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FILED
 Superior Court of California
 County of Los Angeles
 07/11/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: K. Martinez Deputy

8 Attorneys for: Plaintiff MARIA NORMA GUADALUPE DE LA CRUZ
 9 ESQUIVEL, individually and on behalf of other persons similarly
 10 situated and similarly aggrieved employees

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 12 **FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

13 MARIA NORMA GUADALUPE DE LA
 14 CRUZ ESQUIVEL, individually and on behalf
 15 of other persons similarly situated and
 16 similarly aggrieved employees,

17 Plaintiffs,

18 v.

19 BODEGA LATINA CORPORATION DBA EL
 20 SUPER, an active Delaware Corporation; and
 21 DOES 1 through 10,

22 Defendants.

Case No.: 22STCV02622

Assigned to: Hon. Maren E. Nelson
 Department: SS-17

FIRST AMENDED COMPLAINT –
CLASS AND REPRESENTATIVE
ACTION
JURY TRIAL DEMANDED

1. Failure to Provide Meal Periods;
2. Failure to Provide Paid Rest Periods;
3. Failure to Pay Wages;
4. Failure to Timely Pay Wages at Termination/Separation;
5. Failure to Timely Pay Vacation Wages at Termination;
6. Failure to Provide Accurate Wage Statements;
7. Failure to Reimburse Business Expenses;

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8. Violation of Unfair Business Practices Act – Bus. & Prof. Code §§ 17200, *et seq.*; and
9. Penalties Pursuant to Private Attorneys General Act (“PAGA”)

Plaintiff MARIA NORMA GUADALUPE DE LA CRUZ ESQUIVEL (“Plaintiff”), on behalf of herself and all others similarly situated and similarly aggrieved employees, based on information and belief, complains and alleges:

I.

INTRODUCTION

1. This class and representative action lawsuit arises out of the failure of Defendant BODEGA LATINA CORPORATION DBA EL SUPER (referred here as “BODEGA LATINA” or “Defendant”) to provide meal periods at the proper intervals, to provide rest periods at the proper intervals, to pay all wages owed including overtime, to provide accurate wage statements, to pay all wages owed to terminated or separated employees in a timely manner, to pay all vacation pay owed to terminated or separated employees, and to reimburse employee business expenses.
2. Defendant employed Plaintiff during the applicable time period, utilizing consistent policies and procedures in violation of Labor Code §200, *et seq.*, Labor Code §500, *et seq.*, Labor Code §1194, *et seq.*, Labor Code §2800, *et seq.*, and the applicable Wage Orders issued by the California Industrial Welfare Commission.
3. Defendant is engaged in the business of supermarket and grocery store ownership and operation. Plaintiff was hired on or about March 7, 2020, and separated on or about August 14, 2021. At all times during said employment, Plaintiff had a non-exempt classification. Plaintiff was employed by Defendant at the “El Super” supermarket located at 8601 Hooper Avenue in Los Angeles, California 90002.

- 1 4. At the time of her separation, Plaintiff was not paid all her wages, including all
2 accrued and vested vacation pay.
- 3 5. Plaintiff was also deprived of lawful meal and rest periods, not paid all wages
4 including overtime she was entitled to, and failed to receive accurate and
5 compliant itemized wage statements.
- 6 6. Defendant had a consistent policy of not paying wages for all hours worked,
7 including overtime and double time wages as applicable.
- 8 7. Defendant had a consistent policy of requiring its employees, including
9 Plaintiff, to work through meal periods or work without a meal period for at
10 least five (5) hours of a shift and failing to pay such employees one (1) hour of
11 pay at the employees' regular rate of compensation for each workday that the
12 meal period was not provided or as required by California state wage and hour
13 laws.
- 14 8. Defendant had a consistent policy of failing to allow its employees, including
15 Plaintiff, rest periods for at least ten (10) minutes per four (4) hours, or a major
16 fraction worked, and failing to pay such employees one (1) hour of pay at their
17 regular rate of compensation for each workday that the rest period was not
18 provided, or other compensation, as required by California state and wage and
19 hour laws.
- 20 9. Defendant knowingly provided inaccurate wage statements to its
21 employees, including Plaintiff, that did not correctly include the correct wages,
22 including compensation for meal periods not provided and rest period not
23 authorized or permitted as required by California state wage and hour laws.
- 24 10. Defendant had a consistent policy of failing to pay its employees, including
25 Plaintiff, all wages including accrued and vested vacation pay, due at the
26 termination or separation, in violation of California state wage and hour laws.
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- 1 11. Defendants had a consistent policy of failing to reimburse their employees,
2 including Plaintiff, for all business expenses incurred in the discharge of their
3 duties.
- 4 12. Plaintiff, on behalf of herself and all Class Members, brings this action
5 pursuant to Lab. Code §§ 201, 202, 203, 204, 210, 226, 226.7, 227.3, 510, 512, 1194,
6 1194.2, 2800, and 2802 seeking unpaid wages, penalties, equitable relief, and
7 reasonable attorneys' fees and costs.
- 8 13. Plaintiff, on behalf of herself and the putative class members, also brings
9 this action pursuant to Bus. & Prof. Code §§ 17200, *et seq.*, seeking injunctive
10 relief, restitution, and disgorgement of all benefits obtained by Defendant as a
11 result of Labor Code and applicable Wage Order violations.
- 12 14. Plaintiff, on behalf of the State of California, herself, and other similarly
13 aggrieved employees, also brings this action pursuant to California Private
14 Attorney General Act ("PAGA"), Cal. Lab. Code §2698, *et seq.* seeking unpaid
15 wages and other compensation, penalties, and reasonable attorneys' fees and
16 costs.

17 **II.**

18 **JURISDICTION AND VENUE**

- 19 15. Venue as to as to each defendant is proper in this judicial district, pursuant to
20 Code of Civil Procedure § 395. The County of Los Angeles is the proper venue,
21 because work for Defendant was performed by Plaintiff and other class
22 members in the County of Los Angeles and the legal obligations owed by
23 Defendant to Plaintiff and other class members were breached in the County of
24 Los Angeles.
- 25 16. The California Superior Court has jurisdiction in this matter, because Plaintiff is
26 a resident of California, Defendant is qualified to do business in California and
27 regularly conducts business in California.

28 **III.**

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THE PARTIES

17. Plaintiff MARIA NORMA GUADALUPE DE LA CRUZ ESQUIVEL is a resident of the State of California, and was employed by Defendant in Los Angeles County from on or about March 7, 2020 through on or about August 14, 2021.
18. Defendant BODEGA LATINA CORPORATION DBA EL SUPER was an active Delaware Corporation at all times during the claims of Plaintiff and the putative class and was headquartered in California and was doing business in California.
19. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in the conduct herein alleged, of the defendants sued herein as Does 1 through 10, but she is informed and believes and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained.
20. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants.

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IV.

GENERAL ALLEGATIONS

21. At all times relevant here and as set forth in the following paragraphs of this First Amended Complaint, Defendant employed more than 100 people; and Plaintiff and each member of the putative class was employed by Defendant, and each of them, in the State of California.

- 1 22. The employees of Defendant have not been provided: uninterrupted thirty-
2 minute meal periods for work periods of more than five (5) hours per day;
3 second uninterrupted thirty-minute meal periods for work periods of more
4 than ten (10) hours per day; and have not been permitted to take ten-minute
5 (10) rest periods for work periods of four (4) hours or major fractions, pursuant
6 to the Labor Code, and applicable IWC Wage Orders.
- 7 23. Defendant failed to pay employees wages owed for all hours worked, including
8 overtime hours as applicable.
- 9 24. Defendant failed to pay Plaintiff and the members of her putative class upon
10 separation the wages earned and unpaid at the time of discharge, including
11 accrued and vested vacation pay or "PTO".
- 12 25. Defendant failed to provide Plaintiff and the putative members of her class, at
13 the time of each payment of wages, an accurate itemized statement in writing,
14 showing the gross wages earned and/or paid, including premium wages owed
15 for failing to provide meal and/or rest periods at the proper intervals.
- 16 26. Defendants failed to fully reimburse Plaintiff and putative members of her class
17 for all their business-related expenditures. In violation of the Labor Code,
18 Plaintiff and putative members of her class did not receive indemnification for
19 all business-related expenditures.
- 20 27. Plaintiff asserts claims for relief on behalf of herself and other similarly situated
21 persons as a class action pursuant to Code of Civil Procedure § 382. Plaintiff
22 and all members of her putative class are described below with specificity and
23 fall in several categories of subclasses whose rights have been violated under
24 the law. Defendant has made no effort as of the filing of this Complaint to
25 correct or remedy the violations of law specified here.

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V.

CLASS ACTION ALLEGATIONS

28. Plaintiff brings this action on behalf of herself and all other employees of BODEGA LATINA who are similarly-situated persons as a class action pursuant to California Code of Civil Procedure § 382. There is a well-defined common interest by and among Plaintiff and the putative class members, and it is impractical to bring all those individuals before the court under separate, different and repetitive actions. Plaintiff also reserves the right to amend or modify the class descriptions set forth below in greater specificity or clarity if required in the future in accordance with Rule 3.765 (b), California Rules of Court. The class which Plaintiff seeks to represent is composed of and defined as follows:

“Plaintiff Class” – All of Defendant’s current and former non-exempt employees who worked for Defendant in California, during the four years before the filing of the Complaint through the time of class certification.

29. Plaintiff seeks to certify the following subclasses of employees:

- a) “Meal Period Subclass” – All members of Plaintiff Class who worked each period exceeding five (5) hours without an uninterrupted, off duty, thirty (30) minute meal period and/or periods in excess of ten (10) hours without a second uninterrupted, off duty, thirty (30) minute meal periods; and were not provided compensation of one hour’s pay at the employee’s regular rate for each day that a meal period was not provided.
- b) “Rest Period Subclass” – All members of Plaintiff Class who worked periods of four (4) hours or major fraction thereof without a duty free rest period of at least 10-minutes and who were not compensated one

1 hour's pay at the employee's regular rate for each day that a rest period
2 was not permitted.

- 3 c) "Unpaid Wage Subclass" – All members of Plaintiff Class who were
4 not paid their minimum/actual wages, including any time that was
5 unlawfully rounded by Defendant or otherwise considered as off-the-
6 clock, as well as overtime wages for hours worked in excess of eight
7 hours per day at the one and a half rate (of an employee's regular rate
8 of pay) or at a double time rate (of an employee's regular rate of pay)
9 as applicable.
- 10 d) "Waiting Time Subclass" – All members of Plaintiff Class to whom
11 Defendant failed to pay all wages due to them upon termination or
12 resignation under Labor Code §§ 201-203.
- 13 e) "Vacation Pay Subclass" – All members of Plaintiff Class to whom
14 Defendant failed to pay all vacation wages owed, vested or agreed to
15 upon termination or resignation as required by Labor Code §227.3.
- 16 f) "Wage Statement Subclass" – All members of Plaintiff Class to whom
17 Defendant improperly failed to provide accurate itemized wage
18 statements under Labor Code §§ 226.
- 19 g) "Expense Reimbursement Subclass" – All members of Plaintiff Class to
20 whom Defendants failed to fully reimburse employee business
21 expenses as required by Labor Code §2802.
- 22 h) "UCL Subclass" – All members of the Meal Period, Rest Period,
23 Unpaid Wage, Waiting Time, Vacation Pay, Wage Statement, and
24 Expense Reimbursement Subclasses who were subject to unlawful,
25 illegal, unfair and/or deceptive business acts and practices by
26 Defendant and are entitled to disgorgement and restitution of unpaid
27 wages.
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1 30. There is a well-defined community of interest among many persons who
2 comprise a readily ascertainable class:

- 3 a) Numerosity - The potential members of the Class and Subclasses as
4 defined here are so numerous that the individual joinder of all of them as
5 named plaintiffs is impracticable. The number of members of the Class
6 and Subclasses is unknown to Plaintiff. It is however estimated that the
7 members are more than 100 individuals, and their identities may readily
8 be ascertained from Defendant's records.
- 9 b) Typicality – The claims of Plaintiff are typical of the claims of all
10 members of the Class and Subclasses, who sustained similar damages
11 arising out of Defendant's common course of conduct in violation of law
12 as alleged.
- 13 c) Ascertainable Class – The proposed Class and Subclasses are
14 ascertainable as the members can readily be identified and located based
15 on the Defendant's payroll and personnel records.
- 16 d) Adequacy – Plaintiff is an adequate representative of the Class and
17 Subclasses: Plaintiff will fairly protect the interests of the members, she
18 has no interest adverse to the members, and she will vigorously pursue
19 this lawsuit on behalf of all the members of the Class and Subclasses.
20 Plaintiff's attorneys are competent, skilled and experienced in litigating
21 large employment law class actions.
- 22 e) Superiority - Class action treatment will allow a large number of
23 similarly situated persons to prosecute their common claims in a single
24 forum simultaneously, efficiently, and without the unnecessary
25 duplication of effort and expense that numerous individual actions
26 would require. Further, the monetary amounts due to many individual
27 members of the Class and Subclasses are likely to be relatively small, and
28 the burden and expense of individual litigation would make it difficult

1 or impossible for the members to seek and obtain relief. A class action
2 will serve an important public interest by permitting employees harmed
3 by Defendant's unlawful practices to effectively pursue recovery of the
4 sums owed to them.

- 5 f) Common Questions of Law and Fact – There are common questions of
6 law and fact as to the members of the Class and Subclasses which are
7 superior to questions affecting only individual members of the Class and
8 Subclasses. The common questions of law and fact may be summarized
9 as follows and if necessary will be refined with the progress of formal
10 discovery in the case:
- 11 g) Whether Defendant failed to provide members of Plaintiff Class who
12 ceased employment with Defendant all wages owed at the time of the
13 cessation of the employee-employer relationship?
- 14 h) Whether Defendant violated California law and applicable Wage Orders
15 by failing to provide Plaintiff Class members with paid ten-minute (10)
16 rest periods for each four hours worked?
- 17 i) Whether the remedy for an employer's failure to provide rest breaks as
18 required by law is a premium wage for hardship of missing a lawful rest
19 break?
- 20 j) Whether Defendant violated California law and applicable Wage Orders
21 by failing to provide Plaintiff Class members with thirty minute (30)
22 meal period for more than five hours of work?
- 23 k) Whether Defendant violated California law and applicable Wage Orders
24 by failing to provide members of Plaintiff Class with a second meal
25 period?
- 26 l) Whether the remedy for an employer's failure to provide meal period as
27 required by law is a premium wage for hardship of missing a lawful
28 meal period?

- 1 m) Whether Defendant violated California law, including the applicable
2 wage orders by failing to properly compensate Plaintiff Class members
3 for all hours worked, including overtime hours as applicable?
- 4 n) Whether Plaintiff Class is entitled to waiting time penalties under Labor
5 Code § 203?
- 6 o) Whether Defendant violated Labor Code §227.3 by its failure to provide
7 Plaintiff Class with all vacation wages or PTO owed, vested or agreed to
8 upon termination or separation?
- 9 p) Whether Defendant violated California law by its failure to provide
10 Plaintiff Class with accurate and itemized wage statements?
- 11 q) Whether Defendants have violated Labor Code §2802 by failing to
12 reimburse Plaintiff and the Plaintiff Class for all business expenses
13 incurred by them in direct consequence of the discharge of their duties?
- 14 r) Whether Defendant violated Business and Professions Code §§ 17200 et.
15 seq., Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 227.3, 510, 512,
16 1194, 1194.2, 2800, 2802, and applicable Wage Orders which constitute
17 violations of the public policy?
- 18 s) Whether Plaintiff Class is entitled to an equitable relief in accordance
19 with Business and Professions Code §§ 17200 et. seq.
- 20 t) Whether Defendant's affirmative defenses, if any, raise common issues
21 of law and fact as to Plaintiff Class as a whole and/or Subclasses in
22 particular?

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VI.

FIRST CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIOD OR
COMPENSATION IN LIEU THEREOF

(Labor Code §§ 226.7, 512)

(By Plaintiff and Meal Period Subclass against Defendant)

31. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint as if fully alleged herein.
32. By its failure to provide thirty minute (30) uninterrupted meal period as well as second meal period, if applicable, to Plaintiff and members of Meal Period Subclass, Defendant willfully violated the provisions of Labor Code §§ 226.7, 512 and applicable IWC Wage Orders.
33. As a result of Defendant's unlawful conduct, Plaintiff and other members of the Subclass have suffered damages as articulated in the Prayer for Relief, set forth below, and fully incorporated here as applicable.

VII.

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE REST PERIODS OR
COMPENSATION IN LIEU THEREOF

(Labor Code § 226.7)

(By Plaintiff and Rest Period Subclass against Defendant)

34. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint as if fully alleged herein.
35. By its failure to provide ten-minute (10) rest periods for every four (4) hours of work or major fraction thereof per day to Plaintiff and Rest Period Subclass, Defendant willfully violated Labor Code § 226.7 and applicable Wage Orders.
36. As a result of Defendant's unlawful conduct, Plaintiff and other members of the Subclass have suffered damages as articulated in the Prayer for Relief, set forth below, and fully incorporated here as applicable.

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VIII.

THIRD CAUSE OF ACTION

FAILURE TO PAY WAGES

(Labor Code §§ 204, 210, 510, 1194, 1194.2)

(By Plaintiff and the Unpaid Wage Subclass against Defendant)

37. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint as if fully alleged herein.

38. At all relevant times, Plaintiff and the other members of the Unpaid Wage Class were employees of Defendant covered by Labor Code §§ 204, 210, 510, 1194, 1194.2 and applicable Wage Orders, and they were entitled to receive minimum and overtime wages for all hours worked and liquidated damages equal to unlawfully unpaid minimum wages with interest.

39. Defendant has violated California law and the specified provisions of the Labor Code and applicable Wage Orders by its failure to pay all wages due in accordance, including minimum wages, wrongfully classified off-the-clock wages and overtime pay. Notably, any wages that were paid were not effectively paid within seven (7) days of the close of any applicable payroll period. As a result of Defendant's unlawful conduct, Plaintiff and other members of the Subclass have suffered damages as articulated in the Prayer for Relief, set forth below, and fully incorporated here as applicable.

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IX.

FOURTH CAUSE OF ACTION

FAILURE TO PAY WAGES DUE AT TERMINATION

(Labor Code §§ 201, 202, 203)

(By Plaintiff and Waiting Time Subclass against Defendant)

40. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint as if fully alleged herein.

1 41. By its failure to timely pay Plaintiff and Waiting Time Subclass, Defendant
2 willfully violated the provisions of Labor Code §§ 201, 202, 203 and applicable
3 Wage Orders. Sec. 203 of Labor Code provides that if an employer willfully fails
4 to timely pay such wages, the employer must, as penalty, continue to pay the
5 employee's wages until the back wages are paid in full or an action is
6 commenced.

7 42. As a result of Defendant's unlawful conduct, Plaintiff and other members of the
8 Subclass have suffered damages as articulated in the Prayer for Relief, set forth
9 below, and fully incorporated here as applicable.
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11 **X.**

12 **FIFTH CAUSE OF ACTION**
13 **FAILURE TO PAY VACATION WAGES DUE AT TERMINATION**
14 **(Labor Code §227.3)**
15 **(By Plaintiff and Vacation Pay Subclass against Defendant)**

16 43. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint
17 as if fully alleged herein.

18 44. By its failure to timely pay Plaintiff and Vacation Pay Subclass, Defendant
19 willfully violated the provisions of Labor Code §227.3. Section 227.3 of Labor
20 Code provides that whenever a contract of employment or employer policy
21 provides for paid vacation, and an employee is terminated without having
22 taken off his or her vested vacation time, all vested vacation shall be paid to
23 him as wages at his or her final rate in accordance with such contract of
24 employment or employer policy respecting eligibility of time served; provided,
25 however, that an employment contract or employer policy shall not provide for
26 forfeiture of vested vacation time upon termination.

27 45. As a result of Defendant's unlawful conduct, Plaintiff and other members of the
28 Subclass have suffered damages as articulated in the Prayer for Relief, set forth
below, and fully incorporated here as applicable.

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XI.

SIXTH CAUSE OF ACTION
FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS
(Labor Code §226)
(By Plaintiff and Wage Statement Subclass against Defendant)

46. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint as if fully alleged herein.
47. By its failure to provide accurate itemized wage statements, semimonthly or at the time of each payment of wages, Defendant willfully violated the provisions of Labor Code §226 and applicable Wage Orders.
48. As a result of Defendant's unlawful conduct, Plaintiff and other members of the Subclass have suffered damages as articulated in the Prayer for Relief, set forth below, and fully incorporated here as applicable.

XII.

SEVENTH CAUSE OF ACTION
FAILURE TO REIMBURSE ALL BUSINESS EXPENSES
(Labor Code §§2800, 2802)
(By Plaintiff and Expense Reimbursement Subclass against Defendants)

49. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint as if fully alleged herein.
50. Labor Code § 2800 provides, in pertinent part, "[a]n employer shall in all cases indemnify his employee for losses caused by the employer's want of ordinary care."
51. Labor Code § 2802 provides, in pertinent part, "[a]n employer shall indemnify his or his employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or his duties..."
52. Further, Labor Code § 2802 additionally provides, in pertinent part: "(c)...the term 'necessary expenditures or losses' shall include all reasonable costs,

1 including but not limited to, attorney's fees incurred by the employee enforcing
2 the rights granted by this section."

- 3 53. During the relevant time period, Defendants were required to reimburse
4 Plaintiff and class members for all expenditures or losses caused by the
5 employer's want of ordinary care and/or incurred in direct consequence of the
6 discharge of their duties, but failed to indemnify and reimburse Plaintiff and
7 class members in violation of Labor Codes §§ 2800 and 2802.
- 8 54. As a direct and proximate result, Plaintiff and class members have suffered, and
9 continue to suffer, substantial losses, related to the use and enjoyment of such
10 monies to be reimbursed, lost interest on such monies, and expenses and
11 attorney's fees in seeking to compel Defendants to fully perform their
12 obligations under California law, all of their damage in amounts according to
13 proof at the time of trial.

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15 **XIII.**

16 **EIGHTH CAUSE OF ACTION**
17 **VIOLATION OF UNFAIR BUSINESS PRACTICES ACT**
18 **(Bus. & Prof. Code §§ 17200, *et seq.*)**
19 **(By Plaintiff, Plaintiff Class and All Subclasses against Defendant)**

- 20 55. Plaintiff incorporates paragraphs 1 through 54 of this First Amended Complaint
21 as if fully alleged herein.
- 22 56. The alleged unlawful conduct of Defendant constitutes unfair competition
23 pursuant to Business and Professions Code §§ 17200 *et seq.*, and this cause of
24 action is brought as a cumulative remedy under Bus. & Prof. Code § 17205 for
25 the time period starting four (4) years before the filing of the Complaint.
- 26 57. As a result, Plaintiff and other members of Plaintiff Class and Subclasses have
27 suffered injury in fact and lost money or property. Plaintiff and said members
28 have been deprived of their rights as set forth in this First Amended Complaint,
including, but not limited to, payment of minimum and/or actual wages for all

1 hours worked.

2 58. Pursuant to Business and Professions Code § 17203, Plaintiff and other
3 members of Plaintiff Class and Subclasses are entitled to restitution of all wages
4 owed to them under the Labor Code, and interest thereon, in which they had a
5 property interest, which Defendant failed to pay to them but withheld and
6 retained for itself. Restitution of the money owed to Plaintiff, Plaintiff Class and
7 Subclasses is necessary to prevent Defendant from becoming unjustly enriched
8 by its failure to comply with the Labor Code provisions.

9 59. Plaintiff and members of Plaintiff Class and Subclasses are entitled to recover
10 reasonable attorney's fees in connection with their unfair competition claims
11 pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine
12 and/or the common fund doctrine.

13 60. Plaintiff requests the court to issue a preliminary and permanent injunction
14 prohibiting defendants from committing the Labor Code and applicable Wage
15 Order violations set forth in this First Amended Complaint, and Plaintiff and
16 the members of Plaintiff Class and Subclasses have suffered further damages as
17 articulated in the Prayer for Relief, set forth below, also incorporated here fully
18 as applicable.

19 **XIV.**

20 **NINTH CAUSE OF ACTION**

21 **VIOLATION OF CALIFORNIA'S PRIVATE ATTORNEY GENERAL ACT**

22 **(LABOR CODE § 2699 *et seq.*)**

23 **(By Plaintiff and Aggrieved Employees Against Each Defendant)**

24 61. Plaintiff incorporates paragraphs 1 through 60 of this First Amended Complaint
25 as if fully alleged herein.

26 62. Under the Private Attorney General Act, Labor Code §§ 2698-99 ("PAGA"),
27 private parties may recover civil penalties for violations of the California Labor
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Code. PAGA penalties are in addition to any other relief available under the Labor Code.

63. As set forth above, Defendants violated the California Labor Code by consistently failing to employ Plaintiff and other similarly situated employees in compliance with California law.

64. Plaintiff provided written notice by certified mail to Defendants on January 20, 2022, and electronic notice thereafter to the State Labor & Workforce Development Agency ("LWDA"), of the legal claims and theories of this case. To date, and after 65 days from the date of mailing of notice, the LWDA has not notified Plaintiff that the LWDA intends to exercise jurisdiction over the claim for civil penalties under the PAGA. Accordingly, Plaintiff exhausted administrative remedies as required by Labor Code § 2699.3. Plaintiff's PAGA claim was assigned case number LWDA-CM-863841-22 by the LWDA. Attached hereto is a true and correct copy of the referenced notice communicated by Plaintiff.

65. Under the PAGA, Plaintiff and all other aggrieved employees are entitled to recover the maximum civil penalties permitted by law from Defendant for the violations of Labor Code alleged in this First Amended Complaint.

66. Plaintiff and all other aggrieved employees are also entitled to recover their attorneys' fees and costs under Labor Code § 2699.

XV.

PRAYER FOR RELIEF

WHEREFORE, on behalf of herself and all others similarly situated, Plaintiff prays for relief and judgment against Defendant as follows:

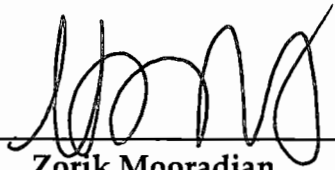
- 1 A. An order certifying that Plaintiff may pursue her claims as a class action
2 under Section 382 of the Code of Civil Procedure; and it is further requested that
3 Plaintiff Class and each Plaintiff Subclass be certified;
- 4 B. An order appointing Plaintiff as Class representative;
- 5 C. An order appointing Plaintiff's counsel as Class counsel;
- 6 D. Disgorgement of Defendant's wrongfully obtained profits and restitution
7 of unpaid wages under Business and Professions Code §§ 17203, 17204;
- 8 E. Damages for unpaid additional compensation for failing to provide
9 timely or uninterrupted or lawful meal periods and rest periods;
- 10 F. Damages for unpaid minimum wages under Labor Code § 1194;
- 11 G. Liquidated damages under Labor Code § 1194.2;
- 12 H. Statutory penalties under Labor Code § 210;
- 13 I. Statutory penalties under Labor Code § 226(e);
- 14 J. Damages for unpaid penalty wages under Labor Code § 203;
- 15 K. Reimbursement of business expenses under Labor Code § 2802;
- 16 L. Damages for unpaid vacation wages at the time of discharge under
17 Labor Code § 227.3;
- 18 M. Reasonable attorney's fees and costs pursuant to statute, including, but
19 not limited to Labor Code § 218.5 and Code of Civ. Proc. § 1021.5;
- 20 N. Enjoinment of Defendant from further acts of unfair competition and
21 continuous violations of the Labor Code and applicable Wage Orders;
- 22 O. Civil penalties under Labor Code Section 2699 (75% payable to the
23 LWDA and 25% payable to aggrieved employees); and
- 24 P. For such other relief that the Court may deem just and proper, including
25 prejudgment interest and costs.

26
27 DATED: Jul. 11, 2022

MOORADIAN LAW, APC

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By: _____


Zorik Mooradian,

Haik Hacopian,

Attorneys for Plaintiff and the putative class

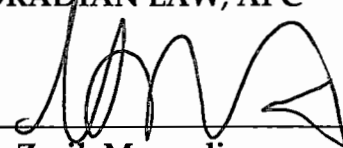
DEMAND FOR A JURY TRIAL

Plaintiff MARIA NORMA GUADALUPE DE LA CRUZ ESQUIVEL hereby
demands a jury trial in the above case.

DATED: Jul. 11, 2022

MOORADIAN LAW, APC

By: _____


Zorik Mooradian,

Haik Hacopian,

Attorneys for Plaintiff and the putative class

MOORADIAN LAW, APC
24007 Ventura Boulevard, Suite 210
Calabasas, California 91302
Mooradianlaw.com
Telephone 1-818-487-1998
Facsimile 1-888-783-1030

HAIK HACOPIAN

E-mail: haik@mooradianlaw.com

JANUARY 20, 2022

VIA USPS CERTIFIED MAIL

Bodega Latina Corporation dba El Super
14601 B Lakewood Blvd.
Paramount, CA 90723
7019 0700 0002 2582 8540

URS Agents Inc.
Agent for Service of Process for
Bodega Latina Corporation dba El Super
7801 Folsom Blvd., #202
Sacramento, CA 95826
7019 0700 0002 2582 8557

VIA ONLINE SUBMISSION

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, CA 95814
www.dir.ca.gov

Re: *California Wage & Hour Violations*
Bodega Latina Corporation dba El Super

To Whom It May Concern:

This office represents Ms. Maria Norma Guadalupe De La Cruz Esquivel with respect to Private Attorneys General Act ("PAGA") claims that she intends to pursue against Bodega Latina Corporation dba El Super ("Bodega Latina") based upon its illegal wage and hour practices in the State of California as to its non-exempt employees. This letter constitutes the notice required by Labor Code Section 2699.3.

Facts

Bodega Latina is engaged in the business of supermarket and grocery store ownership and operation. Ms. De La Cruz Esquivel worked as a non-exempt hourly employee of Bodega Latina at the El Super supermarket located at 8601 Hooper Avenue in Los Angeles, California. Bodega

Latina employs numerous non-exempt, hourly paid employees such as Ms. De La Cruz Esquivel in California. Unfortunately, Bodega Latina has engaged in the following practices:

Failure to Pay Wages

Bodega Latina implemented the policy and practice of failing to pay employees for all hours worked. This includes the practice of disallowing overtime and forcing employees to clock out and work off the clock to avoid triggering of overtime. Additionally, Employees also did not receive net 30-minute meal breaks. Notably, only a single time clock was maintained for the entire store where Ms. De La Cruz Esquivel worked such that employees would often be forced to wait to clock in and later be reprimanded for arriving late. The foregoing practices resulted in underpayment of wages, including underpayment of overtime and double-time to the extent applicable.

Meal Breaks

Bodega Latina engages in the practice of not allowing mandated meal breaks and not compensating employees for any missed, late, or short meal breaks. Employees did not receive premium pay for any missed, late, or short meal period. Notably, meal breaks were not at least a net thirty (30) minutes in duration on account of the clock in and out process.

Rest Breaks

Bodega Latina engages in the practice of not allowing mandated rest breaks and not compensating employees for any missed, late, or short rest breaks. Employees did not receive premium pay for these missed rest breaks. Notably, any rest breaks taken were not at least a net ten (10) minutes in duration as employees were required to be at their work station ten minutes after starting their rest break and had to end to conclude their break before the ten minute mark to return on time.

Waiting Time

At the time of an employee's separation (whether it be by termination or resignation) Bodega Latina have failed to provide the employee with all monies owed, including meal break premiums, rest break premiums, and unpaid wages for work performed, including overtime and double-time wages to the extent applicable. Additionally, separating employees were never timely paid their final wages as they had to wait until the subsequent payday. In Ms. De La Cruz Esquivel instance, she separated from her employment on August 14, 2021 but received a final paycheck via direct deposit on the subsequent payday on August 20, 2021. Moreover, Ms. De La Cruz

Esquivel received a separate payment for unpaid vacation wages via direct deposit on September 17, 2021, over a month after her separation.

Noncompliant Wage Statements

Bodega Latina has adopted a custom and practice of failing to provide wage statements which reflect all hours worked during any pay period, whether or not employees received all wages entitled to, including meal and rest break premiums.

Failure to Fully Reimburse Employee Expenses

Employees were forced to purchase supplies, including cleaning supplies, to carry out their job duties but Bodega Latina never reimbursed these supply expenses.

Additional Penalties

Ms. De La Cruz Esquivel and all other similarly aggrieved California employees intend to seek all available civil penalties for the violations described above.

Code Provisions Violated and Legal Theories

The specific provisions of the California Labor Code which Bodega Latina has violated, and applicable legal theories which establish the violations, are as follows:

Labor Code Section 201: Bodega Latina violated, and continues to violate, Labor Code Section 201 by failing to pay the employees it has discharged the complete and correct amount of all wages owing at the time of termination. The wages earned but not paid at termination include uncompensated work time, including overtime and double-time as applicable, and premium wages for missed meal and rest breaks.

Labor Code Section 202: Bodega Latina violated, and continues to violate, Labor Code Section 202 by failing to pay employees who quit the correct amount of all wages, within 72 hours of the termination. As already stated, the wages earned but not paid at termination include the above.

Labor Code Section 203: Bodega Latina violated, and continues to violate, Labor Code Section 203 by failing to pay 30 days of continuing wages to employees owed wages (explained above) whose employment ended.

Labor Code Section 204: Bodega Latina violated, and continues to violate, Labor Code Section 204 by failing to pay wages to employees for all hours worked as explained above.

Labor Code Section 226: Bodega Latina violated, and continues to violate, Labor Code Section 226(a) by failing to provide employees with accurate and compliant itemized wage statements.

Labor Code Section 226.7: Bodega Latina violated, and continues to violate, Labor Code Section 226.7 by failing to provide meal periods and/or rest periods that are in accordance and in compliance with the IWC's applicable wage order.

Labor Code Section 227.3: Bodega Latina violated, and continues to violate, Labor Code Section 227.3 by failing to promptly pay all vested vacation benefits to employees upon their separation.

Labor Code Section 510: Bodega Latina violated, and continues to violate, Labor Code Section 510 by failing to pay minimum wage or overtime compensation required by law.

Labor Code Section 512: Bodega Latina violated, and continues to violate, Labor Code Section 512 by not providing employees with legally compliant meal periods.

Labor Code Section 1194: Bodega Latina violated, and continues to violate, Labor Code Section 1194 by failing to pay employees minimum wage and overtime compensation required by law.

Labor Code Section 2802: Bodega Latina violated and continues to violate, Labor Code Section 2802 by failing to indemnify employees for all necessary expenditures or losses incurred by employees in direct consequence of the discharge of their duties.

Conclusion

Please inform us if you intend to investigate this matter. We look forward to prompt administrative action so that the identified unlawful practices can be rectified. In the absence of such action, we may file an appropriate action, pursuant to Labor Code Section 2698 *et seq.* Ms. De La Cruz Esquivel and all other similarly aggrieved California employees intend to seek all penalties for the violations described above.

Should you require any additional information, do not hesitate to contact the undersigned.

Very truly yours,
MOORADIAN LAW, APC

/s/ Haik Hacopian

HAIK HACOPIAN

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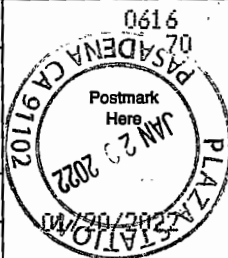
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Paramount, CA 90723

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☐ Return Receipt (electronic)	\$0.00
☐ Certified Mail Restricted Delivery	\$0.00
☐ Adult Signature Required	\$0.00
☐ Adult Signature Restricted Delivery	\$0.00

Postage \$0.58

Total Postage and Fees \$4.33



Sent To BODEGA LATINA CORPORATION DBA EL SUPER
 Street and Apt. No., or PO Box No. 14601 B LAKEWOOD BLVD.
 City, State, ZIP+4® PARAMOUNT, CA 90723

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

See Reverse for Instructions

7019 0700 0002 2582 8557

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
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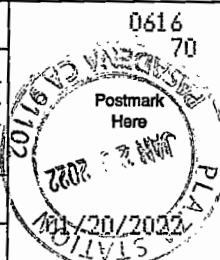
For delivery information, visit our website at www.usps.com®.

Sacramento, CA 95826

Certified Mail Fee	\$3.75
Extra Services & Fees (check box, add fee as appropriate)	
☐ Return Receipt (hardcopy)	\$0.00
☐ Return Receipt (electronic)	\$0.00
☐ Certified Mail Restricted Delivery	\$0.00
☐ Adult Signature Required	\$0.00
☐ Adult Signature Restricted Delivery	\$0.00

Postage \$0.58

Total Postage and Fees \$4.33



Sent To URS Agents Inc. Agent for Service of Process for Bodega Latina Corp.
 Street and Apt. No., or PO Box No. 7801 Folsom Blvd. # 202
 City, State, ZIP+4® SACRAMENTO, CA 95826

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

See Reverse for Instructions



Haik Hacopian <haik.hacopian@gmail.com>

Thank you for submission of your PAGA Case.

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
To: "haik.hacopian@gmail.com" <haik.hacopian@gmail.com>

Thu, Jan 20, 2022 at 4:58 PM

1/20/2022

LWDA Case No. LWDA-CM-863841-22
Law Firm : Mooradian Law, APC
Plaintiff Name : Maria Norma Guadalupe De La Cruz Esquivel
Employer: Bodega Latina Corporation dba El Super
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

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

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

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On July 11, 2022, I served on the parties of record in this action the foregoing document(s) described as:

FIRST AMENDED COMPLAINT – CLASS AND REPRESENTATIVE ACTION

Laura Reathaford, Esq.
laura.reathaford@lathropgpm.com
 Lathrop GPM LLP
 2049 Century Park East, Suite 3500S
 Los Angeles, CA 90067
 Telephone: 310.789.4648

Attorneys for Defendant Bodega Latina
 Corporation DBA El Super

☒ **STATE** – I declare under penalty of perjury under the laws of the “State of California that the above is true and correct.

/s/Haik Hacobian
Haik Hacobian