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Assigned for All Purposes
Judge Glenda Sanders
CX-101

Attorneys for Plaintiff
GLENN KNOTT and the PROPOSED CLASS

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

GLENN KNOTT, individually and on behalf
of all current and former similarly situated
employees in the State of California,

Plaintiff,

v.

Albertsons Companies, Inc, a Michigan
Corporation; the Vons Companies, Inc., a
Delaware Corporation; Kevin M. Curry, an
individual; and DOES 1 to 50, inclusive.

Defendant.

CASE NO.: 30-2022-01264317-CU-OE-CXC

ASSIGNED FOR ALL PURPOSES TO:

CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:

- 1. FAILURE TO PAY OVERTIME
WAGES (VIOLATION OF
CALIFORNIA LABOR CODE §§ 510,
1194, 1198; IWC WAGE ORDER
NO.7.);**
- 2. FAILURE TO PROVIDE MEAL
PERIODS (VIOLATION OF IWC
WAGE ORDER 7-2001, CAL. LAB.
CODE §§ 226.7, 512);**
- 3. FAILURE TO AUTHORIZE AND
PERMIT REST BREAKS
(VIOLATION OF IWC WAGE ORDER
7-2001, CAL. LAB. CODE § 226.7);**
- 4. FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS
(VIOLATION OF CALIFORNIA
LABOR CODE §§ 226(a), 1174(d), and
246(i));**
- 5. WAITING TIME PENALTIES
(VIOLATION OF CALIFORNIA
LABOR CODE § § 201, 202, 203);**
- 6. INJUNCTIVE RELIEF;**
- 7. UNFAIR BUSINESS PRACTICES IN
VIOLATION OF CALIFORNIA
BUSINESS AND PROFESSIONS
CODE §§ 17200-17208;**
- 8. PENALTIES, PURSUANT TO LABOR**

1) CODE § 2699 FOR VIOLATIONS OF
2) LABOR CODE §§ 221, 224, 225.5, 510,
3) 1194, 1198, 558, 226.7, 512, 201, 202, 203,
4) 1174, 226, 226.3, 246(a), 246(i), 246.5(a),
5) 246(l), 2810.5, 1197.5 (b), 1198.5, and
6) 432.3(a).

7) UNLIMITED JURISDICTION

8) REQUEST FOR JURY TRIAL

9 **INTRODUCTION**

10 1. This is a class and representative action, brought pursuant to California Code of Civil
11 Procedure § 382, California Business and Professions Code § 17200 *et seq.*, and the Labor Code
12 Private Attorney General Act 2004 (“PAGA”), California Labor Code § 2698 *et seq.* brought by
13 Plaintiff GLENN KNOTT, (“PLAINTIFF”) on behalf of himself and all others similarly situated
14 current and former employees in the State of California, and the general public (hereinafter the
15 “CLASS”).

16 2. PAGA permits an “aggrieved employee” to bring a lawsuit on behalf of
17 herself/himself and other current and former employees to address an employer’s violations of the
18 California Labor Code.

19 3. PLAINTIFF hereby alleges and complaints against defendants Albertsons
20 Companies, Inc, the Vons Companies, Inc., Kevin M. Curry, and DOES 1-50 (hereinafter collectively
21 referred to as “DEFENDANTS”) to recover, damages, restitution, injunctive relief, civil and
22 statutory penalties for failure to comply with various California Labor Code sections and the
23 Industrial Welfare Commission Wage Orders 7-2001, (“IWO 7”), interest, attorneys’ fees, and costs
24 and any other appropriate relief for DEFENDANTS’ violations of laws.

25 **THE PARTIES**

26 **A. Plaintiff**

27 4. PLAINTIFF is a resident of the State of California who began working for
28 DEFENDANTS from approximately February 4, 2019, until his termination on June 17, 2021.

1 PLAINTIFF was classified as a non-exempt, hourly paid employee who worked for DEFENDANTS
2 as a Courtesy clerk and a Cashier at 1260 W Redondo Beach Blvd, Gardena, CA 90247.

3 **B. Defendants**

4 5. At all relevant times alleged herein, PLAINTIFF is informed and believes, and
5 thereon alleges that Albertsons Companies, Inc, is, and at all times relevant hereto was, a Michigan
6 corporation, registered with the Secretary of State of California and authorized to conduct business
7 in the State of California and does conduct business in the State of California, including the County
8 of Orange.

9 6. At all relevant times alleged herein, PLAINTIFF is informed and believes, and
10 thereon alleges that the Vons Companies, Inc., (“VONS”) is, and at all times relevant hereto was, a
11 Delaware corporation, registered with the Secretary of State of California and authorized to conduct
12 business in the State of California and does conduct business in the State of California, including the
13 County of Orange.

14 7. PLAINTIFF is informed and believes, and thereon alleges that Kevin M. Curry
15 (CURRY”) is a resident of the State of California, County of Orange. PLAINTIFF is informed and
16 believes, and based thereon allege, that Defendant CURRY is the Chief Executive Officer (“CEO”) of
17 VONS with his principal place of business in the County of Orange, located at 1421 Manhattan
18 Ave, Fullerton, California, 92831, that directly oversees and controls VONS’ operation and exercised
19 and continues to exercise significant control over DEFENDANTS’ employees’ overall terms and
20 conditions of employment.

21 8. PLAINTIFF is informed and believes, and based thereon alleges, that CURRY permitted,
22 authorized, approved, and ratified the wrongful acts and practices against the PLAINTIFF and the
23 CLASS while overseeing VONS’ operation in California.

24 9. PLAINTIFF is informed and believes, and based thereon alleges, that CURRY had the
25 authority to hire, and terminate the PLAINTIFF and the other CLASS members; to set work rules
26 and conditions governing PLAINTIFF and the CLASS to maximize VONS’ profits.

27 10. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
28 PLAINTIFF therefore PLAINTIFF sues said DOE defendants by fictitious names. PLAINTIFF will

1 amend this Complaint to show their true names and capacities when they have been ascertained. The
2 defendants, and each of them, were alter egos of each other and/or engaged in a joint enterprise with
3 each other.

4 11. PLAINTIFF is informed and believes and based thereon alleges that all of the
5 Defendants were joint employers of the PLAINTIFF. Hereinafter in this Complaint, unless otherwise
6 specified, reference to DEFENDANTS, shall refer to Albertsons Companies, Inc, the Vons
7 Companies, Inc., Kevin M. Curry, and DOES 1-50, and each of them.

8 12. PLAINTIFF is informed and believes, and based thereon alleges that at all times
9 herein mentioned, that each of the DEFENDANTS is liable as an “employer” and/or “person” for
10 the claims asserted in this Complaint, including but not limited to, under Labor Code § 558.1 and
11 §18.

12 13. At all relevant times herein, PLAINTIFF was employed by DEFENDANTS. In
13 perpetrating the acts and omissions alleged herein, DEFENDANTS, and each of them, acted pursuant
14 to and in furtherance of their policies and practices, *inter alia*, of failing to pay PLAINTIFF and the
15 CLASS for all hours worked including overtime and double time; failing to pay PLAINTIFF and the
16 CLASS for paid sick leave at the employee’s regular rate of pay; failing to pay PLAINTIFF and the
17 CLASS for one additional hour of pay at the employee’s regular rate of compensation for each
18 workday that the meal and rest period was not provided; failing to pay PLAINTIFF and the CLASS
19 for overtime hours at the employee’s regular rate of pay, which includes both hourly pay and non-
20 hourly pay such as bonuses; failing to provide accurate itemized wage statements for each pay period;
21 and failing to pay wages upon termination of employment.

22 14. PLAINTIFF is informed and believes, and based thereon alleges that at all times
23 relevant herein, each of the DEFENDANTS named herein was an employer, was the principle, agent,
24 partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent
25 corporation, successor in interest and/or predecessor in interest of each of the other DEFENDANTS
26 named herein, and, in doing the acts and in carrying out the wrongful conduct alleged herein, was
27 engaged with some or all of the other DEFENDANTS in a joint enterprise for profit, and bore such
28 other relationships to some or all of the other DEFENDANTS so as to be liable for their conduct with

1 respect to the matters alleged in this Complaint. PLAINTIFF is further informed and believes and
2 thereon alleges that each of the DEFENDANTS acted pursuant to and within the scope of the
3 relationships alleged above, and that at all relevant times, each of the DEFENDANTS knew or should
4 have known about, authorized, ratified, adopted, approved, controlled, aided and abetted the conduct
5 of all other DEFENDANTS.

6 15. At all times mentioned herein, each of the DEFENDANTS was the co-conspirator,
7 agent, servant, employee, and/or joint venturer of each of the other DEFENDANTS and was acting
8 within the course and scope of said conspiracy, agency, employment, and/or joint venture and with
9 the permission and consent of each of the other DEFENDANTS.

10 16. PLAINTIFF is informed and believes and thereon alleges that each and every acts and
11 omissions alleged herein were performed by, and/or attributable to, all DEFENDANTS, each acting
12 as agents and/or employees, and/or under the directions and control of each of the other
13 DEFENDANTS, and that said acts and failure to act were within the course and scope of said agency,
14 employment and/or directions and control.

15 17. As a direct and proximate result of the unlawful actions of DEFENDANTS,
16 PLAINTIFF and the CLASS have suffered and continue to suffer from loss of earnings in amounts
17 as yet unascertained, but subject to proof at trial and within the jurisdiction of this Court.

18 **JURISDICTION**

19 18. This Court is the proper court, and this action is properly filed in the Superior Court
20 of the State of California, County of Orange, because DEFENDANTS operate and transact business
21 in the County of Orange. Specifically, CURRY is the CEO of VONS maintains his principle place
22 of business in the County of Orange, located at 1421 Manhattan Ave, Fullerton, California, 92831 and
23 because DEFENDANTS' illegal policies and practices, which are the subject of this action, were
24 applied to members of the CLASS in the County of Orange.

25 19. There is no federal question at issue as Wage and Hour protections and remedies
26 related thereto are based solely on California Law and Statutes, including Labor Code, Civil Code
27 and IWC Wage Order(s). Also, the Ninth Circuit has held that, for purposes of establishing federal
28

1 diversity jurisdiction, penalties pursuant to the Private Attorneys General Action of 2004 may not be
2 aggregated. *Urbino v. Orkin Servs. Of California, Inc.*, 726 F.3d 1118, 1122 (9th Cir. 2013).

3 **PLAINTIFF EXHAUSTED HIS ADMINISTRATIVE REMEDIES**

4 20. PLAINTIFF met all the jurisdictional requirements of proceeding with claims for civil
5 penalties under the Labor Code Private Attorney's General Act ("PAGA"), codified at Labor Code,
6 Section 2698 *et seq.* by timely giving written notice in the manner required by Labor Code § 2699.3
7 at the time of filing. Specifically, on March 9, 2022, per SB 836, which became effective on June
8 27, 2016, PLAINTIFF exhausted his administrative remedies by notifying DEFENDANTS via
9 certified U. S. Mail, and by online filing with Labor and Workforce Development Agency
10 ("LWDA") (a true and correct copy is attached and incorporated by reference as Exhibit "1"). Sixty-
11 Five (65) days elapsed after PLAINTIFF'S notification and PLAINTIFF'S counsel received no
12 notice from LAWD stating their intention to investigate or prosecute the claims.

13 21. Therefore, PLAINTIFF alleges the right to proceed with all remedies provided by law
14 on PLAINTIFF's Complaint herein, with civil and all statutory penalties which are collectible by
15 PLAINTIFF under the provisions of Labor Code §§ 2698-2699.5, PAGA.

16 **FACTUAL BACKGROUND**

17 22. This is a Class Action, brought pursuant to California Code of Civil Procedure §382,
18 California Business and Professions Code § 17200 *et seq.*, and the PAGA, California Labor Code §
19 2698 *et seq.*; *Aris v. Superior Court* (2009) 46 Cal.4th 969, 980-981. PAGA permits an "aggrieved
20 employee" to bring a lawsuit on behalf of himself/herself and other current and former employees to
21 address an employer's violations of the California Labor Code. PLAINTIFF is an aggrieved
22 employee, within the meaning of the statute, who brings this action on behalf of himself and other
23 current and former employees of DEFENDANTS to address DEFENDANTS' violations of the
24 California Labor Code.

25 23. DEFENDANTS hired the PLAINTIFF in February 4, 2019, until his termination on
26 June 17, 2021 August of 2021. PLAINTIFF earned an hourly wage of \$12.10 to \$12.30 in 2019;
27 \$12.30 to \$13.30 in 2020; and \$13.30 to \$14.30 in 2021. The state minimum wage effective January
28 1, 2019 was \$12.00/hour; January 1, 2020 was \$13.00/hour; and effective January 1, 2021 was \$14.00
per hour for employers with 26 employees or more.

1 24. DEFENDANTS are the largest grocery store in the nation and employees thousands
2 of employees. Any contention by DEFENDANTS that Labor Code § 510 does not apply to the
3 PLAINTIFF and the Aggrieved Employees because they are covered by a collective bargaining
4 agreement, is invalidated by the fact that Labor Code § 514 exempts the application of Labor Code
5 §§ 510 and 511 to employees covered by a valid collective bargaining agreement applies only if the
6 agreement expressly provides for the wages, hours of work, and working conditions of the
7 employees, and if the agreement provides premium wage rates for all overtime hours worked and a
8 ***regular hourly rate of pay for those employees of not less than 30 percent more than the state***
9 ***minimum wage***. Clearly, PLAINTIFF did not make at least 30% more than the state minimum wage
10 during his entire employment with DEFENDANTS.

11 25. In March 2020, while the novel coronavirus had been in the country for at least a
12 month, cases began to jump at alarming rates as did the hospitalizations and deaths. Former President
13 Trump and other federal leaders initially claimed that the virus would not be a major problem, but
14 many changed their stance by the end of the month, and the virus was declared a national emergency.
15 Still, relatively little was understood about the disease as leading public health officials issued
16 guidance, including about mask-wearing and states like California issued stay-at-home orders
17 shutting down all non-essential businesses, travel and gatherings creating a ripple effect that crippled
18 the American economy for months to come. Grocery stores, like that of the DEFENDANTS, were
19 deemed to be an essential business and were permitted to remain open. Employees working at
20 essential businesses were called “frontline workers” or “frontline heroes” as they risked their lives
21 and faced hazardous working conditions because of the spread of Covid-19, which was exacerbated
22 by the extremely limited PPE supply.

23 26. To reward their heroic acts and dedication and retain employees, several essential
24 businesses implemented hazard pay premiums during this time to incentivize frontline workers.
25 DEFENDANTS implemented a non-discretionary “Appreciation Pay” or “Frontline Hero Award”,
26 constituting of extra pay in the amount of two (\$2.00) dollars per hour and four dollars per hour
27 (\$4.00).

28 27. PLAINTIFF and the CLASS worked for DEFENDANTS during the time when the

1 “Appreciation Pay” and the “Frontline Hero Award” was in effect. PLAINTIFF was entitled to
2 receive and in fact received “Appreciation Pay” and “Frontline Hero Award”. However, the
3 “Appreciate Pay” and “Frontline Hero Award” was not included in PLAINTIFF’S and the CLASS’
4 “regular rate of pay” for the purposes of overtime compensation. For instance, PLAINTIFF received
5 \$53.00 for 26.50 hours for the pay period ending April 26, 2020. On April 20, 2020, while the
6 “Appreciation Pay” was in effect, PLAINTIFF worked 8.25 minutes. However, PLAINTIFF only
7 received \$106.40 in regular pay ($\$13.30/\text{hr} \times 8 = \106.40) and overtime compensation in the amount
8 of \$5.24 for 0.25 minutes of overtime.

9 28. DEFENDANTS failed to include PLAINTIFF and the CLASS’ Appreciation Pay in
10 computing their regular rate for the purpose of computing their overtime compensation. Because the
11 value of the non-discretionary bonuses were not included in the calculation of the PLAINTIFF’S
12 regular rate of pay, DEFENDANTS were in violation of Cal. Lab. Code § 510.

13 29. Additionally, DEFENDANTS failed to pay PLAINTIFF and the Class for paid sick
14 leave at the employee’s regular rate of pay regular rate of pay, which includes hourly and non-hourly
15 pay, such as non-discretionary Appreciation Pay. The amount of earned but unpaid bonuses that the
16 PLAINTIFF and the CLASS was entitled to receive constitute “wages” within the meaning of § 200
17 of the California Labor Code because PLAINTIFF and the CLASS were promised additional
18 compensation as an incentive for the performance of such services to the benefit of the
19 DEFENDANTS. DEFENDANTS unjustly reaped the benefits of the services and labor performed
20 by PLAINTIFF and the CLASS but failed to pay them for their labor.

21 30. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS knew
22 or should have known that PLAINTIFF and CLASS were entitled to meal periods in accordance with
23 the Labor Code or payment of one (1) additional hour of pay at their regular rates of pay when they
24 were not provided with timely, uninterrupted, thirty (30) minute meal periods and that PLAINTIFF
25 and CLASS were not provided with all meal periods or payment of one (1) additional hour of pay at
26 their regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
27 period.

28 31. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS knew

1 or should have known that PLAINTIFF and the CLASS were entitled to rest periods in accordance
2 with the Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay
3 at their regular rates of pay when they were not provided with a compliant rest period and that
4 PLAINTIFF and CLASS were not provided compliant rest periods or payment of one (1) additional
5 hour of pay at their regular rates of pay when they were not provided a compliant rest period.

6 32. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS knew
7 or should have known that PLAINTIFF and the CLASS were entitled to receive complete and
8 accurate wage statements in accordance with California law. In violation of the California Labor
9 Code, PLAINTIFF and the CLASS were not provided complete and accurate wage statements.

10 33. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS knew
11 or should have known that they had a duty to maintain accurate and complete payroll records in
12 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly, and
13 intentionally failed to do so.

14 34. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS knew
15 or should have known that PLAINTIFF and the CLASS were entitled to timely payment of all wages
16 earned upon termination of employment. In violation of the California Labor Code, PLAINTIFF and
17 the CLASS did not receive payment of all wages due, including, but not limited to, overtime wages,
18 minimum wages, and meal and rest period premiums, within permissible time periods.

19 35. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS knew
20 or should have known that PLAINTIFF and the CLASS were entitled to timely payment of wages
21 during their employment. In violation of the California Labor Code, PLAINTIFF and the CLASS
22 did not receive payment of all wages, including, but not limited to, overtime wages, and meal and
23 rest period premiums, within permissible time periods.

24 36. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS knew
25 or should have known that PLAINTIFF and the CLASS were entitled to receive itemized wage
26 statements or separate written statements showing the amount of paid sick leave available, or paid
27 time off provided in lieu of sick leave. In violation of the California Labor Code, DEFENDANTS
28 failed to provide PLAINTIFF and CLASS with itemized wage statements or separate written

1 statements showing this information.

2 37. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS knew
3 or should have known that they had a duty to compensate PLAINTIFF and CLASS for all hours
4 worked, and that DEFENDANTS had the financial ability to pay such compensation, but willfully,
5 knowingly, and intentionally failed to do so, and falsely represented to PLAINTIFF and CLASS that
6 they would be paid properly their wages but failed to do so all in order to increase DEFENDANTS'
7 profits.

8 38. PLAINTIFF and the CLASS have been harmed by DEFENDANTS' unlawful
9 business policies and practices in that they did not receive the proper and correct amount, and have
10 had their earned wages be subject to unlawful forfeiture, as alleged herein, thereby diminishing their
11 agreed-upon compensation, in amounts to be proven at trial.

12 **CLASS ACTION ALLEGATIONS**

13 39. PLAINTIFF brings this lawsuit as a class action under Cal. Code Civ. Proc. Section
14 382, pursuant to California Business and Professions Code § 17200 *et seq.*, and the PAGA, California
15 Labor Code § 2698 *et seq.*, on behalf of himself and all persons within the class ("CLASS") as
16 follows:

17 **THE CLASS**

18 40. All current and former employees, who were employed by DEFENDANTS in the
19 State of California for a period of time within the four (4) years preceding the filing of this action
20 until the time of trial, "THE RELEVANT TIME PERIOD".

21 41. PLAINTIFF reserves the right under Rule 3.765, California Rules of Court, to amend
22 or modify the CLASS description with greater specificity or further division into subclasses or
23 limitations to particular issues.

24 42. This action has been brought and may properly be maintained as a class action under
25 the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of
26 interest in the litigation and the proposed CLASS is easily ascertainable. This action is appropriately
27 suited for a Class Action because:

28 43. **Ascertainable Class:** The CLASS is ascertainable in that its members may be

1 identified and located using information contained in DEFENDANTS' personnel records.

2 44. **Numerosity:** The potential members of the CLASS as defined are so numerous that
3 joinder of all members of the CLASS is impracticable. While the precise size of the CLASS has not
4 been ascertained at this time, PLAINTIFF is informed and believes, and based thereon allege, that
5 DEFENDANTS currently employees, and during THE RELEVANT TIME PERIOD employed, well
6 over 3000 persons in the State of California who fall within the CLASS definition. Accounting for
7 employees' turnover during THE RELEVANT PERIOD necessarily increases this number.

8 45. Additionally, this action has been brought and may properly be maintained as a
9 representative action because there is a well-defined community of interest in the litigation and the
10 Aggrieved Employees are easily ascertainable.

11 46. **Common Questions of Fact or Law:** This action involves questions of law and fact
12 common to the CLASS that predominate over questions affecting only individual class members.
13 The common questions of law and fact focuses on DEFENDANTS' systematic course of illegal
14 practices and policies, which were applied to all the entire CLASS in violation of the California
15 Labor Code, IWC Orders, the California Business and Professions Code, which prohibits unfair
16 business practices arising from such violations. These common questions of law and fact include,
17 without limitations:

- 18 a. Whether DEFENDANTS failed to pay their employees the proper regular rate of pay for
19 overtime, and double time wages due and owing to them;
- 20 b. Whether DEFENDANTS failed to issue accurately itemized wage statements to PLAINTIFF
21 and the CLASS, in violation of Labor Code §§ 226(a);
- 22 c. Whether DEFENDANTS paid PLAINTIFF and the CLASS their final wages beyond the time
23 frames set forth in Labor Code §§ 201-203.

24 47. **Typicality:** The claims of the PLAINTIFF is typical of the CLASS because
25 DEFENDANTS subjected all of their employees to identical violations of the California Labor Code,
26 the PAGA, and California Business and Professions Code by, *inter alia*, failing to pay the
27 PLAINTIFF and the CLASS for all of their hours worked at the proper regular rate of pay; failing to
28 provide accurate itemized wage statements for each pay period; and failing to pay their final wages

beyond the time frames set forth in Labor Code §§ 201-203.

48. **Adequacy of Representation:** PLAINTIFF is fully prepared to take all necessary steps to represent fairly and adequately the interest of the members of the CLASS. PLAINTIFF has no interests that are adverse to the interests of the CLASS. PLAINTIFF's attorney is ready, able and willing to fully and adequately represent the CLASS and PLAINTIFF.

49. **Superiority of Class Action:** A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all proposed members of the CLASS is not practicable, and questions of law and fact common to the proposed CLASS predominate over any questions affecting only individual members of the proposed CLASS. Each member of the proposed CLASS has been damaged and is entitled to recovery by reason of DEFENDANTS' illegal policies and/or practices.

50. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. PLAINTIFF is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action. Individualized litigation would also present the potential for inconsistent or contradictory judgments, in addition of duplication of efforts and expenses.

FIRST CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES
(VIOLATION OF CALIFORNIA LABOR CODE §§ 510, 1194, 1198; IWC WAGE
ORDER NO.4.)
(AGAINST ALL DEFENDANTS)

51. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

52. During the RELEVANT TIME PERIOD, PLAINTIFF and the CLASS were "non-exempt" employees of DEFENDANTS entitled to overtime compensation pursuant to Cal. Lab. Code § 510 who did not receive proper amount of compensation for overtime work performed. Specifically, DEFENDANTS failed to compensate PLAINTIFF and the CLASS, for all hours worked, including overtime at the rate of no less than one and one-half times the regular rate of pay, which it includes "Appreciation Pay" and the "Frontline Hero Award" pursuant to Lab. Code § 510.

1 53. By failing to pay PLAINTIFF and the CLASS at the rate of no less than one and one-half
2 times the regular rate of pay, which it includes “Appreciation Pay” and the “Frontline Hero Award”,
3 DEFENDANTS deprived PLAINTIFF and the CLASS proper protections and benefits of the laws
4 governing the payment of wages for all hours worked and overtime wages.

5 54. During the RELEVANT TIME PERIOD, PLAINTIFF and the CLASS regularly and/or
6 consistently worked in excess of eight (8) hours in a workday, and/or in excess of forty (40) hours in
7 a workweek. The precise number of overtime hours will be proven at trial. Despite the hours worked
8 by PLAINTIFF and the CLASS, DEFENDANTS intentionally, willfully, in bad faith, and in
9 knowing violation of the California Labor Code, and the applicable IWC Wage Order failed and
10 refused to compensate PLAINTIFF and the CLASS at the rate of no less than one and one-half times
11 the regular rate of pay, which it includes “Appreciation Pay” and the “Frontline Hero Award”,
12 pursuant to Lab. Code § 510 for all of the overtime hours worked.

13 55. At all relevant times, DEFENDANTS were aware of, and were under a duty to comply with
14 the overtime provisions of the IWO Wage Orders, and California Labor Code including, but not
15 limited to, California Labor Code §§510, 1194 and 1198.

16 56. The IWC Wage Order provides that DEFENDANTS are and were required to pay
17 PLAINTIFF and the CLASS employed by DEFENDANTS, and working more than eight (8) hours
18 in a day or more than forty (40) hours in a workweek, at a rate of time-and-one half the employee’s
19 regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty hours
20 (40) in a workweek.

21 57. The Applicable IWC Wage Order further provides that DEFENDANTS are and were
22 required to pay PLAINTIFF and the CLASS overtime compensation at the rate of two times their
23 regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

24 58. California Labor Code § 510 codifies the right to overtime compensation and provides, in
25 pertinent part:

26 “Any work in excess of eight hours in one workday and any work in excess of 40 hours in
27 any one workweek and the first eight hours worked on the seventh day of work in any one
workweek shall be compensated at the rate of no less than one and one-half times the **regular**
rate of pay for an employee.” [Emphasis added].

28 59. California Labor Code §1194, in pertinent part, provides:

1 “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than
2 the legal minimum wage or the legal overtime compensation applicable to the employee is
3 entitled to recover in a civil action the unpaid balance of the full amount of this minimum
wage or overtime compensation, including interest thereon, reasonable attorney’s fees and
cost of the suit.”

4 60. California Labor Code §1198, in pertinent part, provides:

5 “(t) the maximum hours of work and the standard conditions of labor fixed by the commission
6 shall be the maximum hours of work and the standard conditions of labor for employees. The
7 employment of any employee for longer hours than those fixed by the order or under
conditions of labor prohibited by the order is unlawful.”

8 61. By refusing to compensate PLAINTIFF and the CLASS the proper overtime wages earned,
9 DEFENDANTS violated those California Labor Code provisions cited herein as well as the
10 applicable IWC Wage Order, and their actions are therefore unlawful.

11 62. PLAINTIFF and the CLASS are entitled to receive the proper amount of overtime
12 compensation for all hours worked in excess of eight (8) hours in one workday and any work in
13 excess of forty (40) hours in any workweek and the first eight hours worked on the seventh day of
14 work in any one workweek at the rate of no less than one and one half times the regular rate of pay
15 for each employee. In determining the regular rate of pay for each CLASS member, all remuneration
16 paid to each, including but not limited to performance bonuses, must be calculated.

17 63. As a direct and proximate result of DEFENDANTS’ unlawful conduct, as set forth therein,
18 PLAINTIFF and the CLASS have sustained damages, including loss of earnings for hours of
19 overtime worked, in an amount to be established at trial.

20 64. Pursuant to California Labor Code §1194, PLAINTIFF and the CLASS are entitled to
21 recover unpaid overtime compensation and double time compensation, including interest thereon.

22 65. PLAINTIFF is also entitled to recover reasonable attorneys’ fees and costs, pursuant to
23 California Labor Code §1194(a).

24 66. During the RELEVANT TIME PERIOD, DEFENDANTS were PLAINTIFF’S and the
25 CLASS employer and/or person acting on behalf of the DEFENDANTS, within the meaning of
26 California Labor Code § 558, who violated or caused to be violated any section of the wage order
27 regulating the days and hours worked and, as such are each of the DEFENDANTS is individually
28

1 liable to each member of the CLASS for each such violations as set forth in the California Labor
2 Code.

3 67. Labor Code § 558 imposes upon DEFENDANTS, for each initial violation, a penalty of
4 \$50.00 for each underpaid employee for each pay period for which the employee was underpaid in
5 addition to an amount sufficient to recover the underpaid wages, which shall be paid to each affected
6 employee. Furthermore, Labor Code § 558 imposes upon DEFENDANTS, for each subsequent
7 violation, a penalty of \$100.00 for each underpaid employee for each pay period for which the
8 employee was underpaid, in addition to an amount sufficient to recover the underpaid wages, which
9 shall be paid to each affected employee.

10 68. PLAINTIFF on behalf of himself and the CLASS seeks all available remedies for
11 DEFENDANTS' violations including any and all wages due, penalties, monies, interest, attorney's
12 fees, and costs to the extent permitted by law.

13 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

14 **SECOND CAUSE OF ACTION**
15 **FAILURE TO PROVIDE MEAL PERIODS**
(VIOLATION OF IWC WAGE ORDER 4-2001, CAL. LAB. CODE §§ 226.7, 512)
16 **(AGAINST ALL DEFENDANTS)**

17 69. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as
18 though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

19 70. During the RELEVANT TIME PERIOD, the IWC Wage Order and California Labor Code
20 sections 226.7 and 512 were applicable to PLAINTIFF and the CLASS employed by
21 DEFENDANTS.

22 71. During the RELEVANT TIME PERIOD, PLAINTIFF and the CLASS were "non-exempt"
23 employees of DEFENDANTS and did not receive meal periods or premium pay in lieu of meal
24 periods.

25 72. By failing to comply with IWC Wage Order and California Labor Code sections 226.7 and
26 512, DEFENDANTS deprived PLAINTIFF and the CLASS proper protections and benefits of the
27 laws governing meal periods.

28 73. During the RELEVANT TIME PERIOD, DEFENDANTS were aware of, and under a duty
to comply with, California Labor Code §§226.7 and 512.

74. California Labor Code §226.7 provides:

“(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.”

Moreover, California Labor Code §512 provides:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.

75. Sections 11 and 12 of IWC Wage Order 4 mandate that the employer provide all applicable meal periods to employees. Section 11 of the applicable IWC Wage Order provides in pertinent part:

“No employer shall employ any person for a work period of more than of not less than 30 minutes... Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked.

If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order the employer shall provide the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.

76. PLAINTIFF and the CLASS regularly and consistently worked eight (8) hours or more per day but were not provided an uninterrupted, thirty-minute meal period within the first five hours of work each day. By failing to consistently provide PLAINTIFF and each member of the CLASS an uninterrupted thirty-minute meal period within the first five hours of work each day, DEFENDANTS violated the California Labor Code and applicable IWC Wage Order provisions.

77. During the RELEVANT TIME PERIOD, DEFENDANTS intentionally and willfully required PLAINTIFF and the CLASS to work during meal periods and failed to compensate PLAINTIFF and the CLASS the full meal period premium at their regular rate of pay, which includes the non-discretionary Appreciation Pay and the Frontline Hero Award, for work performed during meal periods.

1 78. PLAINTIFF is informed and believes and, on that basis, alleges, that DEFENDANTS failed
2 to pay the one-hour compensation as a premium payment to PLAINTIFF or any member of the
3 CLASS for all missed or interrupted meal breaks due to their violation of the California Labor Code
4 and applicable IWC Wage Order provisions.

5 79. Defendant's conduct violates the applicable IWC Wage Order and California Labor Code
6 sections 226.7 and 512(a).

7 80. As a direct and proximate result of DEFENDANTS unlawful conduct, as set forth herein,
8 PLAINTIFF and the CLASS have sustained damages including loss of compensation resulting from
9 missed meal periods, in an amount to be established at trial.

10 81. Pursuant to applicable IWC Wage Order and California Labor Code section 226.7(b),
11 PLAINTIFF and the CLASS are entitled to recover from DEFENDANTS one additional hour of pay
12 at the employee's regular rate of compensation for each and every workday the meal or rest period
13 is not provided. In determining the regular rate of pay for each CLASS member, all remuneration
14 paid to each, including but not limited to non-discretionary Appreciation Pay and the Frontline Hero
15 Award, which must be calculated.

16 82. During the RELEVANT TIME PERIOD, DEFENDANTS were and are the PLAINTIFF
17 and the CLASS' employers and/or persons acting on behalf of the DEFENDANTS, within the
18 meaning of California Labor Code § 558, who violated or caused to be violated any section of the
19 wage order regulating the days and hours worked and, as such are individually liable to each member
20 of the CLASS for each such violations as set forth in the California Labor Code.

21 83. Labor Code § 558 imposes upon DEFENDANTS, for each initial violation, a penalty of
22 \$50.00 for each underpaid employee for each pay period for which the employee was underpaid in
23 addition to an amount sufficient to recover the underpaid wages, which shall be paid to each affected
24 employee. Furthermore, Labor Code § 558 imposes upon DEFENDANTS, for each subsequent
25 violation, a penalty of \$100.00 for each underpaid employee for each pay period for which the
26 employee was underpaid, in addition to an amount sufficient to recover the underpaid wages, which
27 shall be paid to each affected employee.
28

1 84. As a direct result of DEFENDANTS' violations alleged herein, PLAINTIFF and the
2 CLASS have suffered and continue to suffer loss of wages and compensation, all in amounts to be
3 shown according to proof at trial and within the jurisdiction limitations of this Court. PLAINTIFF
4 and the CLASS seek all available remedies for DEFENDANTS' violations including, but not limited,
5 to any and all wages due, penalties, monies, interest, attorney's fees, and costs to the extent permitted
6 by law.

7 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

8 **THIRD CAUSE OF ACTION**
9 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**
10 **(IN VIOLATION OF IWC WAGE ORDER 7-2001, CAL. LAB. CODE§ 226.7)**
11 **(AGAINST ALL DEFENDANTS)**

12 85. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as
13 though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

14 86. During the RELEVANT TIME PERIOD, the IWC Wage Order and California Labor Code
15 sections 226.7 and 512 were applicable to PLAINTIFF and the Class employed by DEFENDANTS.

16 87. During the RELEVANT TIME PERIOD, PLAINTIFF and the CLASS were and continue
17 to be "non-exempt" employees of DEFENDANTS and did not receive rest periods or premium pay
18 in lieu of rest periods.

19 88. By failing to comply with California Labor Code sections 226.7 and 512, DEFENDANTS
20 deprived PLAINTIFF and the CLASS proper protections and benefits of the laws governing rest
21 periods.

22 89. During the RELEVANT TIME PERIOD, DEFENDANTS were aware of and under a duty
23 to comply with, California Labor Code §226.7 and Section 12 of Wage Order 7-2001.

24 90. California Labor Code. §226.7 states
25 "no employer shall require any employee to work during any meal or rest period mandated
26 by an applicable order of the Industrial Welfare Commission."

27 Section 12 of Wage Order No. 4-2001 provides in relevant part that:

28 (A) Every employer shall authorize and permit all employees to take rest periods, which in
so far as practicable shall be in the middle of each work period., The authorized 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. However, a rest period need not be authorized
for employees whose total daily work time is less than three and one-half (3 'A) hours.
Authorized rest period time shall be counted as hours worked for such there shall be no

deduction from wages.

1 91. During the RELEVANT TIME PERIOD, DEFENDANTS willfully required PLAINTIFF
2 and the CLASS to work four (4) or more hours without authorizing or permitting a ten (10) minute
3 rest period per each four (4) hours period worked.

4 92. During the RELEVANT TIME PERIOD, DEFENDANTS willfully required PLAINTIFF
5 and the CLASS to work during rest periods and failed to pay PLAINTIFF and the CLASS the full
6 rest period premium for work performed during rest periods.

7 93. If an employer fails to provide an employee a rest period in accordance with the applicable
8 provisions of this order, the employer shall pay the employee one (1) hour of pay at that employee's
9 regular rate of compensation for each workday that the rest period is not provided.

10 94. During the RELEVANT TIME PERIOD, DEFENDANTS failed to pay PLAINTIFF and
11 the CLASS the full rest period premium due at their regular rate of pay which includes the non-
12 discretionary Appreciation Pay and the Frontline Hero Award, pursuant to California Labor Code
13 section 226.7 for all missed rest breaks.

14 95. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(b),
15 PLAINTIFF and the CLASS are entitled to recover from DEFENDANTS one additional hour of pay
16 at the employees' regular rate of compensation for each and every workday that the rest period was
17 not provided. In determining the regular rate of pay for each CLASS member, all remuneration paid
18 to each, including but not limited to non-discretionary Appreciation Pay and the Frontline Hero
19 Award, must be calculated.

20 96. In committing the violations of state law as herein alleged, DEFENDANTS refused to
21 perform their obligations to authorize and permit rest periods and have also failed to pay rest premium
22 wages. As a direct result, PLAINTIFF and the CLASS have suffered, and continue to suffer,
23 substantial losses, including those related to the use and enjoyment of such compensation, wages,
24 and lost interest on such monies in seeking to compel DEFENDANTS to fully perform their
25 obligation under state law, all to their respective damage in amounts according to proof at trial and
26 within the jurisdictional limitations of this Court.

1 97. During the RELEVANT TIME PERIOD, DEFENDANTS are and/or were the PLAINTIFF
2 and the CLASS' employers and/or persons acting on behalf of DEFENDANTS within the meaning
3 of California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter I,
4 of the California Labor Code or any provision regulating hours and days of work in any Order of the
5 Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee,
6 which shall be paid to each affected employee, as set forth in Labor Code § 558.

7 98. Labor Code § 558 imposes upon DEFENDANTS for each initial violation a penalty of
8 \$50.00 for each underpaid employee for each pay period for which the employee was underpaid in
9 addition to an amount sufficient to recover the underpaid wages, which shall be paid to each affected
10 employee. Furthermore, Labor Code § 558 imposes upon DEFENDANTS for each subsequent
11 violation a penalty of \$100 for each underpaid employee for each pay period for which the employee
12 was underpaid, in addition to an amount sufficient to recover the underpaid wages, which shall be
13 paid to each affected employee.

14 99. The CLASS, including PLAINTIFF, suffered and continue to suffer loss of wages and
15 compensation, all in an amount to be shown according to proof at trial and within the jurisdictional
16 limitations of this Court.

17 100. PLAINTIFF seeks all available remedies for DEFENDANTS' violations including, but not
18 to, any and all wages due, penalties, interest, attorney's fees, costs to the extent permitted by law.

19 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

20 **FOURTH CAUSE OF ACTION**
21 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
22 **(VIOLATION OF CAL. LAB. CODE §§ 226(a)-(b), 1198.5**
23 **(Against All DEFENDANTS)**

24 101. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs
25 as though fully set forth in this cause of action, and incorporates them by reference, and further
26 alleges:

27 102. Labor Code § 226(a) requires employers to furnish their employees with each wage
28 payment an accurate, itemized writing that shows gross wages earned, total hours worked, all
deductions, net wages earned, the inclusive dates of the period for which the employee is paid, the

1 name of the employee and the portion of his or her social security number as required by law, all
2 applicable hourly rates in effect during the pay period, and the corresponding number of hours
3 worked at each hourly rate by the employee.

4 103. DEFENDANTS engages in a policy and practice of violating California Labor Code
5 §§ 226(a), by failing to provide PLAINTIFF and the CLASS with accurate itemized wage statements
6 in compliance with the statutory requirement of §226(a).

7 104. DEFENDANTS knew or should have known that PLAINTIFF and the CLASS were
8 entitled to receive accurate wage statements. In violation of the California Labor Code,
9 DEFENDANTS failed to provide PLAINTIFF and the CLASS members with itemized wage
10 statements or separate written statements *accurately* showing this information.

11 105. DEFENDANTS failed to provide wages statements to PLAINTIFF and the CLASS
12 that complied with Labor Code §§ 226, and 246(i).

13 106. PLAINTIFF and the CLASS, suffered and continue to suffer injuries, including
14 substantial losses related to the use and enjoyment of such wages, lost interest on such wages and
15 expenses and attorney's fees in seeking to compel DEFENDANTS to fully perform its obligations
16 under state law, all to their respective damage in amounts according to proof at trial. Pursuant to
17 Labor Code §§ 226(e)(2) and 226(c)(2)(B)(i), PLAINTIFF and the CLASS are deemed to have
18 suffered injury as a result of DEFENDANTS' failure to provide accurate and complete information
19 as required by Labor Code § 226(a).

20 107. Labor Code § 226, in part, permits employees suffering injury to collect actual
21 damages or the amount specified in Labor Code§ 226. Thus, Labor Code§ 226(e) requires
22 DEFENDANTS to pay the greater of all actual damages or fifty dollars (\$50.00) for the initial pay
23 period in which a violation occurred and one hundred dollars (\$100.00) per employee for each
24 violation in subsequent pay periods, plus attorney's fees and costs, to each member of the CLASS,
25 including PLAINTIFF, who were injured by DEFENDANTS' failure to comply with Labor Code §
26 226(a). The exact amount of the applicable penalty is all in an amount to be shown according to proof
27 at trial.

28 108. Labor Code § 226(g) permits an employee to bring an action for injunctive relief to

1 ensure compliance with Labor Code § 226. Thus, PLAINTIFF and the CLASS additionally seek
2 injunctive relief to ensure compliance with Labor Code § 226.

3 109. Furthermore, DEFENDANTS failed to comply with Lab Code 226(b) by failing to
4 produce PLAINTIFF'S wage statement pursuant to a written request to inspect and/or receive a copy
5 of the records. Counsel for Plaintiff submitted a signed written request by the Plaintiff to obtain his
6 wage statements; however, DEFENDANTS failed to produce the wage statements within 21 calendar
7 days from the date of the request. Lab Code 226 (c) states that "[a] violation of this subdivision is
8 an infraction."

9 110. Lab Code § 1198.5 provides:

10 (a) Every current and former employee, or his or her representative, has the right to inspect
11 and receive a copy of the personnel records that the employer maintains relating to the
employee's performance or to any grievance concerning the employee.

12 (b) (1) The employer shall make the contents of those personnel records available for
13 inspection to the current or former employee, or his or her representative, at reasonable
14 intervals and at reasonable times, but not later than 30 calendar days from the date the
15 employer receives a written request, unless the current or former employee, or his or her
16 representative, and the employer agree in writing to a date beyond 30 calendar days to
17 inspect the records, and the agreed-upon date does not exceed 35 calendar days from the
18 employer's receipt of the written request. Upon a written request from a current or former
19 employee, or his or her representative, the employer shall also provide a copy of the
20 personnel records, at a charge not to exceed the actual cost of reproduction, not later than 30
calendar days from the date the employer receives the request, unless the current or former
employee, or his or her representative, and the employer agree in writing to a date beyond
30 calendar days to produce a copy of the records, as long as the agreed-upon date does not
exceed 35 calendar days from the employer's receipt of the written request. Except as
provided in paragraph (2) of subdivision (c), the employer is not required to make those
personnel records or a copy thereof available at a time when the employee is actually
required to render service to the employer, if the requester is the employee.

21 (k) If an employer fails to permit a current or former employee, or his or her representative,
22 to inspect or copy personnel records within the times specified in this section, or times
23 agreed to by mutual agreement as provided in this section, the current or former employee
or the Labor Commissioner may recover a penalty of seven hundred fifty dollars (\$750)
from the employer.

24 (l) A current or former employee may also bring an action for injunctive relief to obtain
25 compliance with this section, and may recover costs and reasonable attorney's fees in such
an action.

26 111. Defendants willfully failed to permit the Plaintiff to inspect or copy his *entire*
27 personnel records within 30 calendar days of his request in direct violation of Cal. Lab. Code §
28

1 1198.5. When Plaintiff's counsel requested his personnel records, only a few pages of records was
2 produced, omitting critical documents.

3 112. PLAINTIFF seeks all available remedies for DEFENDANTS' violations including,
4 but not limited to, any and all wages due, actual damages, penalties, payments pursuant to Labor
5 Code § 226(e) and 226.3, monies, interest, attorney's fees, costs and injunctive relief.

6 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

7 **FIFTH CAUSE OF ACTION**
8 **WAITING TIME PENALTIES**
9 **(VIOLATION OF CAL. LAB. CODE §§ 201, 202, 203)**
10 **(Against All DEFENDANTS)**

11 113. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs
12 as though fully set forth in this cause of action, and incorporates them by reference, and further
13 alleges:

14 114. At all times herein mentioned, PLAINTIFF and the CLASS were employees of
15 DEFENDANTS and DEFENDANTS were subject to California law.

16 115. California Labor Code §§ 201 and 202 require that an employer promptly pay all
17 wages due to quitting or discharged employees. Labor Code section 203 provides a penalty for the
18 willful failure to pay all wages due to an employee who is discharged under section 201 or quit under
19 § 202. This penalty consists of an amount equal to the sum of the employee's wages at the
20 employee's prior rate of pay, until the unpaid wages are paid, in an amount not to exceed the
21 equivalent of 30 days' pay.

22 116. As set forth in § 201, upon the end of the PLAINTIFF's and the CLASS' employment,
23 DEFENDANTS were obligated to pay all compensation earned and unpaid at the time of termination.
24 DEFENDANTS failed to do so.

25 117. At the time of termination of the PLAINTIFF and the CLASS, DEFENDANTS failed
26 to timely pay the PLAINTIFF and the CLASS for all their wages, including overtime compensation
27 and meal and rest period premiums. DEFENDANTS are obligated to pay PLAINTIFF and the
28 CLASS waiting-time penalty equivalent to thirty (30) full working days' worth of wages.

1 DEFENDANTS violated 201-203 by willfully failing to pay all wages due to PLAINTIFF and the
2 CLASS who have been discharge or who have quit.

3 118. PLAINTIFF seeks costs, interest, disbursements, and attorneys' fees, as provided by
4 Labor Code §§ 218.5 and 218.6, 1194(a), under PAGA and any other relevant statutes.

5 **SIXTH CAUSE OF ACTION**
6 **INJUNCTIVE RELIEF**
7 **(Against All DEFENDANTS)**

8 119. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs
9 as though fully set forth in this cause of action, and incorporates them by reference, and further
10 alleges:

11 120. DEFENDANTS unlawful conduct of failing to comply with California law, including
12 but not limited to, Cal. Lab. Code §§ 510, 246 threatens real and immediate harm to PLAINTIFF,
13 Aggrieved, Employees, and the CLASS who will suffer irreparable harm.

14 121. PLAINTIFF is therefore entitled to an order restraining and ordering DEFENDANTS,
15 representatives, attorneys, servants, and agents from further harm pending final judgment on this
16 matter.

17 **SEVENTH CAUSE OF ACTION**
18 **UNFAIR BUSINESS PRACTICES IN VIOLATION OF CALIFORNIA BUSINESS AND**
19 **PROFESSIONS CODE §§ 17200-17208**
20 **(AGAINST ALL DEFENDANTS)**

21 122. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs
22 as though fully set forth in this cause of action, and incorporates them by reference, and further
23 alleges:

24 123. The foregoing conduct, as alleged, violates the California Unfair Competition Law
25 ("UCL"), Cal. Bus. & Prof. Code § 17200 *et seq.* Section 17200 of the Cal. Bus. & Prof. Code
26 prohibits unfair competition by prohibiting, *inter alia*, any unlawful or unfair business acts or
27 practices.

28 124. Throughout the course of PLAINTIFF's employment, DEFENDANTS committed
acts of unfair competition, as defined by the UCL, by, among other things, engaging in the acts and
practices described herein, including but not limited to, failing to pay employees at the rate of no less
than one and one-half times the regular rate of pay, which includes Appreciation Pay pursuant to

1 Lab. Code § 510; failing to pay employees paid sick time under Cal. Lab. Code 246 at the regular
2 rate of pay for the workweek in which the employee uses paid sick time; failing to provide accurate
3 itemized wage statements for each pay period; and failing to pay wages upon termination of
4 employment.

5 125. DEFENDANTS' conduct as herein alleged has damaged the PLAINTIFFS and
6 therefore was substantially injurious to the PLAINTIFF and the CLASS.

7 126. DEFENDANTS' course of conduct, acts, and practices in violation of the California
8 laws mentioned herein constitute a separate and independent violation of the UCL. DEFENDANTS'
9 conduct described herein violates the policy or spirit of such laws or otherwise significantly threatens
10 or harms competition. PLAINTIFF seeks disgorgement in the amount of the respective unpaid wages
11 and equity and such other legal and equitable relief from DEFENDANTS' unlawful and willful
12 conduct as the Court deems just and proper.

13 127. WHEREFORE, PLAINTIFF requests the relief as described below.

14 **EIGHTH CAUSE OF ACTION**
15 **PENALTIES, PURSUANT TO LABOR CODE § 2699 FOR VIOLATIONS OF LABOR**
16 **CODE §§ 221, 224, 225.5, 510, 1194, 1198, 558, 226.7, 512, 201, 202, 203, 1174, 226, 226.3,**
17 **246(a), 246(i), 246.5(a), 246(l), 2810.5, 1197.5 (b), 1198.5, and 432.3(a).**
18 **(AGAINST ALL DEFENDANTS)**

19 128. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs
20 as though fully set forth in this cause of action, and incorporates them by reference, and further
21 alleges:

22 129. Cal. Labor Code § 2698 *et seq.*, the Labor Code Private Attorney General Act of 2004
23 expressly establishes that any provision of the Cal. Labor Code which provides for a civil penalty to
24 be assessed and collected by the Labor and Workforce Development Agency, or any of its
25 departments, divisions, commissions, boards agencies or employees for a violation of the Cal. Labor
26 Code, may be recovered through a civil action brought by an aggrieved employee on behalf of
27 himself or herself, and collectively on behalf of all other current or former employees.

28 130. Whenever the Labor and Workforce Development Agency, or any of its departments,
divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a

1 court in a civil action is authorized to exercise the same discretion, subject to the same limitation and
2 conditions, to assess a civil penalty.

3 131. PLAINTIFF, and the CLASS are “Aggrieved Employees” as defined by Cal. Labor
4 Code § 2699 in that they are all current and former employees of DEFENDANTS, and one or more
5 of the alleged violations was committed against them.

6 132. PLAINTIFF has complied with the Notice and administrative provisions of PAGA,
7 PLAINTIFF holds a right to bring an action on behalf of him and other employees acting as a proxy
8 of the LWDA. Pursuant to Labor Code § 2699 *et seq.*, PLAINTIFF seeks to recover civil penalties
9 for which DEFENDANTS are liable as a result of violations of the Labor Code, as set forth in this
10 Complaint and the Labor Code Private Attorney General Notice attached hereto as Exhibit “1” and
11 incorporated by reference including, but not limited to, violations of labor code §§ Labor Code §§
12 221, 224, 225.5, 510, 1194, 1198, 558, 226.7, 512, 201, 202, 203, 1174, 226, 226.3, 246(a), 246(i),
13 246.5(a), 246(l), 2810.5, 1197.5 (b), 1198.5, and 432.3(a).

14 **Pay Discrimination Based on Race:**

15 133. Lab. Code § 1197.5(b) states that

16 “[a]n employer shall not pay any of its employees at wage rates less than the rates paid to
17 employees of another race or ethnicity for substantially similar work, when viewed as a
18 composite of skill, effort, and responsibility, and performed under similar working
conditions except where the employer demonstrates:

19 (1) The wage differential is based upon one or more of the following factors:

20 (A) A seniority system.

21 (B) A merit system.

22 (C) A system that measures earnings by quantity or quality of production.

23 (D) A bona fide factor other than race or ethnicity, such as education, training, or
24 experience. This factor shall apply only if the employer demonstrates that the factor is not
25 based on or derived from a race- or ethnicity-based differential in compensation, is job
26 related with respect to the position in question, and is consistent with a business necessity.
For purposes of this subparagraph, “business necessity” means an overriding legitimate
business purpose such that the factor relied upon effectively fulfills the business purpose it
is supposed to serve. This defense shall not apply if the employee demonstrates that an
alternative business practice exists that would serve the same business purpose without
producing the wage differential.

27 (2) Each factor relied upon is applied reasonably.

28 (3) The one or more factors relied upon account for the entire wage differential.

1 (4) Prior salary shall not justify any disparity in compensation. Nothing in this section shall
2 be interpreted to mean that an employer may not make a compensation decision based on a
3 current employee's existing salary, so long as any wage differential resulting from that
4 compensation decision is justified by one or more of the factors listed in this subdivision.

5 134. Lab. Code §432.3 (a) states, in pertinent part:

6 "An employer shall not rely on the salary history information of an applicant for
7 employment as a factor in determining whether to offer employment to an applicant or what
8 salary to offer an applicant."

9 135. PLAINTIFF is an African American and alleges that DEFENDANTS violated Cal.
10 Lab. Code §§ 1197.5(b) and 432.3 in that PLAINTIFF and the Aggrieved Employees of the African
11 American race were subject to hiring and compensation practices that resulted in a disparity in
12 compensation based on their race that violated Cal. Lab. Code §§ 1197.5(b) and/or 432.3.

13 **Failure to Provide Suitable Seating (Violation of Labor Code §1198, and IWC Order No. 7, § 14)**

14 136. California Labor Code section 1198 makes it illegal to employ an employee under
15 conditions of labor that are prohibited by the applicable wage order. The Labor Code provides that
16 labor conditions set by the Industrial Welfare Commission (Commission) shall be the standard labor
17 conditions for employees. A Commission wage order provides that employees shall be provided
18 suitable seating, if reasonable, during the performance of their duties. Defendants are in violation of
19 the Industrial Wage Order by failing to provide Plaintiff's and Aggrieved Employees with suitable
20 seating even though providing such seating is reasonable during the performance of their duties,
21 therefore, Defendants have violated Lab Code § 1198.

22 137. PAGA permits an "aggrieved employee" to recover penalties on behalf of himself or
23 herself and other current and former employees as a result of the employer's violations of certain
24 sections of the California Labor Code. PLAINTIFF is an aggrieved employee, in that PLAINTIFF
25 was employed by DEFENDANTS and was not provided with a seat, in violation of Lab. Code section
26 1198 and the Wage Order 7-2001, section 14.

27 138. A violation of Lab. Code section 1198 gives rise to private right of action under
28 PAGA. *Home Depot v. Superior Ct.*, 191 Cal.App.4th 210 (2011), wherein aggrieved employees
obtained Court of Appeal rulings that California workers have private right of action for civil
penalties against employers who violate minimum labor conditions standards guaranteed by IWC
Wage Orders. *Id. See also, Bright v. 994 Stores*, 189 Cal.App.4th 1472 (2010.)

1 139. PLAINTIFF and the CLASS are Aggrieved Employees entitled to penalties against
2 DEFENDANTS as provided under Lab. Code section 2699(f), plus reasonable attorneys' fees and
3 costs, in amounts to be proved at trial.

4 **Failure To Provide Paid Sick Leave At The Employees' Regular Rate Of Pay:**

5 140. Labor Code 246(a) requires an employer to provide employees that work in California
6 on or after July 1, 2015, for 30 or more days within a year from the commencement of employment,
7 paid sick days to accrue at a rate of not less than one hour per every 30 hours worked or in the
8 alternative must comply with the requirements of section 246(b)(3).

9 **141. Section 246(l) provides:**

10 (l) For the purposes of this section, an employer shall calculate paid sick leave using any of
the following calculations:

11 (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the
12 regular rate of pay for the workweek in which the employee uses paid sick time, whether or
not the employee actually works overtime in that workweek.

13 (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's
14 total wages, not including overtime premium pay, by the employee's total hours worked in
the full pay periods of the prior 90 days of employment.

15 (3) Paid sick time for exempt employees shall be calculated in the same manner as the
16 employer calculates wages for other forms of paid leave time.

17 142. DEFENDANTS failed to comply with Labor Code § 246(l)(1)-(2), by failing to pay
18 PLAINTIFF and Aggrieved Employees paid sick leave at the employee's regular rate of pay for the
19 workweek in which the employee uses paid sick leave. Employers may calculate the regular rate of
20 pay either based on the workweek in which the employee uses sick leave or by using a 90-day look
21 back period.

22 143. DEFENDANTS did not pay the PLAINTIFF the proper amount taking into account his
23 regular rate of pay which should have included his Appreciation Pay and the Frontline Hero
24 Award.

25 144. California Labor Code §246(i) provides "[a]n employer shall provide an employee
26 with written notice that sets forth the amount of paid sick leave available, or paid time off leave an
27 employer provides in lieu of sick leave, for use on either the employee's itemized wage statement
28 described in Section 226 or in a separate writing provided on the designated pay date with the

1 employee's payment of wages. If an employer provides unlimited paid sick leave or unlimited paid
2 time off to an employee, the employer may satisfy this section by indicating on the notice or the
3 employee's itemized wage statement "unlimited." The penalties described in this article for a
4 violation of this subdivision shall be in lieu of the penalties for a violation of Section 226. This
5 subdivision shall apply to employers covered by Wage Order 11 or 12 of the Industrial Welfare
6 Commission only on and after January 21, 2016."

7 **Unlawful Deductions of Employees' Wages:**

8 145. California Labor Code §221 makes it unlawful for any employer to collect or receive
9 from an employee any part of wages theretofore paid by said employer to said employee.
10 DEFENDANTS engaged in a policy and practice that required all Aggrieved Employees to join the
11 union, and upon information and belief, deducted union dues from employee's wages **without proper**
12 **written authorization.**

13 146. DEFENDANTS' policy and practice of deducting from Aggrieved Employees' wages
14 union dues **without proper written authorization** is not permitted under Labor Code §224. In fact,
15 §225.5 of the Code provides penalties for any person that unlawfully withholds wages due any
16 employee.

17 **Wage Theft Protection Act (Violation of Labor Code § 2810.5):**

18 147. The California Wage Theft Prevention Act of 2011 ("WTPA") became effective on
19 January 1, 2012. Among other provisions, the WTPA adds section 2810.5 to the California Labor
20 Code. The act requires that all employers provide each employee with a written notice containing
21 specified information. The notice must be in the language the employer normally uses to
22 communicate employment-related information to the employee. Specifically, employers are
23 required to provide each employee, at the time of hiring, with a written notice containing the
24 following information: (1) the rate or rates of pay "and basis thereof," whether paid by the hour, shift,
25 day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable;
26 (2) allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances;
27 (3) the regular payday designated by the employer in accordance with the requirements of the Labor
28 Code; (4) the name of the employer, including any "doing business as" names used by the employer;

1 (5) the physical address of the employer's main office or principal place of business, and a mailing
2 address, if different; (6) the telephone number of the employer; (7) the name, address, and telephone
3 number of the employer's workers' compensation insurance carrier; and (8) any other information the
4 Labor Commissioner deems material and necessary.

5 148. PLAINTIFF was a non-exempt employee entitled to notice pursuant Cal. Lab. Code
6 § 2810.5. Cal. Labor Code § 2810.5 is aimed at informing employees about such fundamental and
7 material information concerning their pay and rates of pay under an employment relationship.

8 149. DEFENDANTS willfully, and intentionally failed to comply with the requirements
9 of Cal. Lab. Code § 2810.5.

10 150. Labor Code section 1174(d) requires an employer to keep, at a central location in *the*
11 *state* or at the plants or establishments at which employees are employed, payroll records showing
12 the hours worked daily by, and the wages paid to employees employed at the respective plants or
13 establishments. These records shall be kept on file for not less than three years.

14 151. DEFENDANTS engage in a policy and practice of failing to maintain payroll records,
15 and records pertaining to current and former Aggrieved Employees within the state as provided in
16 section 1174(c).

17 152. As a result of the violations alleged herein, PLAINTIFF, individually and on behalf
18 of all Aggrieved Employees in their capacity as private attorneys general seeks penalties under Labor
19 Code § 2699(f), which states in relevant part:

20 For all provisions of this code except those for which a civil penalty is specifically provided,
21 there is established a civil penalty for a violation of these provisions as follows: ... (2) If, at
22 the time of the alleged violation, the person employs one or more employees, the civil penalty
23 is one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial
24 violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for
25 each subsequent violation.

26 153. To the extent that any violation alleged herein does not carry penalties under Cal. Labor
27 Code § 2699(a), PLAINTIFF seeks civil penalties pursuant to Cal. Lab. Code § 2699(f) for
28 PLAINTIFF and each member of the CLASS for each pay period in which they were aggrieved, in
the amounts established by Cal. Lab. Code § 2699(f).

154. For each such violations, PLAINTIFF and all other aggrieved employees are entitled to

1 penalties in an amount to be shown at the time of trial. The penalties will be allocated 75% to LWDA,
2 and 25% to the CLASS, (i.e. affected employees.)

3 155. Pursuant to Cal. Labor Code §§2699(g)(1) PLAINTIFF is entitled to seek and recover
4 reasonable attorneys' fees and costs.

5 156. PLAINTIFF, on behalf of himself and the Aggrieved Employees, requests relief through
6 PAGA as described herein and below.

7 **DEMAND FOR JURY TRIAL**

8 PLAINTIFF, hereby, demands a trial by jury on all issues so triable.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, PLAINTIFF, on behalf of himself, the CLASS, and Aggrieved Employees
11 prays for relief and judgment against DEFENDANTS, jointly and severally, as follows:

12 1. For an Order certifying the proposed CLASS and/or any other appropriate subclasses
13 under CCP § 382;

14 2. For an Order appointing PLAINTIFF as the representative of the CLASS;

15 3. For an Order appointing counsel for PLAINTIFF as counsel for the CLASS;

16 4. For a finding that DEFENDANTS violated the provisions of the California Labor Code,
17 including but not limited to, §§ 221, 224, 225.5, 510, 1194, 1198, 558, 226.7, 512, 201, 202, 203,
18 1174, 226, 226.3, 246(a), 246(i), 246.5(a), 246(l), 2810.5, 1197.5 (b), 1198.5, 432.3(a), 2699, *et seq.*
19 as to PLAINTIFF and the CLASS;

20 5. That the Court declare, adjudge, and decree that DEFENDANTS violated California
21 Business and Professions Code §§ 17200 *et seq.* as alleged herein;

22 6. That the Court make an award to PLAINTIFF and the CLASS of damages for the
23 amount of unpaid wages, including interest thereon and penalties, in amounts to be proven, in a
24 formulaic manner, at trial;

25 7. For special damages, according to proof;

26 8. For actual damages pursuant to Labor Code § 226(e);

27 9. For reasonable attorneys' fees as provided by statute, including but not limited to
28 California Code of Civil Procedures § 1021.5 and California Labor Code §§ 218.5, 226, 1194;

1 10. For penalties as permitted under California Labor Code for violations of each of the
2 sections identified herein, including but not limited to §§210, 225.5, 226, 226.3, 1174.5, and 558;

3 11. For waiting time penalties and other penalties according to proof pursuant to California
4 Labor Code section 203 for all employees who have left DEFENDANTS' employment;

5 12. For injunctive relief, including but not limited to, pursuant to California Labor Code
6 section 226(h);

7 13. For cost of suit herein;

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

12 15. For disgorgement of all monies which DEFENDANTS have illegally gained;

13 16. For an award of additional hour of pay at the regular rate of compensation pursuant to
14 Labor Code §226.7(b) for each meal and rest period not in compliance with the applicable Wage
15 Order of the IWC;

16 17. For penalties and subsequent violation of a section of Chapter 1 of Labor Code, Div. 2,
17 Part 2, or any provision regulating hours and days of work in any Order of the IWC for each
18 underpaid employee for each pay period for which the employee was underpaid, in addition to an
19 amount sufficient to recover the underpaid wages to be paid to each affected employee pursuant to
20 Labor Code §558;

21 18. For penalties according to the schedule as laid out in PAGA: for any initial violation,
22 one hundred (\$100) dollars for each aggrieved employee per pay period; two hundred (\$200) dollars
23 for each aggrieved employee per pay period for any subsequent violation, and reasonable attorneys'
24 fees and costs pursuant to California Labor Code § 2699;

25 19. For an accounting to determine all money wrongfully obtained and held by
26 DEFENDANTS;

27 20. For all other Orders, findings, and determinations identified and sought in this
28 Complaint and/or the Court finds just and proper;

1 21. For prejudgment interest, and post judgment interest, according to proof;

2 22. For any other such relief as the Court deems just and proper due to the misconduct
3 committed by the DEFENDANTS as alleged in this Complaint.

4 23. PLAINTIFF reserves the right to amend her prayer for relief.

5

6

7 Dated: June 10, 2022

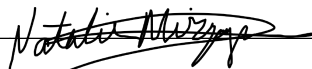
Respectfully submitted,

8

9

MIRZAYAN LAW, APLC

10

By:  _____

11

Natalie Mirzayan, Esq.

12

Attorney for Plaintiff

13

GLENN KNOTT and the PROPOSED CLASS

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EXHIBIT 1

LAW OFFICES OF NATALIE MIRZAYAN

March 9, 2022



VIA ONLINE FILING

Labor & Workforce Development Agency

<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

1515 Clay Street, Suite 801

Oakland, CA 94612

VIA CERTIFIED MAIL

Albertsons Companies, Inc.

and The Vons Companies, Inc.

P.O. Box 20, Corp Tax Dept

Boise, Id 83726-0020

VIA CERTIFIED MAIL

Kevin M. Curry (Chief Executive Officer)

1421 Manhattan Avenue

Fullerton, CA 92831

VIA CERTIFIED MAIL

CT Corporation System

Agent for Service of Process for

Albertsons Companies, Inc.

and The Vons Companies, Inc.

330 N. Brand Blvd, Ste. 700

Glendale, CA 91203

Re: **Notification Of Labor Code Private Attorney General Action, Labor Code 2698
et. seq. Against The Vons Companies, Inc. and Albertsons Companies, Inc.**

Dear Sir or Madame:

This notification is provided in advance of a civil action under Labor Code Private Attorneys General Act of 2004, ("PAGA"). This office represents Mr. Glenn Knott ("Glenn" or "Plaintiff") who was employed by the Vons Companies, Inc., Albertsons Companies, Inc., and Kevin M. Curry ("Defendants") as a Courtesy clerk/Cashier at 1260 W Redondo Beach Blvd, Gardena, CA 90247 between approximately February 4, 2019, until his unlawful termination on or about June 17, 2021. Plaintiff earned an hourly wage of \$12.10 to \$12.30 in 2019; \$12.30 to

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mirzayanlaw@outlook.com

\$13.30 in 2020; and \$13.30 to \$14.30 in 2021. The state minimum wage effective January 1, 2019 was \$12.00/hour; January 1, 2020 was \$13.00/hour; and effective January 1, 2021 was \$14.00 per hour for employers with 26 employees or more. Defendants are the largest grocery store in the nation and employees thousands of employees. Any contention by Defendants that Labor Code § 510 does not apply to the Plaintiff and the Aggrieved Employees because they are covered by a collective bargaining agreement, is invalidated by the fact that Labor Code § 514 exempts the application of Labor Code §§ 510 and 511 to employees covered by a valid collective bargaining agreement applies only if the agreement expressly provides for the wages, hours of work, and working conditions of the employees, and if the agreement provides premium wage rates for all overtime hours worked and a ***regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage***. Clearly, Plaintiff did not make at least 30% more than the state minimum wage during his entire employment with Defendants.

This letter is a notice and a request, pursuant to California Labor Code §2699.3 that your agency investigates the claims in this impending civil action. If the agency does not intend to investigate the alleged violations, we specifically and respectfully request notification so that we can file our civil action to include our PAGA claims.

This action is brought on behalf of the Plaintiff and other similarly situated and aggrieved current and former employees of Defendants working in the state of California (hereinafter “**Aggrieved Employees**”). The impending action is to recover penalties for the following Labor Code Violations as detailed below:

I. Violation of Labor Code §§ 510, 1194, 1198, 558 (Payment for Overtime and Double time):

In March 2020, while the novel coronavirus had been in the country for at least a month, cases began to jump at alarming rates as did the hospitalizations and deaths. Former President Trump and other federal leaders initially claimed that the virus would not a major problem, but many changed their stance by the end of the month and the virus was declared a national emergency. Still, relatively little was understood about the disease as leading public health officials issued guidance, including about mask-wearing and states like California issued stay-at-home orders shutting down all non-essential businesses, travel and gatherings creating a ripple effect that crippled the American economy for months to come. Grocery stores, like that of the Defendants, were deemed to be an essential business and were permitted to remain open. Employees working at essential businesses were called “frontline workers” or “frontline heroes” as they risked their lives and faced hazardous working conditions because of the spread of Covid-19, which was exacerbated by the extremely limited PPE supply.

To reward their heroic acts and dedication and retain employees, several essential businesses implemented hazard pay premiums during this time to incentivize frontline workers. Defendants implemented a non-discretionary “Appreciation Pay” or “Frontline Hero Award”, constituting of extra pay in the amount of two (\$2.00) dollars per hour and four dollars per hour (\$4.00).

Plaintiff worked for Defendants during the time when the “Appreciation Pay” and the “Frontline Hero Award” was in effect and was entitled to receive and in fact received “Appreciation Pay” and “Frontline Hero Award”. However, the “Appreciate Pay” and “Frontline Hero Award” was not included in Plaintiff’s and the Aggrieved Employees “regular rate of pay” for the purposes of overtime compensation. For instance, Plaintiff received \$53.00 for 26.50 hours for the pay period ending April 26, 2020. On April 20, 2020, while the “Appreciation Pay” was in effect, Plaintiff worked 8.25 minutes. However, Plaintiff only received \$106.40 in regular pay ($\$13.30/\text{hr} \times 8 = \106.40) and overtime compensation in the amount of \$5.24 for 0.25 minutes of overtime. This clearly means that Defendants failed to include his Appreciation Pay in computing his regular rate for the purpose of computing his overtime compensation.

California Labor Code § 510 codifies the right to overtime compensation and provides, in pertinent part:

“Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.” [Emphasis added].

California Labor Code § 1194, in pertinent part, provides:

“Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal **overtime compensation** applicable to the employee is entitled to recover in a civil action *the unpaid balance of the full amount* of this minimum wage or **overtime compensation, including interest thereon, reasonable attorney’s fees and cost of the suit.**” [Emphasis added].

California Labor Code § 1198, in pertinent part, provides:

“The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Labor Code § 558 provides:

(a) Any 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 in addition to an amount sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(3) Wages recovered pursuant to this section shall be paid to the affected employee.

(b) If upon inspection or investigation the Labor Commissioner determines that a person had paid or caused to be paid a wage for overtime work in violation of any provision of this chapter, any provision regulating hours and days of work in any order of the Industrial Welfare Commission, or any applicable local overtime law, the Labor Commissioner may issue a citation. The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for a violation of this chapter shall be the same as those set out in Section 1197.1.

(c) In a jurisdiction where a local entity has the legal authority to issue a citation against an employer for a violation of any applicable local overtime law, the Labor Commissioner, pursuant to a request from the local entity, may issue a citation against an employer for a violation of any applicable local overtime law if the local entity has not cited the employer for the same violation. If the Labor Commissioner issues a citation, the local entity shall not cite the employer for the same violation.

(d) The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.

(e) This section does not change the applicability of local overtime wage laws to any entity.

As stated above, Defendants engaged in a policy and practice of suffering their employees to work more than 8 hours per day and/or forty hours in a work week by failing to compensate them for overtime and double time as required by law. Specifically, Defendants failed to properly calculate Plaintiff's and the Aggrieved Employees' "regular rate of pay" for purposes of overtime and double time compensation because the value of the employee's non-discretionary (the Appreciation Pay and the Frontline Hero Award) was not included in the calculation of the Plaintiff's regular rate of pay in violation of Cal. Lab. Code § 510.

Therefore, Plaintiff and Aggrieved Employees were entitled to receive certain wages for overtime and double time compensation but were not properly paid for overtime and double time hours.

II. Labor Code §§ 246(a), 246(i), 246.5(a):

Labor Code 246(a) requires an employer to provide employees that work in California on or after July 1, 2015, for 30 or more days within a year from the commencement of employment, paid sick days to accrue at a rate of not less than one hour per every 30 hours worked or in the alternative must comply with the requirements of section 246(b)(3).

Section 246(i) requires an employer to provide an employee with written notice that sets forth the amount of paid sick leave *available*, or PTO leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement as described in Section 226 or in a

separate writing provided on the designated pay date with the employees' payment of wages. If an employer provides unlimited paid sick leave or unlimited paid time off to an employee, the employer may satisfy this section by indicating on the notice or the employee's itemized wage statement "unlimited."

Section 246(l) provides:

(l) For the purposes of this section, an employer shall calculate paid sick leave using any of the following calculations:

(1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.

(2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

(3) Paid sick time for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

Defendants failed to comply with Labor Code § 246(l)(1)-(2), by failing to pay Plaintiff and Aggrieved Employees paid sick leave at the employee's regular rate of pay for the workweek in which the employee uses paid sick leave. Employers may calculate the regular rate of pay either based on the workweek in which the employee uses sick leave or by using a 90-day look back period. Clearly, Defendants did not pay the Plaintiff the proper amount taking into account his regular rate of pay which should have included his Appreciation Pay and the Frontline Hero Award.

III. Violation of Labor Code §§ 226.7 and 512 (Meal and Rest Break Period):

Defendants violated Labor Code § 226.7 which requires employers to provide a ten-minute rest period during each four-hour of work or major fraction thereof. Defendants further violated Labor Code § 226.7 and 512 by failing to provide Plaintiff and all Aggrieved Employees with a meal period of not less than 30 minutes for each work period more than 5 hours per day and a second meal period of not less than 30 minutes for a work period of more than 10 hours-day. The meal period must be provided prior to the 5th hour of work. California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Defendants required Plaintiff and other Aggrieved Employees to work during meal and rest periods and failed to compensate them properly for missed meal and rest periods, including but not limited to, failing to pay them any premium pay at their regular rate of pay which includes the non-discretionary Appreciation Pay and the Frontline Hero Award.

IV. Violation of Labor Code §§ 201, 202, 203 (Waiting Time Penalty):

California Labor Code section 201 provides that if an employer discharges an employee, the employee's wages that have been earned and are unpaid at the time of discharge shall be paid immediately. Labor Code § 202 provides that if an employee quits, his or her wages become due no later than 72 hours thereafter or if an employee gives 72-hours previous notice of his or her intention to quit, the employees' wages are due at the time of quitting. Labor Code §203 provides that if the employer willfully fails to pay any wages of an employee who is discharged or who quits, the employee's wages shall continue as a penalty from the due date of the payment of wages, at the same rate, until such wages paid, or an action commenced, but not more than 30 days. Defendants willfully failed to provide Plaintiff and the Aggrieved Employees with all wages due and owing, including all regular and overtime wages, and meal and rest period premium wages as specified by Labor Code §§ 201 and 202, as alleged herein.

As a result, Defendants are liable for wages due, interest, and waiting time penalties, any other statutory penalties, other damages together with attorneys' fees and costs.

V. Violation of Labor Code §§ 226, and 226.3:

Labor Code 226 requires employers to maintain accurate records for each employee's hours of work and to provide each employee with an accurate wage statements in writing setting forth, among other things: gross wages earned; total hours worked by the employee; net wages earned; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, all deductions made, and the name and address of the legal entity of the employer

Defendants engage in a policy and practice of willfully and intentionally failing to furnish their employees with accurate itemized wage statements in compliance with the statutory requirement of §226(a). Defendants knowingly and intentionally failed to provide to the Plaintiff and the Aggrieved Employees, the above described writing required by Labor Code § 226 through actions alleged herein, including a failure to provide total hours worked, the correct applicable hourly rate, and all wages earned.

All the above violations, were suffered by Plaintiff and all other similarly situated and Aggrieved Employees working for Defendants in California daily as a result of Defendants' uniform policies and practices, and managerial instructions. Defendants knowingly, intentionally and willfully refused and continue to refuse to comply with California law.

Furthermore, Defendants failed to comply with Lab Code 226(b) by failing to produce Plaintiff's wage statement pursuant to a written request to inspect and/or receive a copy of the records. Counsel for Plaintiff submitted a signed written request by the Plaintiff to obtain his wage statements; however, Defendants failed to produce the wage statements within 21 calendar days from the date of the request. Lab Code 226 (c) states that "[a] violation of this subdivision is an infraction."

VI. Violation of Labor Code § 2810.5 (Wage Theft Protection Act):

The California Wage Theft Prevention Act of 2011 ("WTPA") became effective on January 1, 2012. Among other provisions, the WTPA adds section 2810.5 to the California Labor Code. The act requires that all employers provide each employee with a written notice containing specified information. The notice must be in the language the employer normally uses to communicate employment-related information to the employee. Specifically, employers are required to provide each employee, at the time of hiring, with a written notice containing the following information: (1) the rate or rates of pay "and basis thereof," whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable; (2) allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances; (3) the regular payday designated by the employer in accordance with the requirements of the Labor Code; (4) the name of the employer, including any "doing business as" names used by the employer; (5) the physical address of the employer's main office or principal place of business, and a mailing address, if different; (6) the telephone number of the employer; (7) the name, address, and telephone number of the employer's workers' compensation insurance carrier; and (8) any other information the Labor Commissioner deems material and necessary.

Plaintiff was a non-exempt employee entitled to notice pursuant Cal. Lab. Code § 2810.5. Cal. Labor Code § 2810.5 is aimed at informing employees about such fundamental and material information concerning their pay and rates of pay under an employment relationship. Defendants willfully, and intentionally failed to comply with the requirements of Cal. Lab. Code § 2810.5.

Labor Code § 1174: Labor Code section 1174(d) requires an employer to keep, at a central location in *the state* or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by, and the wages paid to employees employed at the respective plants or establishments. These records shall be kept on file for not less than three years.

Defendants engage in a policy and practice of failing to maintain payroll records, and records pertaining to current and former Aggrieved Employees within the state as provided in section 1174(c).

VII. Violation of Labor Code § 1198 (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. The Labor Code provides that labor conditions set by the Industrial Welfare Commission (Commission) shall be the standard labor conditions for employees. A Commission wage order provides that employees shall be provided suitable seating, if reasonable, during the performance of their duties. Defendants are in violation of the Industrial Wage Order by failing to provide Plaintiff's and Aggrieved Employees with suitable seating even though providing such seating is reasonable during the performance of their duties, therefore, Defendants have violated Lab Code § 1198.

PAGA permits an “aggrieved employee” to recover penalties on behalf of himself or herself and other current and former employees as a result of the employer’s violations of certain sections of the California Labor Code. Plaintiff is an aggrieved employee, in that Plaintiff was employed by Defendants and was not provided with a seat, in violation of Lab. Code section 1198 and the Wage Order.

VIII. Violation of Labor Code §§ 221, 224, and 225.5 (Unlawful Deductions of Employee Wages):

California Labor Code §221 makes it unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. Defendants engaged in a policy and practice that required all Aggrieved Employees to join the union, and upon information and belief, deducted union dues from employee’s wages without proper written authorization. Defendants’ policy and practice of deducting from Aggrieved Employees’ wages union dues without proper written authorization is not permitted under Labor Code §224. In fact, §225.5 of the Code provides penalties for any person that unlawfully withholds wages due any employee.

IX. Violation of Lab Code § 1198.5 (Failure to Produce Current/Former Employee’s Personnel Records):

Lab Code § 1198.5 provides:

(a) Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee’s performance or to any grievance concerning the employee.

(b) (1) The employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request, unless the current or former employee, or his or her representative, and the employer agree in writing to a date beyond 30 calendar days to inspect the records, and the agreed-upon date does not exceed 35 calendar days from the employer’s receipt of the written request. Upon a written request from a current or former employee, or his or her representative, the employer shall also provide a copy of the personnel records, at a charge not to exceed the actual cost of reproduction, not later than 30 calendar days from the date the employer receives the request, unless the current or former employee, or his or her representative, and the employer agree in writing to a date beyond 30 calendar days to produce a copy of the records, as long as the agreed-upon date does not exceed 35 calendar days from the employer’s receipt of the written request. Except as provided in paragraph (2) of subdivision (c), the employer is not required to make those personnel records or a copy thereof available at a time when the employee is actually required to render service to the employer, if the requester is the employee.

(k) If an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified in this section, or times agreed to by mutual agreement as provided in this section, the current or former employee or the Labor Commissioner may recover a penalty of seven hundred fifty dollars (\$750) from the employer.

(l) A current or former employee may also bring an action for injunctive relief to obtain compliance with this section, and may recover costs and reasonable attorney's fees in such an action.

Defendants willfully failed to permit the Plaintiff to inspect or copy his *entire* personnel records within 30 calendar days of his request in direct violation of Cal. Lab. Code § 1198.5. When Plaintiff's counsel requested his personnel records, only a few pages of records was produced, omitting critical documents.

X. Violation of Labor Code §§ 1197.5(b) and 432.3(a) (Pay Discrimination Based on Race):

Lab. Code § 1197.5(b) states that “[a]n employer shall not pay any of its employees at wage rates less than the rates paid to employees of another race or ethnicity for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions except where the employer demonstrates:

(1) The wage differential is based upon one or more of the following factors:

(A) A seniority system.

(B) A merit system.

(C) A system that measures earnings by quantity or quality of production.

(D) A bona fide factor other than race or ethnicity, such as education, training, or experience. This factor shall apply only if the employer demonstrates that the factor is not based on or derived from a race- or ethnicity-based differential in compensation, is job related with respect to the position in question, and is consistent with a business necessity. For purposes of this subparagraph, “business necessity” means an overriding legitimate business purpose such that the factor relied upon effectively fulfills the business purpose it is supposed to serve. This defense shall not apply if the employee demonstrates that an alternative business practice exists that would serve the same business purpose without producing the wage differential.

(2) Each factor relied upon is applied reasonably.

(3) The one or more factors relied upon account for the entire wage differential.

(4) Prior salary shall not justify any disparity in compensation. Nothing in this section shall be interpreted to mean that an employer may not make a compensation decision based on a current employee's existing salary, so long as any wage differential resulting from that compensation decision is justified by one or more of the factors listed in this subdivision.

Lab. Code §432.3 (a) states, in pertinent part: “An employer shall not rely on the salary history information of an applicant for employment as a factor in determining whether to offer employment to an applicant or what salary to offer an applicant.”

Plaintiff (an African American) alleges that Defendants violated Cal. Lab. Code §§ 1197.5(b) and 432.3 in that Plaintiff and the Aggrieved Employees of the African American race were subject to hiring and compensation practices that resulted in a disparity in compensation based on their race that violated Cal. Lab. Code §§ 1197.5(b) and/or 432.3.

The purpose of this letter is to satisfy the requirements created by California Labor Code section 2699 prior to seeking penalties allowed by law for the aforementioned violations. We look forward to determining whether the agency intends to take any action in reference to these violations.

Sincerely,

A handwritten signature in black ink, appearing to read "Natalie Mirzayan", with a long horizontal flourish extending to the right.

Natalie Mirzayan, Esq.



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