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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

ELMAR GARCIA, as an aggrieved employee
pursuant to the Private Attorneys General Act
("PAGA"),

Plaintiff,

vs.

TRACTOR SUPPLY COMPANY, a Tennessee
corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No. MCC1600273

PAGA SETTLEMENT AGREEMENT

Subject to Court approval by the Superior Court of the State of California for the County of Riverside (“Court”), Plaintiff Elmar Garcia (“Plaintiff” or “Garcia”) and Defendant Tractor Supply Company (“Defendant” or “Tractor Supply”) (collectively with Plaintiff, the “Parties”) hereby agree to the following binding settlement (“Settlement” or “Settlement Agreement”) of the lawsuit entitled *Garcia v. Tractor Supply Company*, No. MCC1600273 (Riverside Superior Court April 4, 2016) (the “Action”).

1. Tractor Supply is a national chain of retail stores offering products for home improvement, agriculture, lawn maintenance, and livestock, equine, and pet care. Tractor Supply employed Garcia as a non-exempt Assistant Manager from about December 2013 to December 2015 at its Corona and Hemet, California retail stores.

2. On February 26, 2016, Garcia provided written notice by certified mail to the California Labor Workforce Development Agency (“LWDA”) and to Defendant of specific provisions of the California Labor Code which Plaintiff alleged Defendant had violated, pursuant to California Labor Code 2699.3. On March 25, 2016, Garcia provided an amended written notice by certified mail to the LWDA and to Defendant, supplementing and clarifying the facts and theories to support the alleged violations set forth in his letter to the LWDA of February 26, 2016, in accordance with California Labor Code 2699.3. The LWDA did not respond that it intended to investigate Garcia’s claims within the time period provided by Labor Code 2699.3.

3. On April 4, 2016, Garcia filed this action in the Riverside County Superior Court seeking civil penalties under PAGA for various underlying Labor Code violations. Pursuant to a stipulation and order, Garcia filed the First Amended Complaint (“FAC”) on May 12, 2017, dismissing several claims.

4. On June 14, 2017, the Parties participated in an all-day mediation with Michael Loeb, Esq., an experienced mediator of wage and hour class actions and PAGA actions. Mr. Loeb helped to manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. Although the parties did not settle at mediation, they remained in contact with Mr. Loeb so that he

1 could continue to supervise and guide their continuing settlement negotiations as the litigation resumed.

2 5. On June 20, 2017, Garcia sent a second written notice by online filing to the LWDA and
3 by certified mail to Defendant of additional specific provisions of the California Labor Code which
4 Plaintiff alleged Defendant had violated, and further supplementing and clarifying the facts and theories
5 to support the alleged violations set forth in his prior notices to the LWDA, in accordance with California
6 Labor Code 2699.3. The LWDA did not respond that it intended to investigate Garcia's claims within
7 the time period provided by Labor Code 2699.3.

8 6. Garcia filed a Second Amended Complaint ("SAC") on September 19, 2017, adding
9 new allegations of rest break violations and dismissing one claim under Labor Code section 226(a)(2).
10 The SAC sought civil penalties under PAGA for the following underlying Labor Code violations: (a)
11 violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and California Code of
12 Regulations, Title 8, section 11050(2)(K) (failure to pay minimum wages); (b) violation of Labor Code
13 sections 226.7 and 1198 (failure to provide rest periods); (c) violation of Labor Code sections 226(a),
14 226.3, 1174(d), 1174.5 and 1198 (failure to provide and maintain compliant wage statements); (d)
15 violation of Labor Code sections 201, 202, and 203 (failure to pay wages upon termination); (e) violation
16 of Labor Code sections 204 and 210 (failure to pay wages during employment); and (f) violation of
17 Labor Code section 222.5 (failure to pay for cost of pre-employment physical examination taken as
18 condition of employment).

19 7. On November 7, 2017, Tractor Supply demurred to the SAC, and in the alternative,
20 moved to strike portions of the SAC, specifically those sections alleging violations of Labor Code
21 sections 204 and 222.5. Garcia opposed both motions.

22 8. The Court overruled the demurrer but granted the alternative motion to strike as to the
23 alleged violation of Labor Code sections 204 and 222.5. Garcia petitioned the Court of Appeal for writ
24 review of these rulings. The petition was denied on May 24, 2018.

25 9. As the Parties were preparing for trial, they agreed to resume their settlement
26 negotiations under Mr. Loeb's supervision. With the benefit of Mr. Loeb's guidance, the Parties
27 eventually agreed on the principal terms of a settlement, which are now set forth herein.

28 10. In negotiating the settlement, Plaintiff has considered the expense and length of

1 continued proceedings necessary to litigate his case through trial and through any possible appeals, and
2 the burdens of proof necessary to establish liability for the claims asserted in the action, both generally
3 and in response to Defendant's defenses thereto. Plaintiff has also taken into account the uncertainty and
4 risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. Based
5 on the foregoing, Plaintiff has determined that the settlement is fair and promotes PAGA's objectives.

6 11. Defendant maintains that all of its employees have been compensated in compliance
7 with the law, that it has and continues to have, legally-compliant employment policies and practices
8 throughout the Settlement Period for all of its California non-exempt employees, and has denied and
9 continues to deny each of the claims and contentions alleged by Plaintiff in the Action. Defendant denies
10 any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Action, and
11 believes that it has valid defenses to Plaintiff's claims. Neither this Settlement Agreement, nor any
12 document referred to or contemplated herein, nor any action taken to carry out this Settlement
13 Agreement, may be construed as, or may be used as an admission, concession or indication by or against
14 Defendant of any fault, wrongdoing or liability whatsoever, or of any concession that a trial of this
15 Action would be manageable.

16 12. The Parties and their counsel recognize the expense and length of continued proceedings
17 necessary to litigate the disputes through trial and through any possible appeals, and have also taken into
18 account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays
19 inherent in such litigation. The Parties and their counsel are also aware of the burdens of proof necessary
20 to establish liability for the claims alleged, and the affirmative and other defenses asserted. Thus,
21 reaching this Settlement now has the potential for having a higher value today than it might have later if
22 this litigation was to continue.

23 13. Under California Law, the State may assess and collect civil penalties from employers for
24 violations of certain provisions of the Labor Code. *See* Cal. Lab. Code §§ 2699(a). Under PAGA, however,
25 if an "aggrieved" employee gives written notice to the State and the employer of the specific provision of
26 the Labor Code alleged to have been violated, and the State thereafter decides not to investigate, or does
27 investigate and determines that a citation against the employer should not issue, the employee may, "as an
28 alternative" to enforcement by the State, bring a civil action under PAGA to recover the civil penalties "on

behalf of himself or herself and other current or former employees.” *Id.* In such an action, the employee sues “as the proxy or agent of the state’s labor law enforcement agencies . . . In a lawsuit brought under [PAGA] the employee plaintiff represents the same legal right and interest as state labor law enforcement agencies – namely, recovery of civil penalties that otherwise would have been assessed and collected by the Labor Workforce Development Agency.” *Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009). “[A]n aggrieved employee’s action under the [PAGA] functions as a substitute for an action brought by the government itself[.]” (*Id.*) “The government entity on whose behalf the plaintiff files suit is always the real party in interest in the suit.” *Iskanian v. CLS Transportation Los Angeles LLC*, 59 Cal. 4th 348, 382 (2014). Civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the state and 25 percent to the aggrieved employees. Labor Code § 2699(i).

14. Labor Code section 2699(l)(2) provides that “[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part.” Accordingly, the Parties will seek approval from the Court of the Settlement Agreement pursuant to California Labor Code section 2699(l)(2).

PERSONS COVERED BY THE SETTLEMENT

15. Aggrieved Employees: This Settlement covers all persons who were employed by Defendant as non-exempt hourly employees in California at any time during the period from February 26, 2015 through the date of the order approving the settlement (“Aggrieved Employees”).

16. Settlement Period: The Settlement covers the period February 26, 2015 through the date on which the Court enters an order approving the Settlement (“Settlement Period”).

THIRD AMENDED COMPLAINT

17. Third Amended Complaint. As a condition of settlement, Plaintiff will file a Third Amended Complaint (“TAC”) in the form of Exhibit A to this Settlement Agreement to conform the pleadings within the scope of the Settlement and Settled Claims. Defendant will not be required to file an answer or other responsive pleading to the TAC. If, for any reason, the Court does not approve the Settlement, or if the Settlement does not become final and effective for any reason, then the TAC will be deemed withdrawn and the SAC will again become the operative complaint without prejudice to Plaintiff’s right to seek leave to file another amended complaint. Defendant does not impliedly or

expressly waive any arguments or defenses to the TAC.

SETTLEMENT CONSIDERATION

18. Gross Settlement Amount. The Parties have agreed that the Gross Settlement Amount shall not exceed Four Hundred Thousand Dollars (\$400,000) to be paid by Defendant in full satisfaction of all Settled Claims, which includes the PAGA Penalties Fund, the Attorneys' Fees And Costs, the General Release Payment, and the Settlement Administration Costs. In no case will Defendant be required to pay more than \$400,000 to fulfill its obligations under this Agreement or to obtain the benefits thereof.

19. PAGA Penalties Fund. The Parties agree that Defendant will pay a total of One Hundred Fifty Thousand Five Hundred Dollars (\$150,500) to Aggrieved Employees and the California Labor and Workforce Development Agency ("LWDA") in full satisfaction of all claims for PAGA civil penalties, that otherwise could have been assessed and collected by the LWDA under the California Labor Code, Wage Orders, regulations, and/or other provisions of law alleged to have been violated in the operative Third Amended Complaint with respect to Aggrieved Employees ("PAGA Penalties Fund"). Pursuant to PAGA, Seventy-Five Percent (75%) of the PAGA Penalties Fund, or One Hundred Twelve Thousand Eight Hundred Seventy-Five Dollars (\$112,875), will be paid to the LWDA, and the remaining Twenty-Five Percent (25%), or Thirty-Seven Thousand Six Hundred Twenty-Five Dollars (\$37,625), will be paid to all Aggrieved Employees according to the following formula:

19(a) Defendant will calculate: (i) the total number of pay periods worked by each Aggrieved Employee during the Settlement Period, and (ii) the total number of pay periods worked by all Aggrieved Employees during the Settlement Period. The Parties agree that the number of pay periods worked by each Aggrieved Employee may be determined by counting the number of paychecks issued to that Aggrieved Employee, and assuming that each paycheck represents one pay period worked.

19(b) To determine each Aggrieved Employee's payment from the PAGA Penalties Fund, Defendants will use the following formula: Settlement Payment = \$37,625 × (Pay Periods Worked by Individual Aggrieved

Employee During the Settlement Period ÷ Total Pay Periods Worked by All
Aggrieved Employees during Settlement Period).

20. Attorneys' Fees and Costs. In full satisfaction of all claims Plaintiff may have for attorneys' fees, litigation costs, and expenses arising out of the Action, Defendant agrees not to oppose a request by Plaintiff's counsel, Capstone Law APC ("Plaintiff's Counsel"), for an award of attorney's fees up to a total of One Hundred Ninety-Five Thousand Dollars (\$195,000) and a request for an award of litigation costs and expenses up to a total of Thirty-Two Thousand Dollars (\$32,000) ("Attorneys' Fees and Costs"). In no case shall Defendant be required to pay more than \$195,000 in attorney's fees or more than \$32,000 in litigation costs and expenses to Plaintiff's Counsel. Even in the event that the Court reduces or does not approve the requested attorneys' fees and costs, Plaintiff and Plaintiff's counsel shall not have the right to revoke this Settlement Agreement, and it will remain binding.

21. General Release Payment. For a general release of all claims Plaintiff may have against Defendant arising out of his employment, Defendant agrees to pay Plaintiff the sum of Seven Thousand Five Hundred Dollars (\$7,500) ("General Release Payment"). Upon receipt of the General Release Payment, Plaintiff will be deemed to have fully released and discharged Defendant (including its past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers) from any and all claims, demands, obligations, causes of action, rights, or liabilities of any kind which have been or could have been asserted against Defendant arising out of or relating to Plaintiff's application for employment and/or employment with Defendant or termination thereof, including but not limited to claims for wages, restitution, penalties, retaliation, defamation, discrimination, harassment or wrongful termination of employment. This release specifically includes any and all claims, demands, obligations and/or causes of action for damages, restitution, penalties, interest, and attorneys' fees and costs (except provided by the Settlement) relating to or in any way connected with the matters referred to in this paragraph, whether or not known or suspected to exist, and whether or not specifically or particularly described herein. Specifically, Plaintiff will be deemed to have waived all rights and benefits afforded by California Civil Code Section 1542, which provides:

1 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
2 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR**
3 **AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR**
4 **HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH**
5 **THE DEBTOR.**

6 In no case shall Defendant be required to pay more than \$7,500 as a General Release Payment to
7 Plaintiff. Even in the event that the Court reduces or does not approve the requested General Release
8 Payment, Plaintiff and Plaintiff's counsel shall not have the right to revoke this MOA or this settlement,
9 and it will remain binding. Defendant agrees that in response to any inquiry or request from prospective
10 employers of Plaintiff directed to Defendant, Defendant or its designee shall provide only the following
11 information: dates of employment and last position held.

12 22. Settlement Administration Costs. The Parties will retain CPT Group as the third-party
13 settlement administrator ("Settlement Administrator"), to administer this Settlement. The Settlement
14 Administrator will be responsible establishing a qualified settlement fund ("QSF") and issuing payments
15 and appropriate tax forms to Aggrieved Employees, the LWDA, Plaintiff, and Plaintiff's Counsel.
16 Defendant shall pay for third-party administration fees that are necessary to administer the Settlement up
17 to a maximum payment of Fifteen Thousand Dollars (\$15,000) ("Settlement Administration Costs"). If
18 the actual cost of settlement administration is less than \$15,000, any savings will be added to the PAGA
19 Penalties Fund and distributed in accordance with Paragraph 18.

20 23. Court Approval of the Settlement and Distribution of Settlement Payments. The Parties
21 will present this Settlement Agreement to the Court and will request that the Court issue an order
22 ("Order") in the form of Exhibit B to this Settlement Agreement approving and incorporating by
23 reference the terms and conditions of the Settlement Agreement, and dismissing the Action with
24 prejudice as to Plaintiff Elmar Garcia and without prejudice as to all other Aggrieved Employees. The
25 Court's approval of the Order is a precondition to Defendant's obligation to make any monetary
26 payments pursuant to this Settlement Agreement. If the Court does not grant the full amount of
27 Attorneys' Fees and Costs, and/or General Release Payment requested by Plaintiff in this Settlement, any
28 amounts requested but not awarded shall be added to the PAGA Penalties Fund and distributed in

1 accordance with paragraph 18 of this Settlement Agreement.

2 24. Notice to LWDA. Defendant will provide a copy of this Settlement Agreement to the
3 LWDA at the same time that it is submitted to the Court for approval. Defendant will also provide to the
4 LWDA a copy of the Order entered by the Court.

5 25. Effective Date. “Effective Date” means the date by which the Order becomes final.
6 Such Order becomes final upon the later of: (a) provided that no objection is filed to the Settlement and
7 neither party appeals from the Order approving the Settlement, the date on which the Court enters the
8 Order; (b) if an objection is filed, but no appeal is filed by an objector or either of the Parties, then the
9 day after the deadline for any appeals expires (i.e., 60 days from when the Order is entered); (c) if an
10 appeal of the Order is filed, either by an objector or either of the Parties, and the appeal is finally disposed
11 of by ruling, dismissal, denial, or otherwise, the day after the last date for filing a request for further
12 review of the Court of Appeal’s decision passes, and no further review is requested; or (d) if an appeal of
13 the Order is filed, either by an objector or either of the Parties, and there is a final disposition by ruling,
14 dismissal, denial, or otherwise by the Court of Appeal, and review of the Court of Appeal’s decision is
15 requested, the day after the request for review is denied with prejudice and/or no further review of the
16 Order can be requested.

17 26. List of Aggrieved Employees. Within seven (7) calendar days after the Effective Date,
18 Defendant will provide the Settlement Administrator a complete list of all Aggrieved Employees
19 (“Aggrieved Employee List”). The Aggrieved Employee List will be formatted in Microsoft Office
20 Excel and will include each Aggrieved Employees full name; most recent mailing address and telephone
21 number; Social Security number; the respective number of pay periods during which each Aggrieved
22 Employee worked during the Settlement Period; and any other relevant information needed to calculate
23 settlement payments. The Aggrieved Employee List shall not be disclosed to Plaintiff or Plaintiff’s
24 Counsel.

25 27. Funding of the Settlement. Within seven (7) calendar days after the Effective Date,
26 Defendant will deposit the PAGA Penalties Fund, Attorneys’ Fees and Costs, General Release Payment,
27 and Settlement Administration Costs into the QSF to be established by the Settlement Administrator.
28 Within seven (7) calendar days of the funding of the Settlement, the Settlement Administrator will issue

1 payments to: (a) Aggrieved Employees; (b) the LWDA; (c) Plaintiff; (d) Plaintiff's Counsel; and (e)
2 itself. The Settlement Administrator, and not Defendant, will issue the appropriate tax forms for all
3 payments issued under this Settlement.

4 28. Settlement Payments to Aggrieved Employees. The Settlement Administrator will issue
5 each Aggrieved Employee a check for his or her share of the PAGA Penalties Fund along with an
6 explanatory letter in the form of Exhibit C. Prior to mailing, the Settlement Administrator will perform a
7 search based on the National Change of Address Database for information to update and correct for any
8 known or identifiable address changes. Any checks returned as non-deliverable on or before the check
9 cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address
10 affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt
11 to determine the correct address using a skip-trace, or other search using the name, address or Social
12 Security number of the Aggrieved Employee involved, and will then perform a single re-mailing.
13 Checks will remain negotiable for one hundred and twenty (120) days. Funds represented by settlement
14 checks returned as undeliverable and those settlement checks remaining un-cashed for more than 120
15 days after issuance will be tendered to the California Department of Industrial Relations Unpaid Wage
16 Fund (see Cal. Lab. Code § 96.6). All settlement payments to Aggrieved Employees will be treated as
17 miscellaneous income for which a 1099 will be issued.

18 29. Settled Claims. Upon entry of the Order, (i) Plaintiff, individually, and in his capacity as
19 a private attorney general for and proxy or agent of the California Labor Workforce Development
20 Agency, and (ii) the LWDA, as the real party in interest, will irrevocably release, acquit, and forever
21 discharge Defendant (including its past, present and/or future, direct and/or indirect, officers, directors,
22 members, managers, employees, agents, representatives, attorneys, insurers, partners, investors,
23 shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors,
24 successors, assigns, and joint venturers) of and from all claims for civil penalties recoverable under
25 Labor Code section 2699(a) that were or reasonably could have been brought in this Action based on the
26 facts and legal theories alleged in the TAC. These claims include (1) unpaid wages for the time spent on
27 employer-mandated drug test and/or physical examination pursuant to Labor Code sections 1182.12,
28 1194, 1197, 1197.1, 1198 and California Code of Regulations, Title 8, section 11050(2)(K); (2) rest

period violations pursuant to Labor Code sections 226.7 and 1198; (3) unpaid rest period premiums pursuant to Labor Code section 226.7; (4) untimely payment of wages during and after employment only insofar as it is based on claims enumerated in (1), (2), and (3) above and pursuant to Labor Code sections 201, 202, 203, 204, and 210; (5) wage statement violations only insofar as it is based on claims enumerated in (1), (2), and (3) above and pursuant to Labor Code sections 226(a), 226.3, 1174(d), 1174.5 and 1198 (the “Settled Claims”). The Settled Claims exclude, and will in no way bar or prohibit via res judicata or collateral estoppel the litigation of, all claims in the related PAGA action titled *Charles Lathan v. Tractor Supply Company*, Riverside Superior Court Case No. RIC1724482 (“*Lathan Action*”), that are alleged in the operative Second Amended Complaint, a copy of which is attached hereto as Exhibit A, (the “Excluded Claims”). The Excluded Claims include (1) unpaid overtime due to failure to record all hours worked and/or failure to include bonuses and incentive pay in the calculation of regular rate of pay pursuant to Labor Code sections 510 and 1198; (2) unpaid minimum wages due to failure to record all hours worked pursuant to Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198; (3) meal period violations pursuant to Labor Code sections 226.7, 512(a), and 1198; (4) unpaid meal period premiums pursuant to Labor Code section 226.7; (5) wage statement violations pursuant to Labor Code sections 226(a), 226.3, 1174(d), 1174.5 and 1198 only insofar as it is based on claims enumerated in (1), (2), and (4) in this sentence; (6) payroll recordkeeping violations pursuant to Labor Code sections 1174(d) and 1198 only insofar as it is based on claims (1) through (5) in this sentence; (7) untimely payment of wages upon termination pursuant to Labor Code sections 201, 202, and 203 only insofar as it is based on claims enumerated in (1), (2), and (4) in this sentence; and (8) unreimbursed business expenses pursuant to Labor Code section 2802. It is understood and agreed that this Settlement does not affect the right of the plaintiff in the *Lathan Action* to amend his complaint to add claims which could reasonably be added to the *Lathan Action* by stipulation or motion to amend the operative complaint, except to the extent such claims constitute Settled Claims, as defined above. It is further understood and agreed that the Settled Claims are limited to claims for civil penalties recoverable under Labor Code section 2699(a). This release shall bar any person purporting to represent the LWDA or to sue on its behalf from seeking to recover PAGA penalties for the Settled Claims during the Settlement Period.

30. No Credit Toward Benefit Plans. Payments to Aggrieved Employees as referenced

1 herein will not be utilized to calculate any additional benefits under any benefit plans to which any
2 Aggrieved Employee may be eligible, including, but not limited to profit-sharing plans, bonus plans,
3 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit
4 plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights,
5 contributions, or amounts to which any Aggrieved Employee may be entitled under any benefit plans.

6 31. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
7 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
8 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of
9 action or right herein released and discharged.

10 32. Nullification of Settlement Agreement. In the event that: (i) the Court does not approve
11 the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then
12 this Settlement Agreement, and any documents generated to bring it into effect, will be null and void,
13 and the Parties will be returned to their original respective positions.

14 33. Continued Jurisdiction. After entry of the Order, the Court will have continuing
15 jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the
16 Settlement, (ii) settlement administration matters, and (iii) such post-dismissal matters as may be
17 appropriate under court rules or as set forth in this Settlement.

18 34. Entire Agreement. This Settlement Agreement constitutes the entirety of the Parties'
19 settlement terms. No other prior or contemporaneous written or oral agreements may be deemed binding
20 on the Parties.

21 35. Amendment or Modification. This Settlement Agreement may be amended or modified
22 only by a written instrument, signed either by the Parties or their counsel.

23 36. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however, that
24 Plaintiff or Plaintiff's Counsel may appeal any reduction to the Attorneys' Fees and Costs below the
25 amount they request from the Court, and either party may appeal any court order that materially alters the
26 Settlement Agreement's terms.

27 37. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and
28 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement

1 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant
2 to this Settlement Agreement to effectuate its terms and to execute any other documents required to
3 effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each
4 other and use their best efforts to implement the Settlement. If the Parties are unable to reach agreement
5 on the form or content of any document needed to implement the Settlement, or on any supplemental
6 provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the
7 assistance of the Court to resolve such disagreement.

8 38. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
9 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

10 39. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto
11 will be governed by and interpreted according to the laws of the State of California.

12 40. Execution and Counterparts. This Settlement Agreement is subject only to the execution
13 of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All
14 executed counterparts and each of them, including electronic (e.g., DocuSign), facsimile, and scanned
15 copies of the signature page, will be deemed to be one and the same instrument.

16 41. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this
17 Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this
18 Settlement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that
19 they are each represented by competent counsel and that they have had an opportunity to consult with
20 their counsel regarding the fairness and reasonableness of this Settlement.

21 42. Invalidity of Any Provision. Before declaring any provision of this Settlement
22 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
23 possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement
24 valid and enforceable.

25 43. Captions. The captions and section numbers in this Settlement Agreement are inserted
26 for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the
27 provisions of this Settlement Agreement.

28 44. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement

1 or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
2 constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

3 45. Enforcement Action. In the event that one or more of the Parties institutes any legal
4 action or other proceeding against any other Party or Parties arising out of that other Party's or Parties'
5 breach of this Agreement, the successful Party or Parties will be entitled to recover from the unsuccessful
6 Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection
7 with any enforcement actions.

8 46. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
9 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed
10 more strictly against one party merely by virtue of the fact that it may have been prepared by counsel for
11 one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties,
12 all Parties have contributed to the preparation of this Settlement Agreement.

13 47. Representation By Counsel. The Parties acknowledge that they have been represented
14 by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and
15 that this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed
16 in full.

17 48. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good
18 faith and execute all documents to the extent reasonably necessary to effectuate the terms of this
19 Settlement Agreement.

20 49. Binding Agreement. The Parties warrant that they understand and have full authority to
21 enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and
22 binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to
23 enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply
24 under federal or state law.

25 50. Denial of Liability. The Parties expressly recognize that the making of this agreement
26 does not in any way constitute an admission or concession of wrongdoing on the part of Defendant.
27 Nothing in this Settlement, nor any action taken in implementation thereof, nor any statements,
28 discussions or communications, nor any materials prepared, exchanged, issued or used during the course

of this Action, is intended by the Parties to constitute an admission of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.

51. Confidentiality. Plaintiff and Plaintiff's Counsel agree not to disclose or publicize the Settlement, including the fact of the Settlement, its terms or contents, and the negotiations underlying the Settlement, in any manner or form, directly or indirectly, to any person or entity, except as may be strictly required to effectuate the terms of the Settlement or in any adequacy of counsel declarations. For the avoidance of doubt, this section includes Plaintiff and Plaintiff's Counsel's agreement not to issue press releases, communicate with, or respond to any media or publication entities, publish information in manner or form, whether printed or electronic, on any medium or otherwise communicate, whether by print, video, recording or any other medium, with any person or entity concerning the Settlement, including the fact of the Settlement, its terms or contents and the negotiations underlying the Settlement, except as shall be contractually required to effectuate the terms of the Settlement. However, Plaintiff's Counsel may disclose the name of the Parties in this action, the venue/case number, and settlement details available in the public record, for the limited purpose of allowing Plaintiff's Counsel to prove adequacy as class counsel in other actions or for purposes of seeking approval of an unrelated settlement.

52. Plaintiff's Age. Plaintiff represents that he is less than 40 years old at the time of signing this Agreement. Plaintiff understands and acknowledges that this representation is a material term of this Agreement and that, had he not provided this representation, Defendant would have required additional terms in order to ensure a valid release of any claims he may have under the Age Discrimination in Employment Act, as amended by the Older Workers' Benefit Protection Act of 1990 (29 U.S.C. § 621 et seq.).

AGGREGED BY THE PARTIES:

Dated: 11/12/2018

PLAINTIFF

DocuSigned by:

Elmar Garcia

Plaintiff Elmar Garcia, personally and as private attorney general for and proxy or agent of the California Labor Workforce Development Agency

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DEFENDANTS:

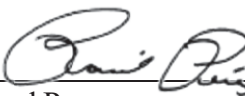
Dated: _____

AGREED BY COUNSEL (AS TO PARAGRAPHS 31, 37 & 51 ONLY)

APPROVED AS TO FORM

CAPSTONE LAW APC

Dated: Nov. 12, 2018



Raul Perez
Attorneys for Plaintiff Elmar Garcia

**OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.**

Dated: _____

Christopher Decker
Attorneys for Defendant Tractor Supply Company

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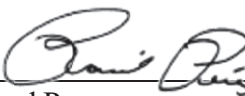
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Dated: Nov. 12, 2018



Raul Perez
Attorneys for Plaintiff Elmar Garcia

**OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.**

Dated: _____

Christopher Decker
Attorneys for Defendant Tractor Supply Company

Exhibit A

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2 Jennifer Bagosy (SBN 223145)
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3 Suzy E. Lee (SBN 271120)
Suzy.Lee@capstonelawyers.com
4 Ari Y. Basser (SBN 272618)
Ari.Basser@capstonelawyers.com
5 CAPSTONE LAW APC
1875 Century Park East, Suite 1000
6 Los Angeles, California 90067
Telephone: (310) 556-4811
7 Facsimile: (310) 943-0396

8 Attorneys for Plaintiff Elmar Garcia
9
10

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF RIVERSIDE
13

14 ELMAR GARCIA, as an aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"),
15

16 Plaintiff,

17 vs.

18 TRACTOR SUPPLY COMPANY, a
Tennessee corporation; and DOES 1
through 100, inclusive,
19

20 Defendants.
21
22
23
24

Case No.: MCC1600273

Honorable Craig G. Reimer, Dept. 5

THIRD AMENDED COMPLAINT

**ENFORCEMENT ACTION UNDER THE
PRIVATE ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698 ET
SEQ.**

(1) Violation of Labor Code §§ 2698, *et seq.*
("PAGA")

Jury Trial Demanded

Complaint: April 4, 2016
FAC: May 8, 2017
SAC: September 19, 2017

1 Plaintiff Elmar Garcia (“Plaintiff”), as an aggrieved employee and on behalf of all
2 other aggrieved employees, alleges as follows:

3 JURISDICTION AND VENUE

4 This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code section 2698 *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 ^{1.} and former employees who worked for Defendants in California as non-exempt, hourly-paid
8 employees and against whom one or more violations of any provision in Division 2 Part 2
9 Chapter 1 of the Labor Code or any provision regulating hours and days of work in the
10 applicable Industrial Welfare Commission (“IWC”) Wage Order were committed, as set forth
11 in this complaint, at any time between one year prior to the filing of this complaint until
12 judgment (“non-party Aggrieved Employees”). Plaintiff’s share of civil penalties sought in
13 this action does not exceed \$75,000.

14 2. This Court has jurisdiction over this action pursuant to the California
15 Constitution, Article VI, section 10. The statute under which this action is brought does not
16 specify any other basis for jurisdiction.

17 This Court has jurisdiction over all Defendants because, on information and
18 belief, Defendants are either citizens of California, have sufficient minimum contacts in
19 California, or otherwise intentionally avail themselves of the California market so as to render
20 the exercise of jurisdiction over them by the California courts consistent with traditional
21 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
22 in this action given that the State of California, as the real party in interest in this action, is not
23 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
24 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
25 ^{4.} aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
26 in this action, and that diversity jurisdiction cannot be established when Plaintiffs’ share of the
27 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

28 Venue is proper in this Court, because Defendants employ persons in this

1 county and employed Plaintiff in this county, and thus a substantial portion of the transactions
2 and occurrences related to this action occurred in this county.

3 California Labor Code sections 2698 *et seq.*, the “Labor Code Private Attorneys
4 General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private attorneys
5 general their current or former employers for various civil penalties for violating the
6 California Labor Code.

7 **THE PARTIES**

8 Plaintiff ELMAR GARCIA is a resident of San Jacinto, California. Defendants
9 employed Plaintiff as a non-exempt, hourly-paid Assistant Manager from approximately
10 6. December 2013 to December 2015 at their retail store location in Hemet, California. As an
11 Assistant Manager, Plaintiff typically worked 9 to 10 hours or more per day, five (5) days a
12 week, and approximately 45-50 hours per week. At the time Plaintiff’s employment with
13 Defendants ended, he was earning approximately \$18.00 per hour.

14 7. Defendant TRACTOR SUPPLY COMPANY (“TRACTOR”) was and is, upon
15 information and belief, a Tennessee corporation, and, at all times hereinafter mentioned, an
16 employer whose employees are engaged throughout this county, the State of California, or the
17 various states of the United States of America.

18 Plaintiff is unaware of the true names or capacities of the Defendants sued
19 herein under the fictitious names DOES 1 through 100 but will seek leave of this Court to
20 amend the complaint and serve such fictitiously named Defendants once their names and
21 capacities become known.

22 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through
23 100 are the partners, agents, owners, shareholders, managers or employees of TRACTOR at
24 all relevant times.

25 Plaintiff is informed and believes, and thereon alleges, that each and all of the
26 acts and omissions alleged herein were performed by, or are attributable to, TRACTOR and/or
27 DOES 1 through 100 (collectively “Defendants” or “TRACTOR”), each acting as the agent
28 for the other, with legal authority to act on the others’ behalf. The acts of any and all

1 Defendants were in accordance with, and represent, the official policy of Defendants.

2 At all relevant times, Defendants, and each of them, ratified each and every act
3 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
4 and abetted the acts and omissions of each and all the other Defendants in proximately causing
5 the damages herein alleged.

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

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

12 **PAGA REPRESENTATIVE ALLEGATIONS**

13 Defendants are a Tennessee corporation which is a retail chain of stores
14 offering products for home improvement, agriculture, lawn maintenance, and livestock,
15 equine, and pet care. Defendants currently own and operate at least 44 retail store locations
16 throughout California.

17 According to Defendants' "Statement of Information" filed with the California
18 Secretary of State office and Defendants' website, Defendants maintain their corporate
19 headquarters in Brentwood, Tennessee.¹ Upon information and belief, Defendants maintain a
20 single, centralized Human Resources ("HR") department at their corporate headquarters in
21 Brentwood, Tennessee, which is responsible for conducting Defendants' recruiting and hiring
22 of new employees, as well as communicating and implementing Defendants' company-wide
23 policies, including timekeeping policies, to employees throughout California. In particular,
24 Plaintiff and other non-party Aggrieved Employees, on information and belief, received the

25
26 ¹ California Secretary of State, Business Filings, <https://businessfilings.sos.ca.gov/>
27 (last visited March 14, 2016); Tractor Supply Company Careers, "Store Support Center
(HQ)," http://tractorsupply.jobs/support_hq.php (last visited March 14, 2016).

1 same standardized documents and/or written policies. Upon information and belief, the use of
2 standardized documents and/or written policies, including new hire documents, indicate that
3 Defendants dictated policies at the corporate-level and implemented them company-wide,
4 regardless of their employees' assigned locations or positions. On information and belief, all
5 transactions regarding hiring, terminations, promotions, pay increases, and employee
6 transfers, etc., relating to Defendants' California employees were submitted to and processed
7 by Defendants' HR department in Brentwood, Tennessee.

8 On information and belief, Defendants' corporate records, business records,
9 data, and other information related to TRACTOR, including, in particular, HR records
10^{16.} pertaining to Defendants' California employees, are also maintained at TRACTOR's
11 corporate headquarters in Brentwood, Tennessee.

12 Upon information and belief, Defendants maintain a centralized Payroll
13^{17.} department at their corporate headquarters in Brentwood, Tennessee, which processes payroll
14 for all non-exempt, hourly-paid employees working for Defendants at their various locations
15 in California, including Plaintiff and other non-party Aggrieved Employees.

16^{18.} Based upon information and belief, Defendants issue the same formatted wage
17 statements to all non-exempt, hourly paid employees in California, irrespective of their work
18 location. Upon further information and belief, during the relevant time period, Defendants
19 used third party ADP Payroll Services to process and issue uniform, standardized wage
20 statements to Plaintiff and other non-party Aggrieved Employees. Thus, Plaintiff is informed
21^{19.} and believes that other non-party Aggrieved Employees throughout California were also
22 affected by Defendants' alleged noncompliance with wage statement reporting requirements.

23^{20.} Upon information and belief, Defendants process payroll for departing
24 employees in the same manner throughout the State of California, regardless of the manner in
25^{21.} which the employees' employment ends.

26 Defendants continue to employ non-exempt, hourly-paid employees, including
27 Assistant Managers, throughout Southern California.

28 Plaintiff is informed and believes, and thereon alleges, that at all times herein

mentioned, Defendants were advised by skilled lawyers and other professionals, employees and advisors knowledgeable about California labor and wage law, employment and personnel practices, and about the requirements of California law.

Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other non-party Aggrieved Employees were not paid for all hours worked, because all hours worked were not recorded, as described below.

^{22.} Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to receive at least minimum wages for compensation and that, in violation of the California Labor Code, there were not receiving at least minimum wages for work done off the clock, as described below.

^{24.} Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to rest periods in accordance with the Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay at their regular rates of pay when they were not provided with a compliant rest period and that Plaintiff and other non-party Aggrieved Employees were not provided compliant rest periods or payment of one (1) additional hour of pay at their ^{25.} regular rates of pay when they were not provided a compliant rest period.

Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to receive complete and accurate wage statements in accordance with California law. In ^{26.} violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees were not provided with complete and accurate wage statements.

Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to timely payment of wages upon termination of employment. In violation of the California Labor Code, Defendants did not pay Plaintiff and other Aggrieved Employees all wages due, including, but not limited to, overtime wages, minimum wages, and meal and rest period

1 premium wages, within permissible time periods.

2 Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
4 timely payment of wages during their employment. In violation of the California Labor Code,
5 Defendants did not pay Plaintiff and other non-party Aggrieved Employees all wages,
6 including, but not limited to, overtime wages, minimum wages, and meal and rest period
7 premium wages, within permissible time periods.

8 Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that they had a duty to compensate Plaintiff and other non-party
10 Aggrieved Employees for their time and mileage expenses to and from testing facilities for
11 obtaining mandatory physical examinations at the time of hire, but willfully, knowingly, and
12 intentionally failed to do so.

13 Plaintiff is informed and believes, and thereon alleges, that at all times herein
14 mentioned, Defendants knew or should have known that they had a duty to compensate
15 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants
16 had the financial ability to pay such compensation but willfully, knowingly, and intentionally
17 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees
18 that they were properly denied wages, all in order to increase Defendants' profits.

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

25 PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
26 person who was employed by the alleged violator and against whom one or more of the
27 alleged violations was committed."
28

1 Plaintiff and other current and former employees of Defendants are “aggrieved
2 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
3 or former employees and one or more of the alleged violations were committed against them.

4 Pursuant to Labor Code sections 2699.3 and 2699.5, aggrieved employees,
5 32. including Plaintiff, may pursue a civil action arising under PAGA after the following
6 requirements have been met:

7 33. The aggrieved employee shall give written notice by certified mail
8 (hereinafter “Employee’s Notice”) to the LWDA and the employer of
9 (a) the specific provisions of the California Labor Code alleged to have
10 been violated, including the facts and theories to support the alleged
11 violations.

12 (b) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
13 employer and the aggrieved employee by certified mail that it does not
14 intend to investigate the alleged violation within thirty (30) calendar
15 days of the postmark date of the Employee’s Notice. Upon receipt of
16 the LWDA Notice, or if the LWDA Notice is not provided within thirty-
17 three (33) calendar days of the postmark date of the Employee’s Notice,
18 the aggrieved employee may commence a civil action pursuant to
19 34. California Labor Code section 2699 to recover civil penalties in addition
20 to any other penalties to which the employee may be entitled.

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

25 The aggrieved employee or representative shall give written notice by
26 certified mail to the LWDA and the employer of the specific provisions
27 of the California Labor Code alleged to have been violated (other than
28 those listed in Section 2699.5), including the facts and theories to

1 support the alleged violation.

2 The employer may cure the alleged violation within 33 calendar days of
3 the postmark date of the notice. The employer shall give written notice
4 by certified mail within that period of time to the aggrieved employee or
5 (b) representative and the agency if the alleged violation is cured, including
6 a description of actions taken, and no civil action pursuant to Section
7 2699 may commence. If the alleged violation is not cured within the
8 33-day period, the employee may commence a civil action pursuant to
9 Section 2699.

10 On February 26, 2016, Plaintiff provided written notice by certified mail to the
11 LWDA and to Defendants of the specific provisions of the California Labor Code alleged to
12 have been violated, including the facts and theories to support the alleged violations, pursuant
13 to California Labor Code section 2699.3. A true and correct copy of Plaintiff's written notice
14 to the LWDA and Defendants dated February 26, 2016, is attached hereto as "Exhibit 1."

15 ^{36.} On March 25, 2016, Plaintiff sent an amended written notice by certified mail
16 to the LWDA and Defendants of the specific provisions of the California Labor Code alleged
17 to have been violated, supplementing and clarifying the facts and theories to support the
18 alleged violations set forth in his original LWDA notice, in accordance with California Labor
19 Code section 2699.3. A true and correct copy of Plaintiff's amended written notice to the
20 LWDA and Defendants dated March 25, 2016, is attached hereto as "Exhibit 2."

21 On June 20, 2017, Plaintiff sent a second amended written notice by online
22 filing to the LWDA and by certified mail to Defendants of the specific provisions of the
23 California Labor Code alleged to have been violated, supplementing and clarifying the facts
24 and theories to support the alleged violations set forth in his prior LWDA notices, in
25 ^{38.} accordance with California Labor Code section 2699.3. A true and correct copy of Plaintiff's
26 second amended written notice to the LWDA and Defendants dated June 20, 2017, is attached
27 hereto as "Exhibit 3."

28 As of the filing date of this second amended complaint, over 33 days passed

1 since Plaintiff sent his initial LWDA Notice described above, and the LWDA has not
2 responded that it intends to investigate Plaintiff's claims and Defendants have not cured the
3 violations.

4 Thus, Plaintiff has satisfied the administrative prerequisites under California
5 Labor Code section 2699.3(a) to recover civil penalties against Defendants for the violations
6 of California Labor Code sections 201, 202, 203, 226(a), 226.7, 1174(d), 1182.12, 1194, 1197,
7 ³⁹1197.1, and 1198 described herein.

8 Labor Code section 558(a) provides "[a]ny employer or other person acting on
9 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
10 ⁴⁰provision regulating hours and days of work in any order of the Industrial Welfare
11 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
12 dollars (\$50) for each underpaid employee for each pay period for which the employee was
13 underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each
14 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
15 period for which the employee was underpaid in addition to an amount sufficient to recover
16 underpaid wages." Labor Code section 558(c) provides "[t]he civil penalties provided for in
17 ~~this~~ section are in addition to any other civil or criminal penalty provided by law."

18 Defendants, at all times relevant to this complaint, were employers or persons
19 acting on behalf of an employer(s) who violated Plaintiff and other non-party Aggrieved
20 Employees' rights by violating various sections of the California Labor Code as set forth
21 above.

22 ⁴³As set forth above, Defendants have violated numerous provisions of both the
23 Labor Code sections regulating hours and days of work as well as the applicable order of the
24 IWC.

25 Pursuant to PAGA, and in particular California Labor Code sections 2699(a),
26 2699.3(a) and 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a
27 private attorney general, seeks assessment and collection of civil penalties for himself, all
28 other non-party aggrieved employees, and the State of California against Defendants, in

1 addition to other remedies, for the violations of California Labor Code sections 201, 202, 203,
2 226(a), 226.7, 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198 described herein.

3 **FIRST CAUSE OF ACTION**

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

5 **(Against all Defendants)**

6 California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
7 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
8 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 226(a), 226.7,
9 1174(d), 1194, 1197, 1197.1, and 1198. Labor Code section 2699.3(c) permits aggrieved
10 employees, including Plaintiff, to recover civil penalties for violations of Labor Code section
11 1182.12.

12 Defendants’ conduct, as alleged herein, violates the applicable IWC Wage
13 ^{45.} Order and numerous sections of the California Labor Code, including, but not limited to, the
14 following:

- 15 (a) Violations of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198,
16 and the applicable IWC Wage Order for Defendants’ failure to
17 compensate Plaintiff and other non-party Aggrieved Employees with at
18 (b) least minimum wages for all hours worked as set forth below;
19 Violations of Labor Code sections 226.7, 1198, and the applicable IWC
20 Wage Order for Defendants’ failure to provide Plaintiff and other non-
21 (c) party Aggrieved Employees with rest periods or compensation in lieu
22 thereof, as set forth below;
23 Violations of Labor Code section 226(a), 1198, and the applicable IWC
24 (d) Wage Order for failure to provide accurate and complete wage
25 statements to Plaintiff and other non-party Aggrieved Employees as set
26 forth below;
27 Violations of Labor Code section 1174(d), 1198, and the applicable
28 IWC Wage Order for failure to maintain payroll records as set forth

below; and

Violations of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination as set forth below.

FAILURE TO PAY MINIMUM WAGES

VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, 1197.1, AND 1198

(c)
At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 5 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

47. During the relevant time period, upon information and belief, Defendants maintained and implemented a company-wide policy of requiring all newly hired employees and/or prospective employees to undergo mandatory drug testing and physical examination. At all times, upon information and belief, Defendants were in control of scheduling the date and time for the drug testing, selecting the provider/facility where the drug testing was to take place, and determining the scope of the physical examination and drug test. Defendants gave Plaintiff and other non-party Aggrieved Employees strict instructions to obtain a drug test as a condition of their employment and Plaintiff and other non-party Aggrieved Employees underwent drug testing for the sole benefit of Defendants. However, Defendants did not 48. compensate Plaintiff and other non-party Aggrieved Employees for the time they spent traveling to and from drug testing or for the time they spent undergoing drug testing.

Defendants’ failure to pay Plaintiff and other non-party Aggrieved Employees the minimum wage as required violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to sections 1197.1 and/or 2699(a), (f), and (g).

//

1 **FAILURE TO PROVIDE REST PERIODS**

2 **VIOLATION OF LABOR CODE SECTION 226.7 AND 1198**

3 At all relevant times herein set forth, the applicable IWC Wage Order and
4 California Labor Code section 226.7 and 1198 were applicable to Plaintiff and other non-party
5 Aggrieved Employees' employment by Defendants.

6 49. At all relevant times, the applicable IWC Wage Order provides that "[e]very
7 employer shall authorize and permit all employees to take rest periods, which insofar as
8 practicable shall be in the middle of each work period" and that the "rest period time shall be
9 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
10 hours or major fraction thereof" unless the total daily work time is less than three and one-half
11 (3½) hours.

12 At all relevant times, California Labor Code section 226.7 provides that no
13 51. employer shall require an employee to work during any rest period mandated by an applicable
14 order of the California IWC.

15 52. Pursuant to the applicable IWC Wage Order and California Labor Code section
16 226.7(b), Plaintiff and other non-party Aggrieved Employees are entitled to recover from
17 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
18 53. required rest period was not provided.

19 During the relevant time period, Defendants regularly failed to authorize and
20 permit Plaintiff and other non-party Aggrieved Employees to take ten (10) minute rest period
21 per each four (4) hour period worked or major fraction thereof. As with meal periods,
22 Defendants' labor budget policies and resultant lack of break coverage prevented Plaintiff and
23 other non-party Aggrieved Employees from being relieved of all duty in order to take
24 compliant rest periods. Plaintiff and other non-party Aggrieved Employees were forced to
25 forego and work through rest breaks, which were not scheduled, in order to perform duties
26 such as stocking the floor and assisting customers. Plaintiff regularly worked through his ten
27 (10) minute rest periods throughout his employment in order to manage the workload and
28 meet customer demand.

1 In addition, Defendants maintained and implemented a rest period policy
2 prohibiting Plaintiff and other non-party Aggrieved Employees from leaving the premises
3 during rest periods. Because Plaintiff and other non-party Aggrieved Employees were
4 restricted from leaving the premises during rest periods, they were denied the ability to use
5 their rest periods freely for their own purposes. Thus, Defendants effectively maintained
6 control over Plaintiff and other non-party Aggrieved Employees during rest periods. As a
7 result of Defendants' rest period policy, Defendants did not relinquish control over Plaintiff
8 and other non-party Aggrieved Employees during rest periods.

9 As also stated, Defendants maintained a policy and practice where only two
10 non-exempt employees were assigned to work certain shifts. The employees working these
11 shifts were unable to take compliant rest periods due to the lack of break coverage due to
12 understaffing. More specifically, it was impossible in practice for one employee to man the
13 entire store, and as such, the needs of the job denied any opportunity for a compliant rest
14 period to aggrieved employees who worked two-person shifts.

15 ^{56.} At the same time, Defendants implemented a company-wide policy to not pay
16 rest period premiums. Alternatively, to the extent that Defendants did pay Plaintiff and other
17 non-party Aggrieved Employees one (1) additional hour of premium pay for missed rest
18 periods, Defendants did not pay Plaintiff and/or other non-party Aggrieved Employees at the
19 correct rate of pay for premium wages because Defendants failed to include all forms of
20 compensation, such as incentive pay and/or nondiscretionary bonuses, in the regular rate of
21 pay. As a result, to the extent Defendants paid Plaintiff and other non-party Aggrieved
22 Employees premium pay for missed rest periods, it did so at a lower rate than required by law.
23 As a result, Plaintiff and other non-party Aggrieved Employees were denied rest periods and
24 Defendants failed to pay the full rest period premiums due.

25 Defendants' conduct violates the applicable IWC Wage Order and California
26 Labor Code section 226.7 and 1198. Plaintiff and other non-party Aggrieved Employees are
27 therefore entitled to recover civil penalties pursuant to section 2699(a), (f), and (g).

28 //

1 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
2 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

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

8 During the relevant time period, Defendants have knowingly and intentionally
9 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
10 ^{59.} inaccurate wage statements.

11 Specifically, Defendants violated sections 226(a)(1) because Defendants did
12 ^{60.} not list the correct amount of gross wages earned by Plaintiff and other non-party Aggrieved
13 Employees in compliance with section 226(a)(1). For the same reason, Defendants failed to
14 list the correct amount of net wages earned by Plaintiff and other non-party Aggrieved
15 Employees in violation of section 226(a)(5). Defendants also failed to list the total hours
16 worked by the employees in compliance with section 226(a)(2) because it failed to include the
17 ~~time~~ employees spent engaging in mandatory drug testing at the time of hire.

18 The wage statement deficiencies are: failing to list gross wages earned and
19 ^{62.} failing to list net wages earned.

20 California Labor Code section 1174(d) provides that “[e]very person employing
21 labor in this state shall ... [k]eep a record showing the names and addresses of all employees
22 employed and the ages of all minors” and “[keep, at a central location in the state or at the
23 plants or establishments at which employees are employed, payroll records showing the hours
24 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
25 applicable piece rate paid to, employees employed at the respective plants or
26 establishments...” During the relevant time period, and in violation of Labor Code section
27 1174(d), Defendants wilfully failed to maintain accurate payroll records for Plaintiff and other
28 non-party Aggrieved Employees showing the daily hours they worked and the wages paid

1 thereto as a result of failing to record the off-the-clock hours that they worked when engaging
2 in mandatory drug testing at the time of hire.

3 California Labor Code section 1198 provides that the maximum hours of work
4 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
5 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
6 employment of any employees for longer hours than those fixed by the order or under
7 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
8 Wage Order, employers are required to keep accurate time records showing when the
9 employee begins and ends each work period and meal period. During the relevant time
10 period, Defendants failed, on a company-wide basis, to keep records of the time employees
11 spent engaged in drug testing at the time of hire for Plaintiff and other non-party Aggrieved
12 Employees in violation of section 1198.

13 64. Because Defendants’ violations of 226(a), 1174(d), and 1198 were committed
14 against Plaintiff and other non-party Aggrieved Employees, Plaintiff and other non-party
15 Aggrieved Employees are entitled to recover civil penalties pursuant to sections 226.3,
16 1174.5, and/or 2699(a), (f), and (g).

17 **FAILURE TO PAY WAGES UPON TERMINATION**

18 65. **VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

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

26 During the relevant time period, Defendants willfully failed to pay Plaintiff and
27 other non-party Aggrieved Employees who are no longer employed by Defendants the earned
28 and unpaid wages set forth above, specifically minimum wages and rest period premium

1 wages, either at the time of discharge, or within seventy-two (72) hours of their leaving
2 Defendants' employ.

3 Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
4 who are no longer employed by Defendants their wages earned and unpaid at the time of
5 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
6 Labor Code sections 201 and 202. Therefore, Plaintiff and other non-party Aggrieved
7 Employees are entitled to recover civil penalties pursuant to section 2699(a), (f), and (g).

8 **REQUEST FOR JURY TRIAL**

9 Plaintiff requests a trial by jury.

10 **PRAYER FOR RELIEF**

11 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and
12 judgment against Defendants, jointly and severally, as follows:

13 1. For civil penalties, costs, and attorneys' fees in excess of twenty-five thousand
14 dollars (\$25,000).

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

16 1. That the Court declare, adjudge and decree that Defendants violated the
17 following California Labor Code sections as to Plaintiff and/or other non-party Aggrieved
18 Employees: 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages
19 for all hours worked); 226.7, and 1198 (by failing to provide rest periods); 226(a) and 1198
20 (by failing to provide accurate wage statements); 1174(d) and 1198 (by failing to maintain
21 ^{2.} accurate payroll records); and 201, 202, 203 (by failing timely to pay all unpaid wages upon
22 termination).

23 For civil penalties for conduct occurring any time between one year prior to the
24 filing of this complaint and judgment, pursuant to California Labor Code sections 210, 226.3,
25 ^{3.} 558, 1174.5, 1197.1, 2699(a) and/or 2699(f) and (g), plus costs and attorneys' fees, for
26 violations of California Labor Code sections 201, 202, 203, 226(a), 226.7, 1174(d), 1182.12,
27 1194, 1197, 1197.1, and 1198;

28 For attorneys' fees and costs pursuant to California Labor Code section

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9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF RIVERSIDE
12

13 CHARLES LATHAN, as an aggrieved
employee pursuant to the Private Attorneys
14 General Act ("PAGA"),

15 Plaintiff,

16 vs.

17 TRACTOR SUPPLY COMPANY, a
Delaware corporation; and DOES 1 through
18 10, inclusive,

19 Defendants.
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26
27
28

Case No. RIC1724482

Honorable Craig G. Riemer, Dept. 5

SECOND AMENDED COMPLAINT

(1) Claim for Civil Penalties for Violations
of California Labor Code, Pursuant to
PAGA, §§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiff Charles Lathan, as an aggrieved employee and on behalf of all other
2 aggrieved employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698 *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as non-exempt, hourly-paid
8 employees who received at least one physical wage statement and against whom one or more
9 violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision
10 regulating hours and days of work in the applicable Industrial Welfare Commission (“IWC”)
11 Wage Order were committed, as set forth in this complaint, at any time between one year prior
12 to the filing of this complaint until judgment (“non-party Aggrieved Employees”). Plaintiff’s
13 share of civil penalties sought in this action does not exceed \$75,000.

14 2. This Court has jurisdiction over this action pursuant to the California
15 Constitution, Article VI, section 10. The statute under which this action is brought does not
16 specify any other basis for jurisdiction.

17 3. This Court has jurisdiction over all Defendants because, on information and
18 belief, Defendants are either citizens of California, have sufficient minimum contacts in
19 California, or otherwise intentionally avail themselves of the California market so as to render
20 the exercise of jurisdiction over them by the California courts consistent with traditional
21 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
22 in this action given that the State of California, as the real party in interest in this action, is not
23 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
24 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
25 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
26 in this action, and that diversity jurisdiction cannot be established when Plaintiffs’ share of the
27 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

28 4. Venue is proper in this Court because Defendants employ persons in this

1 county and employed Plaintiff in this county, and thus a substantial portion of the transactions
2 and occurrences related to this action occurred in this county.

3 5. California Labor Code sections 2698 *et seq.*, the “Labor Code Private Attorneys
4 General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private attorneys
5 general their current or former employers for various civil penalties for violations of various
6 provisions in the California Labor Code.

7 **THE PARTIES**

8 6. Plaintiff CHARLES LATHAN is a resident of Hemet, in Riverside County,
9 California. Defendants employed Plaintiff as an hourly, non-exempt Assistant Store Manager
10 from approximately March 2016 to February 2017. Plaintiff worked for Defendants at their
11 retail store location in Hemet, California. During his employment, Plaintiff typically worked
12 eight (8) to ten (10) hours or more per day, five (5) to six (6) days per week, and
13 approximately 45 or more hours per week. Plaintiff’s job duties included, without limitation,
14 opening and closing the store, operating the cash register and handling customer transactions,
15 stocking and loading merchandise, and providing general customer service.

16 7. Defendant TRACTOR SUPPLY COMPANY (“TRACTOR”) was and is, upon
17 information and belief, a Delaware corporation, and, at all times hereinafter mentioned, an
18 employer whose employees are engaged throughout this county, the State of California, or the
19 various states of the United States of America.

20 8. Plaintiff is unaware of the true names or capacities of the Defendants sued
21 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
22 amend the complaint and serve such fictitiously named Defendants once their names and
23 capacities become known.

24 9. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
25 are the partners, agents, owners, shareholders, managers, or employees of TRACTOR at all
26 relevant times.

27 10. Plaintiff is informed and believes, and thereon alleges, that each and all of the
28 acts and omissions alleged herein was performed by, or is attributable to, TRACTOR and/or

DOES 1 through 10 (collectively “Defendants”), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others’ behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

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

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

PAGA REPRESENTATIVE ALLEGATIONS

13. Defendants are a Delaware corporation which operates a chain of retail stores offering products for home improvement, agriculture, lawn maintenance, and livestock, equine, and pet care. Defendants currently own and operate at least 50 retail store locations throughout California.

14. According to Defendants’ “Statement of Information” filed with the California Secretary of State office and Defendants’ website, Defendants maintain their corporate headquarters in Brentwood, Tennessee.¹ Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their corporate headquarters in Brentwood, Tennessee, which is responsible for collecting and processing all new hire paperwork, as well as communicating and implementing Defendants’ company-wide policies, to employees throughout California.

15. In particular, Plaintiff and other non-party Aggrieved Employees, on information and belief, received the same standardized documents and/or written policies.

¹ California Secretary of State, Business Filings, <https://businessfilings.sos.ca.gov/> (last visited December 18, 2017); Tractor Supply Company Careers, “Store Support Center (HQ),” http://tractorsupply.jobs/support_hq.php (last visited December 18, 2017).

1 Upon information and belief, the usage of standardized documents and/or written policies,
2 including new hire documents, indicate that Defendants dictated policies at the corporate level
3 and implemented them company-wide, regardless of their employees' assigned locations or
4 positions. Upon information and belief, Defendants set forth uniform policies and procedures
5 in several documents provided at an employee's time of hire, including the Team Member
6 Handbook.

7 16. On information and belief, all transactions regarding hiring, terminations,
8 promotions, pay increases, and employee transfers, etc., relating to Defendants' California
9 employees were submitted to and processed by Defendants' HR department in Brentwood,
10 Tennessee. Additionally, on information and belief, Defendants' corporate records, business
11 records, data, and other information related to Defendants, including, in particular, HR records
12 pertaining to Defendants' California employees, are also maintained at Defendants' corporate
13 headquarters in Brentwood, Tennessee.

14 17. Upon information and belief, Defendants maintain a centralized Payroll
15 department in Brentwood, Tennessee, which processes payroll for all non-exempt, hourly-paid
16 employees working for Defendants at their various locations in California, including Plaintiff
17 and other non-party Aggrieved Employees. Based upon information and belief, Defendants
18 issued the same formatted wage statements to all non-exempt employees in California,
19 irrespective of their work location. Upon information and belief, Defendants process payroll
20 for departing employees in the same manner throughout the State of California, regardless of
21 the manner in which each employee's employment ends.

22 18. Defendants continue to employ non-exempt, hourly-paid employees throughout
23 California.

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

28 20. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other

1 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
2 were not recorded.

3 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
5 receive certain wages for overtime compensation and that they were not receiving certain
6 wages for overtime compensation.

7 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
9 be paid at a regular rate of pay, and corresponding overtime rate of pay, that included all
10 forms of remuneration paid to Plaintiff and other non-party Aggrieved Employees, including
11 incentive pay, nondiscretionary bonuses, and/or other forms of compensation.

12 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
14 receive at least minimum wages for compensation and that they were not receiving at least
15 minimum wages for work that was required to be done off-the-clock. In violation of the
16 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
17 least minimum wages for work done off-the-clock.

18 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
20 meal periods in accordance with the Labor Code or payment of one (1) additional hour of pay
21 at their regular rates of pay when they were not provided with timely, uninterrupted, thirty
22 (30) minute meal periods and that Plaintiff and other non-party Aggrieved Employees were
23 not provided with all meal periods or payment of one (1) additional hour of pay at their
24 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
25 period.

26 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
28 receive complete and accurate wage statements in accordance with California law. In

1 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees
2 were not provided complete and accurate wage statements.

3 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that they had a duty to maintain accurate and complete payroll records in
5 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
6 and intentionally failed to do so.

7 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
9 timely payment of all wages earned upon termination of employment. In violation of the
10 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
11 payment of all wages due, including, but not limited to, overtime wages, minimum wages, and
12 meal period premiums, within permissible time periods.

13 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
15 receive reimbursement for all business-related expenses and costs they incurred during the
16 course and scope of their employment, and that they did not receive reimbursement of
17 applicable business-related expenses and costs they incurred.

18 29. Plaintiff is informed and believes, and thereon alleges, that at all times herein
19 mentioned, Defendants knew or should have known that they had a duty to provide Plaintiff
20 and other non-party Aggrieved Employees with written notice of the material terms of their
21 employment with Defendants as required by the California Wage Theft Prevention Act, but
22 willfully, knowingly, and intentionally failed to do so.

23 30. Plaintiff is informed and believes, and thereon alleges, that at all times herein
24 mentioned, Defendants knew or should have known that they had a duty to compensate
25 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants
26 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
27 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees
28 that they were properly denied wages, all in order to increase Defendants' profits.

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

7 32. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any
8 person who was employed by the alleged violator and against whom one or more of the
9 alleged violations was committed.”

10 33. Plaintiff and other current and former employees of Defendants are “aggrieved
11 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
12 or former employees and one or more of the alleged violations were committed against them.

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

- 16 (a) The aggrieved employee shall give written notice by online filing
17 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail
18 to the employer of the specific provisions of the California Labor Code
19 alleged to have been violated, including the facts and theories to support
20 the alleged violations.
- 21 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
22 2699.3(a) and any employer response to that notice shall be
23 accompanied by a filing fee of seventy-five dollars (\$75).
- 24 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
25 employer and the aggrieved employee by certified mail that it does not
26 intend to investigate the alleged violation within sixty (60) calendar
27 days of the postmark date of the Employee’s Notice. Upon receipt of
28 the LWDA Notice, or if the LWDA Notice is not provided within sixty-

1 five (65) calendar days of the postmark date of the Employee's Notice,
2 the aggrieved employee may commence a civil action pursuant to
3 California Labor Code section 2699 to recover civil penalties in addition
4 to any other penalties to which the employee may be entitled.

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

- 9 (a) The aggrieved employee or representative shall give written notice by
10 online filing to the LWDA and by certified mail to the employer of the
11 specific provisions of the California Labor Code alleged to have been
12 violated (other than those listed in Section 2699.5), including the facts
13 and theories to support the alleged violation.
- 14 (b) An aggrieved employee's notice filed with the LWDA pursuant to
15 2699.3(c) and any employer response to that notice shall be
16 accompanied by a filing fee of seventy-five dollars (\$75).
- 17 (c) The employer may cure the alleged violation within thirty-three (33)
18 calendar days of the postmark date of the notice. The employer shall
19 give written notice by certified mail within that period of time to the
20 aggrieved employee or representative and the agency if the alleged
21 violation is cured, including a description of actions taken, and no civil
22 action pursuant to Section 2699 may commence. If the alleged violation
23 is not cured within the 33-day period, the employee may commence a
24 civil action pursuant to Section 2699.

25 36. On October 18, 2017, Plaintiff provided written notice by online filing to the
26 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
27 Code alleged to have been violated, including facts and theories to support the alleged
28 violations, in accordance with California Labor Code section 2699.3. A true and correct copy

1 of Plaintiff's written notice to the LWDA and Defendants dated October 18, 2017, is attached
2 hereto as "Exhibit 1."

3 37. As of the filing date of this complaint, over 65 days have passed since Plaintiff
4 sent the initial LWDA Notice described above, and the LWDA has not responded that it
5 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

6 38. Thus, Plaintiff has satisfied the administrative prerequisites under California
7 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants, in
8 addition to other remedies, for violations of California Labor Code sections 201, 202, 203,
9 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

10 39. Defendants, at all times relevant to this complaint, were employers or persons
11 acting on behalf of an employer(s) who violated Plaintiff's and other non-party Aggrieved
12 Employees' rights by violating various sections of the California Labor Code as set forth
13 above.

14 40. As set forth below, Defendants have violated numerous provisions of both the
15 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
16 Order.

17 41. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
18 2699.3(a), 2699.3(c), and 2699.5, Plaintiff, acting in the public interest as a private attorney
19 general, seeks assessment and collection of civil penalties for himself, all other non-party
20 Aggrieved Employees, and the State of California against Defendants, in addition to other
21 remedies, for violations of California Labor Code sections 201, 202, 203, 226(a), 226.7, 510,
22 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

23 **FIRST CAUSE OF ACTION**

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

25 **(Against all Defendants)**

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

28 43. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover

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

7 44. Defendants' conduct, as alleged herein, violates numerous sections of the
8 California Labor Code, including, but not limited to, the following:

- 9 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
10 wage order for Defendants' failure to compensate Plaintiff and other
11 non-party Aggrieved Employees with all required overtime pay as set
12 forth below;
- 13 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198,
14 and the applicable IWC wage order for Defendants' failure to
15 compensate Plaintiff and other non-party Aggrieved Employees with at
16 least minimum wages for all hours worked as set forth below;
- 17 (c) Violation of Labor Code sections 226.7, 512, 1198, and the applicable
18 IWC wage order for Defendants' failure to provide Plaintiff and other
19 non-party Aggrieved Employees with meal periods, as set forth below;
- 20 (d) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
21 wage order for failure to provide accurate and complete wage statements
22 to Plaintiff and other non-party Aggrieved Employees, as set forth
23 below;
- 24 (e) Violations of Labor Code sections 1174(d), 1198, and the applicable
25 IWC wage order for failure to maintain payroll records as set forth
26 below;
- 27 (f) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
28 earned wages upon termination as set forth below; and

1 (g) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
2 and other non-party Aggrieved Employees for all business expenses
3 necessarily incurred, as set forth below.

4 **FAILURE TO PAY OVERTIME**

5 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

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

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

15 47. Specifically, the applicable IWC Wage Order provides that Defendants are and
16 were required to pay Plaintiff and other non-party Aggrieved Employees working more than
17 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
18 one-half (1½) for all hours worked in excess of eight (8) hours in a day or more than forty (40)
19 hours in a workweek.

20 48. The applicable IWC Wage Order further provides that Defendants are and were
21 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
22 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
23 An employee’s regular rate of pay includes all remuneration for employment paid to, or on
24 behalf of, the employee, including non-discretionary bonuses and incentive pay.

25 49. California Labor Code section 510 codifies the right to overtime compensation
26 at one and one-half times (1½) the regular rate of pay for hours worked in excess of eight (8)
27 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
28 seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate

1 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
2 in a day on the seventh (7th) day of work.

3 50. During the relevant time-period, Defendants willfully failed to pay all overtime
4 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time-
5 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
6 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
7 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
8 not recorded.

9 51. First, Defendants have a company-wide policy of staffing their locations strictly
10 based on limited labor or payroll budgets, which has resulted in and continues to result in
11 chronic understaffing and a lack of break coverage for employees. Defendants' company-
12 wide use of labor budgets has led to stores being understaffed because labor budgets were set
13 with more focus on controlling costs than ensuring a sufficient number of employees were
14 available to handle the workload and provide adequate break coverage. For example,
15 Plaintiff's store was allocated approximately \$5,000-\$5,500 labor costs per week, which was
16 inadequate to provide break coverage and keep up with store demands. Due to this
17 understaffing, Plaintiff and other non-party Aggrieved Employees were required to perform
18 work during meal breaks and were not compensated for this time.

19 52. In addition, Defendants have a company-wide policy of requiring that a
20 manager be present on the sales floor at all times and prohibiting managers from leaving the
21 store premises unless another manager was on the sales floor, resulting in a lack of break
22 coverage for managerial employees. At the same time, the labor budgets Defendants
23 implemented did not allow for more than one manager to be on the schedule at all times. As a
24 result, Plaintiff and other managerial non-party Aggrieved Employees were often the only
25 managers on duty. Plaintiff was the only manager on schedule approximately two (2) to three
26 (3) times per week. Because managerial employees were prohibited from leaving Defendants'
27 store premises for meal periods, and because there were too few employees and other
28 managers on duty to handle the workload, stock the floor, and/or attend to customers, Plaintiff

1 and other non-party Aggrieved Employees were denied uninterrupted 30-minute meal periods.

2 53. Defendants' company-wide policies and/or practices of understaffing stores and
3 requiring that a managerial employee be on the floor at all times prevented Plaintiff and other
4 non-party Aggrieved Employees from taking all timely, uninterrupted thirty (30) minute meal
5 periods and led to them working off-the-clock during meal periods to complete their assigned
6 tasks. For example, Plaintiff was frequently unable to take a full 30-minute meal period
7 because, as the only manager on duty, he had to address store issues requiring a manager as
8 they arose, including those that occurred during his meal period. Certain store transactions
9 required a manager and, as the only manager on duty, Plaintiff and other non-party Aggrieved
10 Employees would be interrupted during their unpaid meal periods to handle those transactions.

11 54. Further, Defendants did not provide Plaintiff and other non-party Aggrieved
12 Employees with compliant second 30-minute meal periods on days that they worked in excess
13 of ten (10) hours in one day. Plaintiff occasionally worked shifts in excess of ten (10) hours
14 but was not permitted to take a second meal period. Plaintiff and other non-party Aggrieved
15 Employees did not sign valid meal break waivers on days that they were entitled to meal
16 periods but were not relieved of all duties.

17 55. Defendants also implemented a uniform, company-wide loss prevention policy
18 requiring that employees undergo security checks after clocking out of their shifts before
19 leaving the store premises. Defendants' security checks took place at the front of the store,
20 and Plaintiff and other non-party Aggrieved Employees were required to clock out of their
21 shifts either in the break room located in the back of the store or at the Customer Center
22 located near the center of the store. After clocking out at the back of the store or Customer
23 Center toward the center of the store, Plaintiff and other non-party Aggrieved Employees had
24 to wait for another employee at the front of the store to become available to perform the check
25 and then undergo the security check. As a result, Plaintiff and other non-party Aggrieved
26 Employees were required to remain within the store under Defendants' control, but "off-the-
27 clock" and without pay, waiting for another employee to conduct mandatory security checks.

28 56. Additionally, Defendants had a policy and/or practice of requiring that

1 managerial employees respond to alarm calls from the security company and travel to the
2 store to reset the alarm. During the relevant time period, Plaintiff and other non-party
3 Aggrieved Employees who lived nearest to the store were designated as first responders and
4 would receive a phone call from the security company if the store alarm went off. If the
5 security company was unable to reach the first responder, then the company would go down
6 the list of other managerial employees until they reached someone. Plaintiff and other non-
7 party Aggrieved Employee who received the call was required to then travel to the store and
8 reset the alarm. At times, these calls could be in the middle of the night, and the process of
9 getting called and having to go to the store and reset the alarm could take hours. Plaintiff and
10 other non-party Aggrieved Employees were not scheduled and were not clocked in when these
11 alarm calls took place, and, on information and belief, they were not compensated for the time
12 they spent communicating with the alarm company, traveling to and from the store, and time
13 spent resetting the store alarm.

14 57. Defendants knew or should have known that, as a result of these company-wide
15 policies, Plaintiff and other non-party Aggrieved Employees were performing their assigned
16 duties off-the-clock and/or during unpaid meal periods, and were suffered or permitted to
17 perform work for which they were not paid.

18 58. Because Plaintiff and other non-party Aggrieved Employees sometimes worked
19 shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-
20 the-clock work qualified for overtime premium pay. Therefore, Plaintiff and other non-party
21 Aggrieved Employees were not paid overtime wages for all of the overtime hours they
22 actually worked.

23 59. Furthermore, on information and belief, Defendants did not pay Plaintiff and
24 other non-party Aggrieved Employees the correct overtime rate for the recorded overtime
25 hours that they generated. In addition to an hourly wage, Defendants paid Plaintiff and other
26 non-party Aggrieved Employees incentive pay and/or nondiscretionary bonuses. However,
27 upon information and belief, Defendants failed to incorporate all remunerations, including
28 incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay

1 for purposes of calculating the overtime wage rate.

2 60. Specifically, during the relevant time period, Defendants paid Plaintiff non-
3 discretionary bonus pay which appear on his wage statement(s) as “Store Bonus.” The “Store
4 Bonus” was awarded to Plaintiff and other non-party Aggrieved Employees for reaching sales
5 goals. In the same pay periods in which these incentive payments and/or nondiscretionary
6 bonuses were earned, Plaintiff and other non-party Aggrieved Employees also worked
7 overtime hours for which they were paid overtime wages. However, on a company-wide
8 basis, Defendants failed to incorporate these other forms of pay earned into Plaintiff’s regular
9 rate of pay and, as a result, paid him at an incorrect and lower rate of pay for overtime hours
10 worked. Specifically, Defendants paid Plaintiff at 1.5 times his hourly rate of pay, instead of
11 at 1.5 times his regular rate of pay incorporating all applicable remuneration.

12 61. For example, for the pay period ending on January 20, 2017, Defendants paid
13 Plaintiff 1.5 times his hourly rate for overtime hours (\$29.9250 per hour (which is 1.5 x
14 \$19.95 hourly rate)) instead of 1.5 times his regular rate incorporating the \$476.60 Store
15 Bonus he earned during that pay period. Therefore, during times when Plaintiff and other
16 non-party Aggrieved Employees worked overtime and received incentive pay and/or non-
17 discretionary bonuses, Defendants failed to pay all overtime wages by paying a lower
18 overtime rate than required.

19 62. Defendants’ failure to pay Plaintiff and other non-party Aggrieved Employees
20 the balance of overtime compensation and failure to include all applicable remuneration in
21 calculating the regular rate of pay for overtime pay, as required by California law, violates the
22 provisions of California Labor Code sections 510 and 1198. Plaintiff and other non-party
23 Aggrieved Employees are entitled to recover civil penalties pursuant to Labor Code section
24 2699(a), (f)-(g).

25 **FAILURE TO PAY MINIMUM WAGES**

26 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, 1197.1, AND 1198**

27 63. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
28 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the

1 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
2 fixed is unlawful. Compensable work time is defined in Wage Order No. 4 as “the time
3 during which an employee is subject to the control of an employer, and includes all the time
4 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code.
5 Regs. tit. 8, § 11070(2)(K) (defining “Hours Worked”).

6 64. As stated, due to Defendants’ company-wide policies, including labor budget,
7 and resultant lack of break coverage, Plaintiff and other non-party Aggrieved Employees were
8 forced to forego meal breaks and/or have their meal breaks interrupted or delayed by work.
9 Moreover, Plaintiff and other non-party Aggrieved Employees were not relieved of all duties
10 such that they could take second 30-minute meal periods on days that they worked in excess
11 of ten (10) hours in a day. As stated, during his employment, Plaintiff worked shifts in excess
12 of ten (10) hours and was not permitted to take a second 30-minute meal period.

13 65. As also described above, Defendants had a company-wide policy and practice
14 requiring Plaintiff and other non-party Aggrieved Employees to submit to off-the-clock
15 security checks. However, Defendants did not compensate Plaintiff and other non-party
16 Aggrieved Employees for the time they spent waiting to undergo security checks and for the
17 time they spent undergoing security checks. And, as also stated, Defendants required Plaintiff
18 and other non-party Aggrieved Employees to respond to calls from the security company
19 when the store alarm went off and travel to and from the store to reset the alarm while “off-
20 the-clock.” Defendants did not compensate Plaintiff and other non-party Aggrieved
21 Employees for the time they spent communicating with the security company or for the time it
22 took them to travel to and from the store and reset the alarm.

23 66. Thus, Defendants did not pay at least minimum wages for off-the-clock hours
24 that qualified for overtime premium payment. Also, to the extent that these off-the-clock
25 hours did not qualify for overtime premium payment, Defendants did not pay at least
26 minimum wages for those hours worked off-the-clock in violation of California Labor Code
27 sections 1182.12, 1194, 1197, 1197.1, and 1198.

28 67. Defendants’ failure to pay Plaintiff and other non-party Aggrieved Employees

1 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
2 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover
3 civil penalties pursuant to sections 1197.1 and/or 2699(a), (f), and (g).

4 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**
5 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), AND 1198**

6 68. At all relevant times herein set forth, the applicable IWC Wage Order(s) and
7 California Labor Code sections 226.7, 512(a), and 1198 were applicable to Plaintiff and non-
8 party Aggrieved Employees' employment by Defendants.

9 69. At all relevant times herein set forth, California Labor Code section 512(a)
10 provides that an employer may not require, cause, or permit an employee to work for a period
11 of more than five (5) hours per day without providing the employee with a meal period of not
12 less than thirty (30) minutes, except that if the total work period per day of the employee is
13 not more than six (6) hours, the meal period may be waived by mutual consent of both the
14 employer and the employee. Under California law, first meal periods must start after no more
15 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
16 2012).

17 70. At all relevant times herein set forth, California Labor Code section 226.7 and
18 512(a) provide that no employer shall require an employee to work during any meal period
19 mandated by an applicable order of the IWC.

20 71. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
21 the applicable IWC Wage Order also require employers to provide a second meal break of not
22 less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
23 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
24 hours worked is no more than twelve (12) hours, the second meal period may be waived by
25 mutual consent of the employer and the employee only if the first meal period was not waived.

26 72. As stated, Defendants had a policy of requiring that managerial employees be
27 present at all times at the store, which has resulted in and continues to result in a lack of break
28 coverage. At all times herein mentioned, Defendants knew or should have known that as a

1 result of its policies, Plaintiff and other non-party Aggrieved Employees have been required to
2 perform some of their assigned duties during meal periods and that Defendants did not pay
3 meal period premium wages when meal periods were interrupted. For example, during the
4 relevant time period, Plaintiff was required to assist customers while clocked out for meal
5 periods due to his inability to leave the store unattended by a manager. As a result, Plaintiff
6 and other non-party Aggrieved Employees had to work through some or all of their meal
7 periods, have their meal periods interrupted to return to work, and wait extended periods of
8 time before taking meal periods.

9 73. Furthermore, Defendants did not provide Plaintiff and other non-party
10 Aggrieved Employees with second 30-minute meal periods on days that they worked in excess
11 of 10 hours in one day. Plaintiff and other non-party Aggrieved Employees did not sign valid
12 meal break waivers on days that they were entitled to meal periods and were not relieved of all
13 duties. To the extent Plaintiff and/or other non-party Aggrieved Employees signed second
14 meal period waivers for shifts longer than 12 hours in length, such meal period waivers were
15 invalid under California law.

16 74. Additionally, Defendants maintained a policy and practice of only assigning
17 two non-exempt employees to work certain shifts. The employees working these shifts were
18 unable to take compliant meal periods due to the lack of break coverage due to understaffing.
19 More specifically, it was impossible, in practice, for one employee to run the entire store, and
20 as such, the needs of the job denied any opportunity for a compliant meal period to Plaintiff
21 and other non-party Aggrieved Employees who worked two-person shifts.

22 75. Further, Labor Code section 1198 and the applicable wage order require that
23 employers record meal periods. Defendants violated Labor Code section 1198 and the
24 applicable IWC Wage Order insofar as Defendants failed to accurately record when Plaintiff
25 and other non-party Aggrieved Employees took meal periods, to the extent they were
26 authorized and permitted to do so.

27 76. At all times herein mentioned, Defendants knew or should have known that as a
28 result of these policies, Plaintiff and other non-party Aggrieved Employees were prevented

1 from being relieved of all duties and were required to perform some of their assigned duties
2 during meal periods. Defendants further knew or should have known they did not pay
3 Plaintiff and/or other non-party Aggrieved Employees meal period premium wages when meal
4 periods were missed, interrupted by work, and/or taken late. Plaintiff and other non-party
5 Aggrieved Employees did not sign valid meal break waivers on days that they were entitled to
6 meal periods and were not relieved of all duties.

7 77. Moreover, Defendants engaged in a systematic, company-wide practice and/or
8 policy of not paying meal period premiums owed when compliant meal periods were not
9 provided. Alternatively, to the extent that Defendants did pay Plaintiff and other non-party
10 Aggrieved Employees one (1) additional hour of premium pay for missed meal periods, on
11 information and belief, Defendants did not pay Plaintiff and other non-party Aggrieved
12 Employees at the correct rate of pay for premium wages because Defendants failed to include
13 all forms of compensation, such as incentive pay and/or nondiscretionary bonuses, in the
14 regular rate of pay. As a result, to the extent Defendants paid Plaintiff and other non-party
15 Aggrieved Employees premium pay for missed meal periods, they did so at a lower rate than
16 required by law. As a result, Defendants failed to provide Plaintiff and/or other non-party
17 Aggrieved Employees compliant meal periods and failed to pay the full meal period premiums
18 due.

19 78. Defendants' conduct violates the applicable IWC Wage Order, and California
20 Labor Code sections 226.7, 512(a), and 1198. Plaintiff and other non-party Aggrieved
21 Employees are entitled to recover civil penalties pursuant to section 2699(a), (f), and (g).

22 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
23 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

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

1 80. During the relevant time-period, Defendants have knowingly and intentionally
2 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
3 inaccurate wage statements. Specifically, Defendants violated sections 226(a)(1), 226(a)(2),
4 226(a)(5), 226(a)(8), and 226(a)(9). Defendants failed to report all hours worked, in that the
5 time Plaintiff and other non-party Aggrieved Employees spent undergoing security checks and
6 responding to alarm calls were omitted from the total hours worked by the employee.
7 Because Defendants did not calculate Plaintiff's and other non-party Aggrieved Employees'
8 regular rate of pay correctly for purposes of paying overtime, Defendants did not list the
9 correct amount of gross wages earned by Plaintiff and other non-party Aggrieved Employees
10 in compliance with section 226(a)(1). For the same reason, Defendants failed to list the
11 correct amount of net wages earned by Plaintiff and other non-party Aggrieved Employees in
12 violation of section 226(a)(5). Defendants also failed to correctly list all applicable hourly
13 rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of
14 pay for premium wages, including for holiday overtime, in violation of section 226(a)(9). For
15 example, Defendants listed an overtime rate(s) of \$29.925 per hour on Plaintiff's paystub
16 dated January 20, 2017, when his correct overtime rate of pay was higher based on his regular
17 rate of pay. Defendants listed a holiday overtime rate ("Holiday Ot") on other non-party
18 Aggrieved Employees' wage statements at their lower straight hourly rate, when their correct
19 rate of pay was actually higher.

20 81. California Labor Code section 1198 provides that the maximum hours of work
21 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
22 set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he
23 employment of any employees for longer hours than those fixed by the order or under
24 conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC
25 Wage Order, employers are required to keep accurate time records showing when the
26 employee begins and ends each work period and meal period. During the relevant time-
27 period, Defendants failed, on a company-wide basis, to keep accurate records of meal period
28 start and stop times for Plaintiff and other non-party Aggrieved Employees, in violation of

1 section 1198.

2 82. Because Defendants' violations of 226(a) and 1174(d) were committed against
3 Plaintiff and other non-party Aggrieved Employees, Plaintiff and other non-party Aggrieved
4 Employees are entitled to recover civil penalties pursuant to sections 226(e), 226.3, 1174.5,
5 and/or 2699(a), (f), and (g).

6 **FAILURE TO PAY WAGES UPON TERMINATION**

7 **VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

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

15 84. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved
16 Employees who are no longer employed by Defendants the earned and unpaid wages set forth
17 above, including but not limited to, overtime wages, minimum wages, and meal period
18 premium wages, either at the time of discharge, or within seventy-two (72) hours of their
19 leaving Defendants' employ.

20 85. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
21 who are no longer employed by Defendants their wages earned and unpaid at the time of
22 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
23 Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are
24 therefore entitled to recover civil penalties pursuant to Labor Code section 2699(f)-(g).

25 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

26 **VIOLATION OF LABOR CODE SECTION 2802**

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

1 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
2 to prevent employers from passing off their cost of doing business and operating expenses on
3 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
4 (2014). The applicable wage order, IWC Wage Order 7-2001, provides that: “[w]hen tools or
5 equipment are required by the employer or are necessary to the performance of a job, such
6 tools and equipment shall be provided and maintained by the employer, except that an
7 employee whose wages are at least two (2) times the minimum wage provided herein may be
8 required to provide and maintain hand tools and equipment customarily required by the trade
9 or craft.”

10 87. During the relevant time-period, Defendants, on a company-wide basis,
11 required Plaintiff and other non-party Aggrieved Employees to utilize their own cell phones
12 and personal vehicles to carry out company business, but Defendants failed to reimburse them
13 for these costs, including mileage and cell phone and/or data plans. For example, Plaintiff
14 was required to use his cell phone to communicate with other employees and managers, as
15 well as his cell phone data to look up store items for customers and vendors. Although
16 Defendants required Plaintiff to regularly utilize his personal cellular phone to carry out work-
17 related responsibilities, Defendants failed to reimburse him for this cost. Similarly, Plaintiff
18 and other non-party Aggrieved Employees were required to drive to nearby banks and make
19 bank deposits and get change for their store using their own vehicles. Although Defendants
20 required that Plaintiff and other non-party Aggrieved Employees use their own vehicles and
21 complete these bank deposits as part of their job duties, Defendants did not reimburse Plaintiff
22 or other non-party Aggrieved Employees for their travel expenses. Further, as mentioned,
23 Defendants had a company-wide practice and policy that required any individual who has
24 accepted Defendants’ offer of employment (“newly hired employee”) to complete a
25 mandatory drug test at a date, time, and location set by Defendants before or after the newly
26 hired employee’s first work shift. Despite this job requirement, Defendants did not reimburse
27 them for the cost of travel to the mandatory drug testing location that was predetermined by
28 the Defendants. For example, Plaintiff was required to travel to a location that was determined

1 by Tractor Supply to complete a drug test but was not reimbursed for travel expenses.

2 88. Defendants engaged in a systematic, company-wide policy to not reimburse its
3 employees for necessary business expenses. Defendants could have provided Plaintiff and
4 other non-party Aggrieved Employees with the actual tools for use on the job, including
5 company phones and devices or reimbursement for their cell phone usage, and could have
6 provided company vehicles for fulfilling work-related tasks or reimbursed travel expenses, but
7 instead, Defendants passed these operating costs off onto Plaintiff and other non-party
8 Aggrieved Employees. At all relevant times, Plaintiff did not earn at least two (2) times the
9 minimum wage.

10 89. Defendants' company-wide policy and/or practice of passing its operating costs
11 on to Plaintiff and non-party Aggrieved Employees is in violation of California Labor Code
12 section 2802. Defendants have intentionally and willfully failed to fully reimburse Plaintiff
13 and other non-party Aggrieved Employees for necessary business-related expenses and costs.

14 90. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
15 recover civil penalties pursuant to Labor Code section 2699(f)-(g).

16 **REQUEST FOR JURY TRIAL**

17 Plaintiff requests a trial by jury.

18 **PRAYER FOR RELIEF**

19 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and
20 judgment against Defendants, jointly and severally, as follows:

21 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
22 (\$25,000).

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

24 2. That the Court declare, adjudge and decree that Defendants violated the
25 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
26 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
27 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512
28 and 1198 (by failing to provide all meal periods); 226(a), 1174(d) and 1198 (by failing to

1 provide accurate wage statements and maintain accurate payroll records); 201, 202, 203 (by
2 failing timely to pay all earned wages upon termination); 2802 (by failing to reimburse
3 business expenses); and 2810.5 (by failing to provide written notice of material terms of
4 employment);

5 3. For civil penalties, pursuant to California Labor Code sections 226.3, 1174.5,
6 1197.1, 2699(a) and/or 2699(f) and (g), for violations of California Labor Code sections 201,
7 202, 203, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and
8 2810.5;

9 4. For attorneys' fees and costs pursuant to California Labor Code section
10 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
11 Labor Code sections 201, 202, 203, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197,
12 1197.1, 1198, 2802, and 2810.5;

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

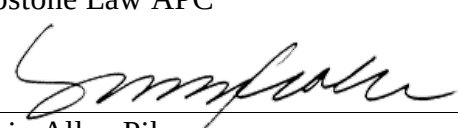
14 6. For such other and further relief as the Court may deem equitable and
15 appropriate.

16
17 Dated: June 12, 2018

Respectfully submitted,

Capstone Law APC

19
20 By:


Bevin Allen Pike
Jennifer R. Bagosy
Suzy E. Lee
Ari Y. Basser

Attorneys for Plaintiff Charles Lathan

2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 203, 226(a), 226.7, 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198;

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

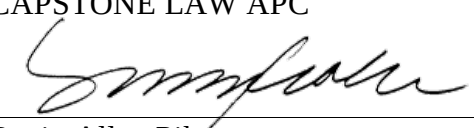
For such other and further relief as the Court may deem equitable and appropriate.

4.

Dated: June 13, 2018

Respectfully submitted,

CAPSTONE LAW APC

By: 

Bevin Allen Pike

Jennifer Bagosy

Suzy E. Lee

Ari Y. Bassar

Attorneys for Plaintiff Elmar Garcia

Exhibit B

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

ELMAR GARCIA, as an aggrieved employee
pursuant to the Private Attorneys General Act
("PAGA"),

Plaintiff,

vs.

TRACTOR SUPPLY COMPANY, a Tennessee
corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No. MCC1600273

Hearing Date:	Date
Time:	Time
Place:	Dept. 05
Judge:	Hon. Craig G. Riemer
	[Assigned for all purposes]

**[PROPOSED] ORDER GRANTING
MOTION FOR APPROVAL OF
SETTLEMENT, LEAVE TO FILE THIRD
AMENDED COMPLAINT, AND ORDER
OF DISMISSAL**

[Assigned for all purposes to
The Honorable Craig G. Riemer, Dept. 05]

Action Filed:	April 4, 2016
Trial Date:	None

1 The motion to approve settlement (the “Motion”) of Plaintiff Elmar Garcia’s action (the
2 “Action”) to recover penalties recoverable under the California Labor Code Private Attorney
3 General Act, Cal. Labor Code section 2698 et seq. (“PAGA”), came for hearing in Department 5 of
4 this Court on _____, 2018. Having reviewed and considered the Motion and supporting
5 declarations in support thereof, and finding good cause therefore, the Court finds that:

6 1. Plaintiff’s request for leave to file his proposed Third Amended Complaint is hereby
7 granted. Plaintiff’s Third Amended Complaint is deemed filed as of the date of this Order.

8 2. Settlement of Plaintiff’s claims under PAGA for \$400,000, inclusive of attorney’s
9 fees, litigation costs, a general release payment to Plaintiff and settlement administration costs is in
10 all respects, fair, adequate, and reasonable, and was reached as a result of intensive, serious and
11 non-collusive arm’s length negotiations.

12 3. Reduction of the penalties paid in this Action pursuant to this Order and Labor Code
13 section 2699(e)(2) is appropriate to prevent an unjust, arbitrary and oppressive, or confiscatory
14 result.

15 4. Under the terms of the PAGA Settlement Agreement (the “Agreement”) between
16 the parties and in light of Defendant’s potential exposure, an award of attorney’s fees to Plaintiff’s
17 counsel in the amount of \$_____ falls within the range of reasonableness and the results achieved
18 in this Action justify the award.

19 5. Defendant properly submitted the proposed Settlement Agreement to the Labor and
20 Workforce Development Agency at the same time it was submitted to this Court in compliance
21 with Labor Code section 2699(l)(2).

22 **NOW, THEREFORE, IT IS HEREBY ORDERED:**

23 1. The Motion is GRANTED and the Court approves that \$400,000, inclusive of
24 attorney’s fees, litigation costs, a general release payment to the named plaintiff and settlement
25 administration costs be allocated to resolve Plaintiff’s claims under PAGA in this Action, and shall
26 be distributed as follows:

- 27 a. _____ will be paid to the LWDA as its 75% share of assessed
28 penalties recoverable under PAGA, as provided in the Agreement;

- b. _____ will be paid to Plaintiff's counsel as reasonable attorney's fees and litigation costs, as provided in the Agreement:
- c. _____ will be paid to Plaintiff as consideration for his general release of claims in favor of Defendant (the "General Release Payment"), as provided in the Agreement.
- d. _____ will be paid to CPT Group, as settlement administration costs, as provided in the Agreement
- e. _____ will be paid to the aggrieved employees as their 25 % share of assessed penalties recoverable under PAGA, exclusive of the General Release Payment, as provided in the Agreement, and as follows:
- i. Within the time limits set forth in the Agreement, Defendant will provide the Settlement Administrator with a complete list of all Aggrieved Employees ("Aggrieved Employee List"). The Aggrieved Employee List will include each Aggrieved Employees full name; most recent mailing address and telephone number; Social Security number; the respective number of pay periods during which each Aggrieved Employee worked during the Settlement Period; and any other relevant information needed to calculate settlement payments. The Aggrieved Employee List shall not be disclosed to Plaintiff or Plaintiff's Counsel.
 - ii. Within the time limits set forth in the Agreement, Defendant will deposit \$400,000 into a Qualified Settlement Fund to the established by the settlement administrator selected by the parties in the Agreement.
 - iii. Within the time limits set forth in the Agreement, the settlement administrator will issue all payments provided in this Order. The payments will be calculated as provided in this Order, and, in the case of the alleged aggrieved employees, as provided in the

Agreement. Upon completion of the issuance of all payments required by the Agreement, including tendering any unclaimed funds to the California Department of Industrial Relations Unpaid Wage Fund, the settlement administrator will provide a declaration to be filed with the Court confirming its compliance with the directions of the Agreement and this Order.

2. The Court approves and incorporates by reference the terms and conditions of the Agreement and directs the implementation of all remaining terms, conditions and provisions of the Agreement in accordance with its terms.

3. The Court shall retain jurisdiction over this matter until the final payment is made and all obligations in the Agreement are satisfied.

4. This Action is dismissed with prejudice as to Plaintiff Elmar Garcia and without prejudice as to all other alleged aggrieved employees.

5. Upon receipt of the General Release Payment, Plaintiff will be deemed to have fully released and discharged Defendant (including its past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers) from any and all claims, demands, obligations, causes of action, rights, or liabilities of any kind which have been or could have been asserted against Defendant arising out of or relating to Plaintiff's application for employment and/or employment with Defendant or termination thereof, including but not limited to claims for wages, restitution, penalties, retaliation, defamation, discrimination, harassment or wrongful termination of employment. This release specifically includes any and all claims, demands, obligations and/or causes of action for damages, restitution, penalties, interest, and attorneys' fees and costs (except provided by the Settlement) relating to or in any way connected with the matters referred to in this paragraph, whether or not known or suspected to exist, and whether or not specifically or particularly described herein. Specifically, Plaintiff will be deemed to have waived all rights and benefits afforded by California Civil Code Section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR

DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

6. Upon entry of this Order, (i) Plaintiff, individually, and in his capacity as a private attorney general for and proxy or agent of the California Labor Workforce Development Agency, and (ii) the LWDA, as the real party in interest, will irrevocably release, acquit, and forever discharge Defendant (including its past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers) of and from all claims for civil penalties recoverable under Labor Code section 2699(a) that were or reasonably could have been brought in this Action based on the facts and legal theories alleged in the operative Third Amended Complaint. These claims include (1) unpaid wages for the time spent on employer-mandated drug test and/or physical examination pursuant to Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198 and California Code of Regulations, Title 8, section 11050(2)(K); (2) rest period violations pursuant to Labor Code sections 226.7 and 1198; (3) unpaid rest period premiums pursuant to Labor Code section 226.7; (4) untimely payment of wages during and after employment only insofar as it is based on claims enumerated in (1), (2), and (3) above and pursuant to Labor Code sections 201, 202, 203, 204, and 210; (5) wage statement violations only insofar as it is based on claims enumerated in (1), (2), and (3) above and pursuant to Labor Code sections 226(a), 226.3, 1174(d), 1174.5 and 1198 (the "Settled Claims"). The Settled Claims exclude, and will in no way bar or prohibit via res judicata or collateral estoppel the litigation of, all claims in the related PAGA action titled *Charles Lathan v. Tractor Supply Company*, Riverside Superior Court Case No. RIC1724482 ("*Lathan Action*"), that are alleged in the operative Second Amended Complaint, (the "Excluded Claims"). The Excluded Claims include (1) unpaid overtime due to failure to record all hours worked and/or failure to include bonuses and incentive pay in the calculation of regular rate of pay pursuant to Labor Code sections 510 and 1198; (2) unpaid minimum wages due to failure to record all hours worked pursuant to Labor Code sections 1182.12, 1194, 1197, 1197.1,

1 and 1198; (3) meal period violations pursuant to Labor Code sections 226.7, 512(a), and 1198; (4)
2 unpaid meal period premiums pursuant to Labor Code section 226.7; (5) wage statement violations
3 pursuant to Labor Code sections 226(a), 226.3, 1174(d), 1174.5 and 1198 only insofar as it is based
4 on claims enumerated in (1), (2), and (4) in this sentence; (6) payroll recordkeeping violations
5 pursuant to Labor Code sections 1174(d) and 1198 only insofar as it is based on claims (1) through
6 (5) in this sentence; (7) untimely payment of wages upon termination pursuant to Labor Code
7 sections 201, 202, and 203 only insofar as it is based on claims enumerated in (1), (2), and (4) in
8 this sentence; and (8) unreimbursed business expenses pursuant to Labor Code section 2802. It is
9 understood and agreed that this Settlement does not affect the right of the plaintiff in the *Lathan*
10 Action to amend his complaint to add claims which could reasonably be added to the *Lathan*
11 Action by stipulation or motion to amend the operative complaint, except to the extent such claims
12 constitute Settled Claims, as defined above. It is further understood and agreed that the Settled
13 Claims are limited to claims for civil penalties recoverable under Labor Code section 2699(a).
14 This release shall bar any person purporting to represent the LWDA or to sue on its behalf from
15 seeking to recover PAGA penalties for the Settled Claims during the Settlement Period.

16
17 IT IS SO ORDERED.

18
19 DATE: _____

20 Hon. Craig G. Riemer

21 Judge of the Superior Court
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Exhibit C

<<DATE>>

<<FIRST_NAME>> <<LAST_NAME>>
<<ADDRESS 1>>
<<ADDRESS 2>>

**Re: Payment From *Elmar Garcia v. Tractor Supply Company*, Case No. MCC1600273
(Riverside Superior Court)**

Dear <<FIRST_NAME>> <<LAST_NAME>>:

Enclosed you will find a check made payable to you. This is your payment from the settlement of the lawsuit entitled *Elmar Garcia v. Tractor Supply Company*, Case No. MCC1600273 (Riverside Superior Court) (the “Action”).

The Action was filed against Defendant Tractor Supply Company (“Defendant”) pursuant to the California Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* (called “PAGA”). The Action was brought by a former employee of Tractor Supply Company on behalf of the State of California and all alleged “aggrieved employees” of Tractor Supply Company. You have been identified as one of the employees on whose behalf the case was brought.

The Plaintiffs in the Action claimed that Tractor Supply Company owed civil penalties recoverable under PAGA for alleged violations of the California Labor Code. Tractor Supply Company denies that it violated the Labor Code.

The Court has not ruled on the merits of the Action but it has approved the settlement amount to be paid by Defendant in civil penalties. A portion of the civil penalty settlement amount goes to the State of California’s Labor and Workforce Development Agency. Another portion of the civil penalty settlement amount goes to the current and former employees who were allegedly affected by the wage-hour practices at issue in the case. In agreeing to this settlement, Defendants do not admit that they are liable in any way for any penalties.

Pursuant to the settlement, enclosed is a check for your share of a portion of the civil penalties.

You are not a party to this lawsuit, but you and the government will be bound by the settlement in this matter as to civil penalties. If you have any questions, you can contact the settlement administrator (whose contact information is at the top of this letter).

Very Truly Yours,

[Administrator]