the overtime rates paid to other aggrieved employees,
14 as alleged herein and set forth below;
- 15 (g) Violation of Labor Code sections 1182.12. 1194, 1197, 1197.1, 1198, and
16 the applicable IWC Wage Order for Defendants’ failure to compensate
17 Plaintiff and other aggrieved employees with at least minimum wages for
18 all hours worked, as alleged herein;
- 19 (h) Violation of Labor Code sections 226.7, 512(a), 516, 1198, and the
20 applicable IWC Wage Order for Defendants’ failure to provide meal
21 periods to Plaintiff and other aggrieved employees, as alleged herein;
- 22 (i) Violation of Labor Code sections 226.7, 512(a), 516, 1198, and the
23 applicable IWC Wage Order for Defendants’ failure to failure to properly
24 calculate the pay for meal period premiums paid to other aggrieved
25 employees, as alleged herein, as set forth below;
- 26 (j) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
27 IWC Wage Order for Defendants’ failure to authorize and permit Plaintiff
28 and other aggrieved employees to take rest periods, as alleged herein;

- (k) Violation of Labor Code sections 226.7, 516, 1198, and the applicable IWC Wage Order for Defendants' failure to properly calculate the rate of pay for rest premiums paid to other aggrieved employees, as set forth below;
- (l) Violation of Labor Code sections 226(a), 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiff and other aggrieved employees, as alleged herein;
- (m) Violation of Labor Code sections 1174(d), 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as alleged herein;
- (n) Violation of Labor Code sections 201, 202, and 203 for failure to pay Plaintiff and other aggrieved employees all earned wages upon termination, as alleged herein;
- (o) Violation of Labor Code section 204 for failure to pay all earned wages during employment to Plaintiff and aggrieved employees, as alleged herein;
- (p) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and aggrieved employees for all business expenses necessarily incurred, as alleged herein;
- (q) Violation of Labor Code section 1198 for failing to provide suitable seating to other aggrieved employees, as set forth below; and
- (r) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to provide written notice of information material to other aggrieved employees' employment with Defendants, as set forth below.

127. At all relevant times herein set forth, the applicable IWC Wage Order provides that Defendants are and were required to pay other aggrieved employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that Defendants are and

1 were required to pay other aggrieved employees working more than twelve (12) hours in a day,
2 overtime compensation at a rate of two (2) times their regular rate of pay. An employee's
3 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
4 employee, including nondiscretionary bonuses and incentive pay.

5 128. On information and belief, Defendants did not pay other aggrieved employees
6 the correct overtime rates for the recorded overtime hours that they generated. In addition to an
7 hourly wage, Defendants paid other aggrieved employees incentive pay, nondiscretionary
8 bonuses, and/or other forms of remuneration. However, in violation of the California Labor
9 Code, Defendants failed to incorporate all remunerations, including incentive pay and/or
10 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of
11 calculating the overtime wage rates.

12 129. Therefore, during times when other aggrieved employees worked overtime and
13 received these other forms of pay, Defendants failed to pay all overtime wages by paying a
14 lower overtime rate than required. Other aggrieved employees are therefore entitled to recover
15 civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

16 130. To the extent that Defendants did pay other aggrieved employees for missed, late,
17 and interrupted meal periods, Defendants did not pay other aggrieved employees at the correct
18 rate of pay for premiums because Defendants systematically failed to include all forms of
19 compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of
20 remuneration, in the regular rate of pay. As a result, Defendants failed to pay the full meal
21 period premiums due.

22 131. Defendants' conduct violates the applicable IWC Wage Order, and California
23 Labor Code sections 226.7, 512(a), 516, and 1198. Other aggrieved employees are therefore
24 entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and
25 (g).

26 132. To the extent that Defendants did not authorize and permit full, timely, and
27 uninterrupted rest periods, Defendants did not pay other aggrieved employees at the correct rate
28 of pay for premiums because Defendants systematically failed to include all forms of

1 compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of
2 remuneration, in the regular rate of pay. As a result, Defendants failed to pay the full rest period
3 premiums due.

4 133. Defendants' conduct violates the applicable IWC Wage Order, and California
5 Labor Code sections 226.7, 512(a), 516, and 1198. Other aggrieved employees are therefore
6 entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and
7 (g).

8 134. At all relevant times herein, California Labor Code section 1198 makes it illegal
9 to employ an employee under conditions of labor that are prohibited by the applicable wage
10 order. California Labor Code section 1198 requires that "... the standard conditions of labor
11 fixed by the commission shall be the ... standard conditions of labor for employees. The
12 employment of any employee ... under conditions of labor prohibited by the order is unlawful."

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

16 136. Defendants' California supermarket locations are generally similar in their layout
17 and design and there was, and continues to be, space behind cash wraps to allow for the presence
18 and use of a seat or stool by Plaintiff and other aggrieved employees (with reasonable or no
19 modification to these work areas) during the performance of their work duties. Defendants
20 could provide Plaintiff and other aggrieved employees with a seat or stool at its cash wraps, but
21 instead denies employees seating and forces Plaintiff and other aggrieved employees to stand
22 throughout the day.

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

1 138. As a result of Defendants’ company-wide policy and/or practice of prohibiting
2 employees from sitting during their shifts and company-wide failure to provide suitable seating,
3 Plaintiff and other aggrieved employees were forced to stand during shifts and denied seats.
4 Defendants’ failure to provide suitable seating to Plaintiff and other aggrieved employees
5 violates California Labor Code section 1198 and IWC Wage Order 7-2001, subdivision 14(A).
6 Plaintiff and other aggrieved employees are therefore entitled to recover civil penalties pursuant
7 to Labor Code sections 2699(a), (f), and (g).

8 139. At all relevant times herein, California Labor Code section 1198 makes it illegal
9 to employ an employee under conditions of labor that are prohibited by the applicable wage
10 order. California Labor Code section 1198 requires that “. . . the standard conditions of labor
11 fixed by the commission shall be the . . . standard conditions of labor for employees. The
12 employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

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

18 141. During the relevant time period, Defendants violated California Labor Code
19 section 1198 and California Code of Regulations, Title 8, section 11070(14)(B), because
20 Plaintiff and other aggrieved employees were not provided with suitable seats in reasonable
21 proximity to their work areas and, therefore, effectively not allowed to sit, even during lulls in
22 their work duties.

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

1 day.

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

10 144. As a result of Defendants' company-wide policy and/or practice of prohibiting
11 employees from sitting at any time, even when they were not engaged in active duties requiring
12 standing, and company-wide failure to provide seats in reasonable proximity to their work areas,
13 Plaintiff and other aggrieved employees were forced to stand during shifts and denied seats.
14 Defendants' failure to provide suitable seating to Plaintiff and other aggrieved employees
15 violates California Labor Code section 1198 and IWC Wage Order 7-2001, subdivision 14(B).
16 Plaintiff and other aggrieved employees are therefore entitled to recover civil penalties pursuant
17 to Labor Code sections 2699(a), (f), and (g).

18 **TENTH CAUSE OF ACTION**

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

20 **Unlawful Business Practices**

21 **(Against all Defendants)**

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

24 146. Defendants are "persons" as defined by California Business & Professions Code
25 sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or
26 associations.

27 147. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
28 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has

suffered injury in fact and has lost money as a result of Defendants' unlawful business practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

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

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

- (a) Requiring non-exempt, hourly paid employees, including Plaintiff and class members, to work overtime without paying them proper compensation in violation of California Labor Code sections 510 and 1198, and the applicable IWC Wage Order, as alleged herein;
- (b) Failing to pay at least minimum wage to Plaintiff and class members in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (c) Failing to provide uninterrupted meal periods to Plaintiff and class members in violation of California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (d) Failing to authorize and permit Plaintiff and class members to take uninterrupted rest periods in violation of California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (e) Failing to provide Plaintiff and class members with accurate wage statements and failing to maintain accurate payroll records in violation of California Labor Code sections 226(a), 1174(d), and 1198, and the applicable IWC Wage Order, as alleged herein;
- (f) Failing timely to pay all earned wages to Plaintiff and class members in

violation of California Labor Code section 204, as alleged herein;

- (g) Failing to reimburse Plaintiff and class members for all business expenses necessarily incurred in violation of California Labor Code sections 2802, as alleged herein; and
- (h) Failing to provide written notice of information material to Plaintiff's and class members' employment with Defendants in violation of California Labor Code section 2810.5(a)(1)(A)-(C), as set forth below.

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

151. At all relevant times, on information and belief, Defendants failed, on a company-wide basis, to provide written notice to Plaintiff and class members that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure to provide Plaintiff and class members with written notice of basic information regarding their employment with Defendants is in violation of Labor Code sections 2810.5(a)(1)(A)-(C).

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

153. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and class members are entitled to restitution of the wages withheld and retained by

1 Defendants during a period that commences four years prior to the filing of this complaint; a
2 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
3 class members; and an award of attorneys' fees pursuant to California Code of Civil Procedure
4 section 1021.5 and other applicable laws; and an award of costs.

5 **ELEVENTH CAUSE OF ACTION**

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

7 **Unfair Business Practices**

8 **(Against all Defendants)**

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

11 155. Defendants are "persons" as defined by California Business & Professions Code
12 section 17201, as they are corporations, firms, partnerships, joint stock companies, and/or
13 associations.

14 156. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, and
15 harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in
16 fact and has lost money as a result of Defendants' unfair business practices. Plaintiff seeks to
17 enforce important rights affecting the public interest within the meaning of Code of Civil
18 Procedure section 1021.5. Defendants' activities, namely Defendants' company-wide practice
19 and/or policy of not paying Plaintiff and class members meal and rest period premiums due to
20 them under Labor Code section 226.7, deprived Plaintiff and class members of the
21 compensation guarantee and enhanced enforcement implemented by section 226.7. The
22 statutory remedy provided by section 226.7 is a "'dual-purpose' remedy intended primarily to
23 compensate employees, and secondarily to shape employer conduct." *Safeway, Inc. v. Superior*
24 *Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were
25 guaranteed to Plaintiff and class members as part of their employment with Defendants, and
26 thus Defendants' practice and/or policy of denying these statutory benefits constitutes an unfair
27 business practice in violation of California Business & Professions Code sections 17200, *et seq.*
28 (*Id.*)

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

158. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory benefits implemented by section 226.7 withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all statutory benefits implemented by section 226.7 due to Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

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

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

Class Certification

2. That this case be certified as a class action;
3. That Plaintiff be appointed as the representative of the Class and Subclass;
4. That counsel for Plaintiff be appointed as class counsel.

As to the First Cause of Action

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

///

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

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

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

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

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable IWC Wage Order by willfully failing to pay minimum wages to Plaintiff and class members;

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

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

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

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

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

As to the Third Cause of Action

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

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

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

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

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

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

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

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order by willfully failing to authorize and permit Plaintiff and class members to take all rest periods;

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

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

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

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

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

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

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC

Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

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

32. For injunctive relief pursuant to California Labor Code section 226(h);

33. For statutory penalties pursuant to California Labor Code section 226(e);

34. For attorneys' fees and costs pursuant to California Labor Code section 226(e)(1); and

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

As to the Sixth Cause of Action

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

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

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

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

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

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

As to the Seventh Cause of Action

42. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to timely pay Plaintiff and class members overtime

wages, minimum wages, and/or meal and rest period premiums during their employment;

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

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

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

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

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

As to the Eighth Cause of Action

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

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

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

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

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

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

As to the Ninth Cause of Action

54. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:

1 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and
2 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
3 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
4 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
5 statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay
6 all earned wages upon termination); 204 (by failing timely to pay all earned wages during
7 employment); 1198 (by failing to provide suitable seating); 2802 (by failing to reimburse
8 business expenses); and 2810.5 (by failing to provide written notice of information material to
9 employment);

10 55. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256,
11 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code sections
12 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1,
13 1198, 2802 and 2810.5.

14 56. For attorneys' fees and costs pursuant to California Labor Code section
15 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California
16 Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12,
17 1194, 1197, 1197.1, 1198, 2802 and 2810.5.

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

19 58. For such other and further relief as the Court may deem equitable and
20 appropriate.

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

22 59. That the Court declare, adjudge and decree that Defendants' conduct of failing
23 to provide Plaintiff and class members all overtime wages due to them, failing to provide
24 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and
25 class members all meal periods, failing to authorize and permit Plaintiff and class members to
26 take all rest periods, failing to provide Plaintiff and class members accurate and complete wage
27 statements, failing to maintain accurate payroll records for Plaintiff and class members, failing
28 to timely pay Plaintiff and class members all earned wages during employment, failing to

1 reimburse Plaintiff and class members for business-related expenses, and failing to provide
2 Plaintiff and class members with written notice of the material terms of their employment,
3 constitutes an unlawful business practice in violation of California Business and Professions
4 Code sections 17200, *et seq.*;

5 60. For restitution of unpaid wages to Plaintiff and all class members and
6 prejudgment interest from the day such amounts were due and payable;

7 61. For the appointment of a receiver to receive, manage, and distribute any and all
8 funds disgorged from Defendants and determined to have been wrongfully acquired by
9 Defendants as a result of violations of California Business & Professions Code sections 17200,
10 *et seq.*;

11 62. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
12 California Code of Civil Procedure section 1021.5; and

13 63. For such other and further relief as the Court may deem equitable and
14 appropriate.

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

16 64. That the Court declare, adjudge and decree that Defendants' conduct of denying
17 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes an
18 unfair business practice in violation of California Business and Professions Code sections
19 17200, *et seq.*;

20 65. For restitution of the statutory benefits under section 226.7 unfairly withheld
21 from Plaintiff and class members and prejudgment interest from the day such amounts were due
22 and payable;

23 66. For the appointment of a receiver to receive, manage, and distribute any and all
24 funds disgorged from Defendants and determined to have been wrongfully acquired by
25 Defendants as a result of violations of California Business & Professions Code sections 17200,
26 *et seq.*;

27 67. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
28 California Code of Civil Procedure section 1021.5;

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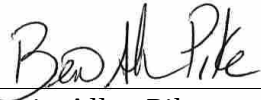
68. For pre-judgment and post-judgment interest as provided by law; and

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

Dated: November 17, 2021

Respectfully submitted,

Capstone Law APC

By: 
Bevin Allen Pike
Daniel Jonathan
Trisha K. Monesi

Attorneys for Plaintiff Mayra Torres

EXHIBIT “1”

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

September 7, 2021

VIA ONLINE SUBMISSION

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

Subject: *Mayra Torres v. Manuel Villa Enterprises, Inc., et al.*

Dear PAGA Administrator:

This office represents Mayra Torres in connection with her claims under the California Labor Code. Ms. Torres was an employee of MANUEL VILLA ENTERPRISES, INC. and/or MV3, INC. For the purpose of this letter, Ms. Torres collectively refers to these entities as “LA PERLA.”

The employers may be contacted directly at the addresses below:

MANUEL VILLA ENTERPRISES, INC.
710 LANDER AVENUE
TURLOCK CA 95380

MV3, INC.
710 LANDER AVENUE
TURLOCK CA 95380

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

LA PERLA employed Ms. Torres as an hourly paid, non-exempt Cashier from approximately September 2020 to February 2021. Ms. Torres worked for LA PERLA at its supermarket in Hughson, California. Ms. Torres typically approximately six (6) to eight (8) hours or more per day, five (5) to six (6) days per week, and forty (40) hours or more per week. At the time Ms. Torres’s employment with LA PERLA ended, she earned approximately \$14.50 per hour. Her job duties included, without limitation, attending to customers, unloading inventory, re-stocking produce, and cashiering.

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

LA PERLA’s Company-Wide and Uniform Payroll and HR Practices

MANUEL VILLA ENTERPRISES, INC. and MV3, INC. are California corporations that own and operate La Perla Tapatia, supermarket/grocery store chain in the Central Valley of California that specializes in Mexican food and products. Upon information and belief, LA PERLA maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Turlock, California for all non-exempt, hourly paid employees working for LA PERLA in California, including Ms. Torres and other aggrieved employees. At all relevant times, LA PERLA issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Torres and other aggrieved employees, regardless of its location or position.

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

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

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

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

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

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

First, during the relevant time period, LA PERLA had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Ms. Torres and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, in order to limit the amount of overtime employees could accrue. This policy of limiting overtime, coupled with LA PERLA's practices of understaffing and assigning heavy workloads and deadlines, led Ms. Torres and other aggrieved employees to work off-the-clock after their scheduled shift times in order to complete their assigned tasks. For example, about once a month, Ms. Torres was required to continue performing work duties after she clocked out, including having to stay and assist other cashiers with attending to a rush of customers waiting to be checked out, especially when the following shift's cashier was running late, which could take up to 30 minutes. As another example, because Ms. Torres was required to complete her duties within her scheduled hours, Ms. Torres would clock out at the end of her scheduled shift but continue working for at least 30 minutes off-the-clock to ensure she completed her assigned tasks before leaving, such as restocking produce (approximately once per month), and/or assessing the store's produce inventory needs and drafting inventory orders for vendors (approximately once per week). As a result of this policy and/or practice, LA PERLA failed to track this time spent working after scheduled shifts, and Ms. Torres and other aggrieved employees received no compensation for this time.

Second, LA PERLA had, and continues to have, a company-wide policy and/or practice of calling employees off-the-clock to discuss work-related matters. For example, about once per week, Ms. Torres's supervisor would call her to discuss assignments and execution of tasks, which took up to five (5) minutes per instance. As a further example, at least once per week, Ms. Torres was required to make phone calls to LA PERLA's vendors and suppliers to discuss purchasing inventory, which took up to 30 minutes to discuss. LA PERLA failed to track this time Ms. Torres and other aggrieved employees spent working off-the-clock, and thus, Ms. Torres and other aggrieved employees received no compensation for this time.

Third, LA PERLA had, and continues to have, a company-wide policy of understaffing, such that there were too few employees on duty to handle the heavy workload and provide uninterrupted meal period coverage. As a result, Ms. Torres and other aggrieved employees were not provided adequate meal period coverage to allow them to be relieved of their duties for compliant meal periods. In conjunction with understaffing its supermarkets, LA PERLA had a company-wide practice or policy of failing to schedule meal periods, which exacerbated the lack of meal period coverage. For example, approximately five (5) times per month, Ms. Torres would miss her meal period entirely to meet the demands of her workload due to understaffing and lack of meal period coverage. For the same reasons, Ms. Torres would have her meal periods interrupted once per week and/or shortened by 15 minutes to help unload inventory delivered from vendors. LA PERLA did not compensate Ms. Torres and other aggrieved employees for the time they spent working off the clock during meal periods.

Further, on information and belief, because LA PERLA frowned upon employees accruing meal period penalties, LA PERLA pressured Ms. Torres and other aggrieved employees to clock out for meal periods, on threat of discipline, and/or adjusted their time records to reflect compliant meal periods, even when they did not receive a compliant meal period, in order to strictly limit meal penalties that LA PERLA would otherwise owe. Thus, Ms. Torres and other aggrieved employees performed work during meal periods for which they were not paid.

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

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

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

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

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

As set forth above, due to LA PERLA's restrictions on overtime accrual, Ms. Torres and other aggrieved employees were forced to work off-the-clock after their scheduled shifts to complete assigned tasks, such as attending to a rush of customers waiting to be checked out, restocking produce, and assessing the store's produce inventory needs and preparing inventory orders for vendors. As also stated, LA PERLA had a company-wide policy and/or practice of calling employees off-the-clock to discuss work-related matters and requiring employees to make phone calls to LA PERLA's vendors and suppliers to discuss purchasing inventory. LA PERLA failed to track this time Ms. Torres and other aggrieved employees spent working off-the-clock, and thus, Ms. Torres and other aggrieved employees received no compensation for this time.

Additionally, as stated above, due to LA PERLA's uniform policies and/or practices of understaffing, assigning heavy workloads, failure to schedule meal periods, and subsequent lack of meal period coverage, Ms. Torres and other aggrieved employees were forced to forego meal periods and/or had their meal periods interrupted by work. Further, to limit the meal penalties that LA PERLA would otherwise owe, LA PERLA pressured Ms. Torres and other aggrieved employees to clock out for

meal periods, on threat of discipline, and/or adjusted employee time records to reflect compliant meal periods, but required them to continue working, time for which they were not paid.

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

Accordingly, LA PERLA regularly failed to pay at least minimum wages to Ms. Torres and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198. Ms. Torres and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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

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

During the relevant time period, as stated, LA PERLA had, and continues to have, a company-wide policy and/or practice of understaffing its supermarkets while assigning heavy workloads, which created a lack of adequate meal period coverage and prevented Ms. Torres and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. In conjunction with understaffing, LA PERLA had a company-wide practice or policy of failing to schedule meal periods for employees, which exacerbated the lack of meal period coverage. As a result of LA PERLA's practices and/or policies, Ms. Torres and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, approximately five (5) times per month, Ms. Torres was unable to take her meal period until the sixth hour after the start of her scheduled shift.

Moreover, on information and belief, because LA PERLA frowned upon employees accruing meal period penalties, LA PERLA's management pressured Ms. Torres and other aggrieved employees to clock out for meal periods and/or adjusted their time records to reflect compliant meal periods, even when they did not receive a compliant meal period, in order to strictly limit meal penalties that LA

PERLA would otherwise owe. For example, at LA PERLA's management's direction, Ms. Torres would log that her meal period was taken within the first five (5) hours of her shift, even though she was only able to take her meal periods until her sixth hour.

Furthermore, during the relevant time period, LA PERLA had, and continue to have, a company-wide policy and/or practice of not providing Ms. Torres and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During her employment, Ms. Torres worked shifts in excess of ten (10) hours or more per day, but was not provided a second 30-minute meal period on those days. Ms. Torres and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

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

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

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

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

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over

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

During the relevant time period, LA PERLA regularly failed to authorize and permit Ms. Torres and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. LA PERLA maintained and implemented, on a company-wide basis, a non-compliant written rest period policy that prevented Ms. Torres and other aggrieved employees from taking compliant rest periods. The policy states in relevant part: “Employees are given rest periods or breaks. One 10 minute paid break period is given for four (4) hours of working. Generally this means that in an eight hours shift, an employee will be given two 10 minute paid breaks.” LA PERLA’s written rest period policy incorrectly states that employees are entitled to two paid 10-minute rest periods “in an eight hours shift,” rather than stating that employees are entitled to two 10-minute rest periods for shifts in excess of 6 hours.

In addition, LA PERLA’s non-compliant policy fails to correctly state the timing of when rest periods must occur. LA PERLA’s policy states, “If you work at least 3.5 hours in a day, you are entitled to a one (1) 10 minute paid break period. If you work up to 10 hours in a day, you are entitled to receive two (2) breaks of 10 minutes that are paid.” However, under California law, an employee is entitled to rest periods for every four (4) hours worked or major fraction thereof. Thus, LA PERLA’s written rest period policy is non-compliant on its face, as it fails to authorize and permit employees to take a first rest period for shifts between 3.5 and 6 hours, and a second rest period for shifts between 6 and 10 hours.

Additionally, as with meal periods, LA PERLA’s company-wide practices, including understaffing and heavy workloads, prevented Ms. Torres and other aggrieved employees from being relieved of all duty to take rest periods. LA PERLA also failed to schedule rest periods, which, coupled with LA PERLA’s failure to provide adequate rest period coverage, further led to Ms. Torres and other aggrieved employees not being authorized and permitted to take compliant rest periods. Further, contrary to LA PERLA’s written policy discussed above, LA PERLA’s management erroneously informed Ms. Torres and other aggrieved employees that they were only entitled to one (1) 10-minute rest period per shift, regardless of the shift length, and thus only authorized and permitted Ms. Torres and other aggrieved employees to take one (1) rest period even when they worked shifts exceeding six (6) hours in length.

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

As a result of LA PERLA’s practices and policies, Ms. Torres and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Ms. Torres was never authorized or permitted to take second rest periods on shifts she was entitled to receive them, and had her first rest periods cut short and/or interrupted once per week due to her heavy workload and/or lack of coverage.

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

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

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

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

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

Because LA PERLA did not record the time Ms. Torres and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), LA PERLA did not list the correct amount of gross wages and net wages earned by Ms. Torres and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, LA PERLA failed to accurately list the total number of hours worked by Ms. Torres and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Furthermore, because LA PERLA did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, LA PERLA did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, LA PERLA also failed to list the correct amount of net wages in violation of section

226(a)(5). LA PERLA also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by

the order is unlawful.” California Code of Regulations, Title 8, section 11070(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

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

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

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

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

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

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

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

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

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

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

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

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

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

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

Second, LA PERLA had a company-wide policy of requiring Ms. Torres and other aggrieved employees to utilize their own personal vehicles for work purposes, such as obtaining additional food and inventory from other supermarket locations LA PERLA owned and operated, but failed to reimburse them for all costs of travel, including mileage. For example, Ms. Torres was required to drive 10 miles roundtrip to LA PERLA's supermarket location on 1460 Mitchell Road in Modesto, California, to obtain food or inventory, such as additional boxes of lettuce heads. Although LA PERLA required Ms. Torres and other aggrieved employees to utilize their own vehicles to travel to and from LA PERLA's other supermarket locations, LA PERLA did not reimburse them for all of their travel expenses.

Third, during the relevant time period, LA PERLA required Ms. Torres and other aggrieved employees to report to work in clean and presentable uniforms, including an apron bearing the company logo, that is to be “washed and ironed daily.” However, LA PERLA did not provide its employees with sufficient uniform items to wear for their shifts throughout the week. For example, LA PERLA only provided Ms. Torres and other aggrieved employees with one (1) apron during their employment. Because LA PERLA failed to provide Ms. Torres and other aggrieved employees with an adequate number of uniform items in relation to their scheduled shifts, Ms. Torres and other aggrieved employees were forced to wash their uniforms more frequently than they otherwise do laundry, and incur expenses in doing so. Specifically, Ms. Torres was required to wash her uniform apron at a laundromat, usually at a cost of \$10 per week. Thus, LA PERLA failed to maintain uniforms they required Ms. Torres and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms. Also, since LA PERLA did not provide an adequate number of uniform aprons to all employees, other aggrieved employees were required to purchase additional uniform aprons directly from LA PERLA at a cost of \$10 each, and were not reimbursed for these costs

LA PERLA could have provided Ms. Torres and other aggrieved employees with the actual tools for use on the job, such company vehicles, company phones, and an adequate number of uniforms or

access to laundering services. Or, LA PERLA could have reimbursed employees for the costs of their cellular phone usage, mileage, travel expenses, and uniform expenses or provided a uniform maintenance allowance. Instead, LA PERLA passed these operating costs off onto Ms. Torres and other aggrieved employees. At all relevant times, Ms. Torres did not earn at least two (2) times the minimum wage.

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

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

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

LA PERLA failed to provide Ms. Torres and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). LA PERLA's failure to provide Ms. Torres and other aggrieved employees with written notice of basic information regarding their employment with LA PERLA is in violation of Labor Code section 2810.5.

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

California Labor Code § 558(a)

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

California Labor Code.

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

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

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

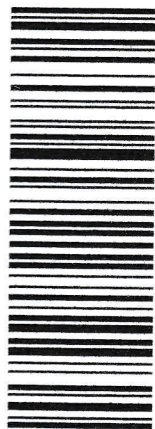
Anthony Castillo
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,


Anthony Castillo

Copy: MANUEL VILLA ENTERPRISES, INC. (via U.S. Certified Mail); MV3, INC. (via U.S. Certified Mail)

CERTIFIED MAIL



7016 2710 0000 6779 7633

tone

LAW APC

710 Park East, Ste 1000
Turlock, CA 90067

MANUEL VILLA ENTERPRISES, INC.
710 LANDER AVENUE
TURLOCK CA 95380

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:

MANUEL VILLA ENTERPRISES, INC.
710 LANDER AVENUE
TURLOCK CA 95380



9590 9402 1512 5362 2490 86

2. Article Number (Transfer from service label)

7016 2710 0000 6779 7633

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

☐ Yes
☐ No

3. Service Type

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

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

Domestic Return Receipt

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

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

OFFICIAL USE

Certified Mail Fee

\$ 3.60

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

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

Postage

\$ 1.63

Total Postage and Fees

\$ 8.08

Sent To

Street and Apt. No. 710 LANDER AVENUE
City, State, ZIP+4® TURLOCK CA 95380

Postmark
Here

Torres v. Manuel
Villa Enterprises, Inc.

MANUEL VILLA ENTERPRISES, INC.

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

See Reverse for Instructions

**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:

MV3, INC.
710 LANDER AVENUE
TURLOCK CA 95380



9590 9402 1512 5362 2491 23

2. Article Number (Transfer from service label)

7016 2710 0000 6779 7626

COMPLETE THIS SECTION ON DELIVERY**A. Signature**

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)**C. Date of Delivery**

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

3. Service Type

☐ Adult Signature

☒ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Insured Mail

☐ Insured Mail Restricted Delivery

(over \$500)

☐ Priority Mail Express®

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☐ Registered Mail Restricted Delivery

☐ Return Receipt for Merchandise

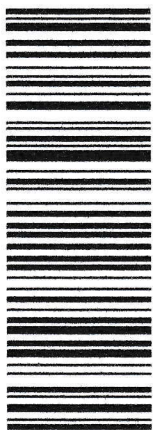
☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

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

Domestic Return Receipt

CERTIFIED MAIL®



7016 2710 0000 6779 7626

MV3, INC.
710 LANDER AVENUE
TURLOCK CA 95380

U.S. Postal Service™
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Domestic Mail Only

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

OFFICIAL USE

Certified Mail Fee

\$ 3.60

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

☒ Return Receipt (hardcopy) \$ 2.85

☐ Return Receipt (electronic) \$

☐ Certified Mail Restricted Delivery \$

☐ Adult Signature Required \$

☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 8.08

Sent To

MV3, INC.

Street and Apt. No. or PO Box No.
710 LANDER AVENUE

City, State, ZIP+4®
TURLOCK CA 95380

Postmark

Here

Torres v. MV3, Inc.

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

See Reverse for Instructions

one
LAW APC

1000
Park East, Ste 1000
CA 90067

PROOF OF SERVICE

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

On **November 17, 2021**, I served the document described as: **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§2698, ET SEQ.** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Stacy L. Henderson, (SBN:)
stacy@hendersonhatfield.com
Raquel A. Hatfield, (SBN:)
raquel@hendersonhatfield.com
HENDERSON HATFIELD
578 N. Wilma Avenue, Suite A
Ripon, CA 95366
Tel. (209) 599-5003
Fax: (209) 599-5008

Attorney for Defendants
MANUEL VILLA ENTERPRISES, INC. and
MV3, INC.,

cecilia@hendersonhatfield.com
tricia@hendersonhatfield.com

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

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

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **November 17, 2021**, at Los Angeles, California.

Xochitl Tapia

Type/Print Name

Signature

