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SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES

JEANNINE URBAN, individually, and on
 behalf of other members of the general
 public similarly situated, and as an
 aggrieved employee pursuant to the Private
 Attorneys General Act ("PAGA"),

Plaintiff,

vs.

BRISTOL FARMS, a California
 corporation; and DOES 1 through 10,
 inclusive,

Defendants.

Case No.: **22STCV28760**

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

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (6) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (7) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (8) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (9) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and

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(10) Violation of California Business &
Professions Code §§ 17200, *et seq.* (Unfair
Business Practices)

Jury Trial Demanded

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

4 JURISDICTION AND VENUE

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

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

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

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

10 **THE PARTIES**

11 4. Plaintiff Jeannine Urban is a resident of Rancho Santa Fe, in San Diego
12 County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee
13 from approximately July 2019 to July 2021. Plaintiff worked for Defendants as a Baker,
14 Assistant Bakery Manager, and Front-End Cashier at their Lazy Acres store located in
15 Encinitas, California. Plaintiff typically worked eight (8) hours or more per day, five (5) per
16 week. Plaintiff was compensated approximately \$18.00 per hour. Her job duties included,
17 without limitation, baking, organizing food displays, attending to customers, cashiering, and
18 cleaning.

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

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

27 7. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
28 were the partners, agents, owners, or managers of BRISTOL FARMS at all relevant times.

8. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein was performed by, or is attributable to, BRISTOL FARMS and/or DOES 1 through 10 (collectively, “Defendants” or “LAZY ACRES”), 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.

9. 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.

10. 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.

GENERAL ALLEGATIONS

11. Defendants own and operate a chain of grocery stores in Southern California. Defendants acquired “Lazy Acres Market” in 2005 and continue to operate five (5) locations under this name. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their corporate headquarters in Carson, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

12. In particular, Plaintiff and class members, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees' assigned locations or positions.

1 13. Upon information and belief, Defendants maintain a centralized Payroll
2 department at their corporate headquarters in Carson, California, which processes payroll for
3 all non-exempt, hourly paid employees working for Defendants at their various locations and
4 jobsites in California, including Plaintiff and class members. Based upon information and
5 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
6 employees in California, irrespective of their work locations. Upon information and belief,
7 Defendants process payroll for departing employees in the same manner throughout the State
8 of California, regardless of the manner in which each employee's employment ends.

9 14. Defendants continue to employ non-exempt or hourly paid employees in
10 California.

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

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

17 17. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and class members were entitled to receive certain wages for
19 overtime compensation and that they were not receiving certain wages for overtime
20 compensation.

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

28 19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and class members were entitled to receive at least minimum
2 wages for compensation and that they were not receiving at least minimum wages for work
3 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
4 and class members were not paid at least minimum wages for work done off-the-clock.

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

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

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

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

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

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

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

15 26. Plaintiff is informed and believes, and thereon alleges, that at all times herein
16 mentioned, that Defendants knew or should have known that they had a duty to cover the costs
17 and expenses Plaintiff and/or class members incurred obtaining mandatory physical
18 examinations and/or drug tests, but failed to do so.

19 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and class members were entitled to suitable seating and/or
21 were entitled to sit when it did not interfere with the performance of their duties and also have
22 seats nearby to use during a lull in tasks that do require moving about or standing. In
23 violation of the California Labor Code and applicable IWC Wage Order, Defendants failed to
24 provide Plaintiff and class members with suitable seating.

25 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and/or class members were entitled to receive all reporting
27 time pay when Defendants required Plaintiff and/or class members to report to work but put
28 them to work for less than half of their usual or scheduled shift. In violation of the California

1 Labor Code and applicable IWC Wage Order, Plaintiff and/or class members were not paid all
2 reporting time pay.

3 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and/or class members were entitled to be paid split shift
5 premiums when they returned to work for an additional shift in the same day, after having
6 been clocked out for more than an hour. In violation of the California Labor Code and
7 applicable IWC Wage Order, Defendants did not pay Plaintiff and/or class members an
8 additional hour at minimum wage when they worked split-shifts.

9 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and class members were entitled to receive full
11 reimbursement for all business-related expenses and costs they incurred during the course and
12 scope of their employment and that they did not receive full reimbursement of applicable
13 business-related expenses and costs incurred.

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

20 **PAGA REPRESENTATIVE ALLEGATIONS**

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

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

1 alleged violations was committed.”

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

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

- 8 (a) The aggrieved employee or representative shall give written notice by
9 online filing with the LWDA and by certified mail to the employer of
10 the specific provisions of the California Labor Code alleged to have
11 been violated, including the facts and theories to support the alleged
12 violation.
- 13 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
14 2699.3(a) and any employer response to that notice shall be
15 accompanied by a filing fee of seventy-five dollars (\$75).
- 16 (c) The LWDA shall notify the employer and the aggrieved employee or
17 representative by certified mail that it does not intend to investigate the
18 alleged violation (“LWDA’s Notice”) within sixty (60) calendar days of
19 the postmark date of the aggrieved employee’s notice. Upon receipt of
20 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
21 (65) calendar days of the postmark date of the aggrieved employee’s
22 notice, the aggrieved employee may commence a civil action pursuant
23 to California Labor Code section 2699 to recover civil penalties.

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

- 28 (a) The aggrieved employee or representative shall give written notice by

1 online filing with the LWDA and by certified mail to the employer of
2 the specific provisions of the California Labor Code alleged to have
3 been violated (other than those listed in Section 2699.5), including the
4 facts and theories to support the alleged violation.

5 (b) An aggrieved employee's notice filed with the LWDA pursuant to
6 2699.3(c) and any employer response to that notice shall be
7 accompanied by a filing fee of seventy-five dollars (\$75).

8 (c) The employer may cure the alleged violation within thirty-three (33)
9 calendar days of the postmark date of the notice sent by the aggrieved
10 employee or representative. The employer shall give written notice
11 within that period of time by certified mail to the aggrieved employee or
12 representative and by online filing with the LWDA if the alleged
13 violation is cured, including a description of actions taken, and no civil
14 action pursuant to Section 2699 may commence. If the alleged violation
15 is not cured within the 33-day period, the aggrieved employee may
16 commence a civil action pursuant to Section 2699.

17 37. On June 10, 2022, Plaintiff provided written notice by online filing to the
18 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
19 Code alleged to have been violated, including facts and theories to support the alleged
20 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
21 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
22 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
23 Plaintiff PAGA Case Number LWDA-CM-888654-22. A true and correct copy of Plaintiff's
24 written notice to the LWDA and Defendants dated June 10, 2022, is attached hereto as
25 "Exhibit 1."

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

1 39. Thus, Plaintiff has satisfied the administrative prerequisites under California
2 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
3 violations of California Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 510, 512(a),
4 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

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

17 42. As set forth below, Defendants have violated numerous provisions of both the
18 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
19 Order.

20 43. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
21 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
22 private attorney general, seeks assessment and collection of civil penalties for herself, all other
23 aggrieved employees, and the State of California against Defendants for violations of
24 California Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d),
25 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

26 **CLASS ACTION ALLEGATIONS**

27 44. Plaintiff brings this action on her own behalf, as well as on behalf of each and
28 all other persons similarly situated, and thus seeks class certification under California Code of

Civil Procedure section 382.

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

46. Plaintiff's proposed class consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California, within four years prior to the filing of the initial complaint¹ until the date of trial ("Class").

47. Members of the Class are referred to herein as "class members."

48. Plaintiff reserves the right to redefine the Class and add subclasses as appropriate based on further investigation, discovery, and specific theories of liability.

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

- (a) Whether Defendants required Plaintiff and class members to work over eight (8) hours per day, over twelve (12) hours per day, or over forty (40) hours per week and failed to pay all legally required overtime compensation to Plaintiff and class members;
- (b) Whether Defendants failed to include all forms of remuneration in the "regular rate" of pay as required by law for purposes of paying overtime wages and/or meal and rest period premiums to Plaintiff and/or class members;
- (c) Whether Defendants failed to pay Plaintiff and class members at least minimum wages for all hours worked;
- (d) Whether Defendants failed to provide Plaintiff and class members meal periods;
- (e) Whether Defendants failed to authorize and permit Plaintiff and class members to take rest periods;
- (f) Whether Defendants provided Plaintiff and/or class members with

¹ Subject to applicable tolling rules and period(s) of tolling, which include, but are not limited to, tolling under Emergency Rule 9 of the California Rules of Court.

complete and accurate wage statements as required by California Labor Code section 226(a);

(g) Whether Defendants maintained accurate payroll records as required by California Labor Code section 1174(d);

(h) Whether Defendants failed to pay earned overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay due to Plaintiff and class members upon their discharge;

(i) Whether Defendants failed to timely pay overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay due to Plaintiff and class members during their employment;

(j) Whether Defendants failed to pay Plaintiff and/or class members for the costs of mandatory drug testing and/or physical examinations;

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

(l) Whether Defendants required Plaintiff and/or class members to report to work, but failed to provide them with work or provided them with less than half their scheduled day's work, without properly compensating them as required by California Code of Regulations, Title 8, section 11070, subsection 5;

(m) Whether Defendants required Plaintiff and/or class members to return to work for an additional shift in the same day, after having been clocked out for more than an hour, without paying Plaintiff and/or class members an addition hour of pay at the minimum wage as required by California Code of Regulations, Title 8, section 11070(4)(C);

(n) Whether Defendants failed to reimburse Plaintiff and class members for necessary and required business-related expenditures and/or losses incurred by them in the scope of their employment;

(o) Whether Defendants engaged in unlawful and unfair business practices

1 in violation of California Business & Professions Code sections 17200,
2 *et seq.*; and

- 3 (p) The appropriate amount of damages, restitution, or monetary penalties
4 resulting from Defendants' violations of California law.

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

- 7 (a) Numerosity: The class members are so numerous that joinder of all
8 members would be unfeasible and impractical. The membership of the
9 entire class is unknown to Plaintiff at this time; however, the class is
10 estimated to be greater than one hundred (100) individuals and the
11 identity of such membership is readily ascertainable by inspection of
12 Defendants' employment records.
- 13 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
14 protect the interests of each class member with whom she has a well-
15 defined community of interest, and Plaintiff's claims (or defenses, if
16 any) are typical of all class members as demonstrated herein.
- 17 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
18 protect the interests of each class member with whom she has a well-
19 defined community of interest and typicality of claims, as demonstrated
20 herein. Plaintiff acknowledges that she has an obligation to make
21 known to the Court any relationship, conflicts or differences with any
22 class member. Plaintiff's attorneys, the proposed class counsel, are
23 versed in the rules governing class action discovery, certification, and
24 settlement. Plaintiff has incurred, and throughout the duration of this
25 action, will continue to incur costs and attorneys' fees that have been,
26 are, and will be necessarily expended for the prosecution of this action
27 for the substantial benefit of each class member.
- 28 (d) Superiority: The nature of this action makes the use of class action

1 adjudication superior to other methods. A class action will achieve
2 economies of time, effort, and expense as compared with separate
3 lawsuits, and will avoid inconsistent outcomes because the same issues
4 can be adjudicated in the same manner and at the same time for the
5 entire class.

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

15 **FIRST CAUSE OF ACTION**

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

17 **(Against all Defendants)**

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

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

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

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

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

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

17 57. During the relevant time period, Defendants willfully failed to pay all overtime
18 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
19 class members were not paid overtime premiums for all of the hours they worked in excess of
20 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
21 hours in a week, because all hours worked were not recorded.

22 58. First, during the relevant time period, Defendants had a company-wide policy
23 and/or practice of requiring Plaintiff and class members to perform work-related tasks while
24 off-the-clock. For example, Plaintiff and class members were sometimes required to undergo
25 off-the-clock temperature checks and/or COVID-19 screenings prior to the start of their
26 scheduled shifts. Thus, Defendants failed to track this time spent working after scheduled
27 shifts, and Plaintiff and class members received no compensation for this time.

28 59. Second, Defendants had, and continue to have, a uniform practice and/or policy

1 of staffing their supermarkets strictly based on the labor hours or labor budget set by the
2 corporate office, which has resulted in, and continues to result in, chronic understaffing and a
3 lack of adequate meal period coverage, because there were too few employees on duty to
4 handle the workload and attend to customers. In addition, Defendants also had a practice of
5 failing to schedule meal periods and/or adhere to a schedule for meal periods, which further
6 caused Plaintiff and class members to not be relieved of their duties for compliant meal
7 periods. Moreover, on information and belief, Defendants had, and continue to have, a policy
8 and/or practice of requiring employees to respond when supervisors and management called
9 them on the store intercom, even during unpaid meal periods. However, Defendants'
10 company-wide timekeeping system prevented Plaintiff and/or class members from recording
11 all hours worked when their meal periods were shortened or interrupted, because the system
12 locked Plaintiff and/or class members out once they clocked out for a meal period and would
13 not permit them to clock back in from a meal before 30 minutes elapsed.

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

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

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28 //

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

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

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

64. During the relevant time period, Defendants required Plaintiff and class members to work off-the-clock, including, but not limited to, undergoing mandatory temperature checks and/or health screenings, but did not compensate them for this time. Additionally, as set forth above, due to Defendants’ uniform practices of utilizing labor budgets, understaffing, assigning heavy workloads, failing to schedule meal periods and/or adhere to a schedule for meal periods, and subsequent lack of meal period coverage, Plaintiff and/or class members were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods. Moreover, on information and belief, Defendants had, and continue to have, a policy and/or practice of requiring employees to respond when supervisors and management called them on the store’s loudspeakers, even during unpaid meal periods. However, Defendants’ company-wide timekeeping system prevented Plaintiff and/or class members from recording all hours worked when their meal periods were shortened or interrupted, because the system locked them out once they clocked out for a meal period and would not permit them to clock back in from a meal before 30 minutes elapsed.

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

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

THIRD CAUSE OF ACTION

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

Violations

(Against all Defendants)

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

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

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

70. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an

1 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
2 hours worked is no more than twelve (12) hours, the second meal period may be waived by
3 mutual consent of the employer and the employee only if the first meal period was not waived.

4 71. As stated above, Defendants had, and continue to have, a company-wide policy
5 and/or practice of understaffing their locations due to labor budgeting, which, combined with
6 assigning heavy workloads, has resulted in a lack of meal period coverage and prevented
7 Plaintiff and class members from taking all timely, uninterrupted meal periods to which they
8 were entitled. Defendants also had a practice of failing to schedule meal periods and/or
9 adhere to a schedule of meal periods, which further caused Plaintiff and class members to not
10 be relieved of their duties for compliant meal periods.

11 72. Moreover, on information and belief, Defendants had, and continue to have, a
12 policy and/or practice of requiring employees to respond to supervisors' and management's
13 calls over the store's loudspeakers, even during unpaid meal periods. However, as stated,
14 Defendants' company-wide timekeeping system further prevented Plaintiff and/or class
15 members from recording all hours worked when their meal periods were shortened or
16 interrupted, because the system locked out Plaintiff and/or class members once they clocked
17 out for a meal period and would not permit them to clock back in from a meal before 30
18 minutes elapsed.

19 73. As a result of Defendants' practices and/or policies, Plaintiff and class
20 members had to work through part or all of their meal periods, have their meal periods
21 interrupted, and/or wait extended periods of time before taking meal periods. For example,
22 during her employment, once per week, Plaintiff would take her meal period after working
23 five (5) hours due to the heavy workload and lack of coverage. Plaintiff and class members
24 did not sign valid meal period waivers on days that they were entitled to meal periods and
25 were not relieved of all duties.

26 74. At all times mentioned herein, Defendants knew or should have known that as a
27 result of their policies, Plaintiff and class members were not actually relieved of all duties to
28 take timely, uninterrupted meal periods. Defendants further knew or should have known that

1 they did not pay Plaintiff and class members meal period premiums when meal periods were
2 late, interrupted, shortened, and/or missed.

3 75. Furthermore, Defendants engaged in a company-wide practice and/or policy of
4 not paying all meal period premiums owed when compliant meal periods are not provided.
5 Because of this practice and/or policy, Plaintiff and class members have not received premium
6 pay for missed, late, and interrupted meal periods.

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

11 **FOURTH CAUSE OF ACTION**

12 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 13 **(Against all Defendants)**

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

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

19 79. At all relevant times, the applicable IWC Wage Order provides that "[e]very
20 employer shall authorize and permit all employees to take rest periods, which insofar as
21 practicable shall be in the middle of each work period" and that the "rest period time shall be
22 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
23 hours or major fraction thereof" unless the total daily work time is less than three and one-half
24 (3 ½) hours.

25 80. At all relevant times, California Labor Code section 226.7 provides that no
26 employer shall require an employee to work during any rest period mandated by an applicable
27 order of the California IWC. To comply with its obligation to authorize and permit rest
28 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an

1 employer must “relinquish any control over how employees spend their break time, and
2 relieve their employees of all duties—including the obligation that an employee remain on
3 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
4 *Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and
5 California Labor Code section 226.7(c), Plaintiff and class members are entitled to recover
6 from Defendants one (1) additional hour of pay at their regular rates of pay for each work day
7 that a required rest period was not authorized and permitted.

8 81. During the relevant time period, Defendants regularly failed to authorize and
9 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
10 period worked or major fraction thereof. As with meal periods, Defendants’ company-wide
11 policy and practice of understaffing and the resultant lack of rest period coverage, prevented
12 Plaintiff and class members from being relieved of all duty to take their rest periods.
13 Defendants also failed to schedule rest periods, which, coupled with Defendants’ failure to
14 provide adequate rest period coverage, further led to Plaintiff and class members not being
15 authorized and permitted to take compliant rest periods.

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

22 83. As a result of Defendants’ practices and policies, Plaintiff and class members
23 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
24 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
25 Plaintiff missed her rest periods approximately three (3) times per week due to due to
26 understaffing, the heavy workload, and lack of rest period coverage.

27 84. Defendants also have engaged in a company-wide practice and/or policy of not
28 paying all rest period premiums owed when compliant rest periods are not authorized or

1 permitted. Because of this practice and/or policy, Plaintiff and class members have not
2 received premium pay for all missed rest periods.

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

8 **FIFTH CAUSE OF ACTION**

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

10 **Termination**

11 **(Against all Defendants)**

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

14 87. This cause of action is dependent upon, and wholly derivative of, the overtime
15 wages, minimum wages, meal and rest period premiums, and/or reporting time pay that were
16 not timely paid to Plaintiff and those class members no longer employed by Defendants upon
17 their termination.

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

25 89. Defendants willfully failed to pay Plaintiff and class members who are no
26 longer employed by Defendants the earned and unpaid wages set forth above, including but
27 not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or
28 reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their

1 leaving Defendants' employ.

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

8 **SIXTH CAUSE OF ACTION**

9 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During**
10 **Employment**

11 **(Against all Defendants)**

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

14 92. This cause of action is dependent upon, and wholly derivative of, the overtime
15 wages, minimum wages, meal and rest period premiums, and/or reporting time pay that were
16 not timely paid to Plaintiff and class members during their employment.

17 93. At all times relevant herein set forth, Labor Code section 204 provides that all
18 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
19 days, inclusive, of any calendar month, other than those wages due upon termination of an
20 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
21 the month during which the labor was performed. Labor Code section 204 further provides
22 that all wages earned by any person in any employment between the sixteenth (16th) and the
23 last day, inclusive, of any calendar month, other than those wages due upon termination of an
24 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
25 month.

26 94. At all times relevant herein, Labor Code section 204 provides that all wages
27 earned for labor in excess of the normal work period shall be paid no later than the payday for
28 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section

1 204 provides that the requirements of this section are deemed satisfied by the payment of
2 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
3 seven (7) calendar days following the close of the payroll period.

4 95. During the relevant time period, Defendants willfully failed to pay Plaintiff and
5 class members all wages due including, but not limited to, overtime wages, minimum wages,
6 meal and rest period premiums, and/or reporting time pay, within the time periods specified
7 by California Labor Code section 204.

8 96. Defendants' failure to pay Plaintiff and class members all wages due violates
9 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
10 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

11 **SEVENTH CAUSE OF ACTION**

12 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses** 13 **(Against all Defendants)**

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

16 98. At all times herein set forth, California Labor Code section 2802 provides that
17 an employer must reimburse employees for all necessary expenditures and losses incurred by
18 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
19 to prevent employers from passing off their cost of doing business and operating expenses on
20 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
21 (2014). The applicable wage order, IWC Wage Order No. 7-2001, provides that: "[w]hen
22 uniforms are required by the employer to be worn by the employee as a condition of
23 employment, such uniforms shall be provided and maintained by the employer."

24 99. During the relevant time period, Defendants on a company-wide basis,
25 expected Plaintiff and class members to report to work in clean and presentable uniforms,
26 including a t-shirt bearing Defendants' logo. However, Defendants did not provide their
27 employees with sufficient uniforms to wear for their shifts throughout the week. For example,
28 Defendants only provided Plaintiff with three (3) uniform shirts at the beginning of her

1 employment. Because Defendants failed to provide Plaintiff class members with an adequate
2 number of uniform items in relation to their scheduled shifts and for the tasks they were
3 required to perform, Plaintiff was forced to wash her uniforms more frequently than she
4 otherwise do laundry, and incur expenses in doing so. Thus, Defendants failed to maintain
5 uniforms they required Plaintiff and class members to wear during their shifts and forced them
6 to incur the cost of maintaining employee uniforms.

7 100. Defendants could have provided Plaintiff and class members an adequate
8 number of uniforms or access to laundering services; or, Defendants could have reimbursed
9 employees for the costs of their laundering expenses or provided a uniform maintenance
10 allowance. Instead, Defendants passed these operating costs off onto Plaintiff and class
11 members.

12 101. Defendants' company-wide policy and/or practice of passing on their operating
13 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
14 have intentionally and willfully failed to reimburse Plaintiff and class members for necessary
15 business-related expenses and costs.

16 102. Plaintiff and class members are entitled to recover from Defendants their
17 business-related expenses incurred during the course and scope of their employment, plus
18 interest.

19 **EIGHTH CAUSE OF ACTION**

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

21 **(Against all Defendants)**

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

24 104. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
25 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
26 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 222.5, 226(a),
27 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c)
28 permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of

those Labor Code sections not found in section 2699.5, including sections 516 and 1182.12.

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

- (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and/or other aggrieved employees with all required overtime pay, as alleged herein and set forth below;
- (b) Violation of Labor Code sections 226.7, 510, and 1198, and the applicable IWC Wage Order for Defendants' failure to include all forms of remuneration in the "regular rate" of pay as required by law for purposes of paying overtime wages and/or meal and rest period premiums to other aggrieved employees, as set forth below;
- (c) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and/or other aggrieved employees with at least minimum wages for all hours worked, as alleged herein and set forth below;
- (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to provide Plaintiff and/or other aggrieved employees with meal periods, as alleged herein and set forth below;
- (e) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to authorize and permit Plaintiff and other aggrieved employees to take rest periods, as alleged herein;
- (f) Violation of Labor Code sections 226(a) and 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiff and other aggrieved employees, as set forth

below;

- (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as set forth below;
- (h) Violation of Labor Code sections 201 and 202 for failure to pay all earned wages upon termination, as alleged herein;
- (i) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as alleged herein;
- (j) Violation of Labor Code section 222.5 for failing to compensate other aggrieved employees for mandatory physical examinations and/or drug testing, as set forth below;
- (k) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failure to provide suitable seating, as set forth below;
- (l) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failure to pay reporting time pay when other aggrieved employees were put to work for less than half of their usual or scheduled shifts, as set forth below;
- (m) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failure to pay split-shift premiums when other aggrieved employees returned to work for an additional shift in the same day, after having been clocked out for more than an hour, as set forth below; and
- (n) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and/or other aggrieved employees for all business expenses necessarily incurred, as alleged herein and set forth below.

106. As stated, Defendants had a company-wide practice and/or policy of requiring Plaintiff and/or other aggrieved employees to continue to perform work-related tasks while off-the-clock. For example, other aggrieved employees were required to gather shopping carts from the parking lot or communicate with Defendants' management via their personal cellular

1 phones after they clocked out for their shifts. Thus, Defendants failed to track this time spent
2 working after scheduled shifts, and other aggrieved employees received no compensation for
3 this time. Furthermore, Defendants had a company-wide loss prevention policy requiring
4 employees to undergo mandatory security checks by a managerial employee before leaving
5 the store premises. As a result of Defendants' policy, other aggrieved employees were
6 required to undergo security screenings after clocking out at the end of a shift prior to leaving
7 the store premises. Although Defendants' requirement that other aggrieved employees
8 undergo security checks was mandatory, Defendants did not compensate them for the time it
9 took them to wait in line and undergo these checks.

10 107. Additionally, because Defendants frowned upon employees accruing meal
11 period penalties, Defendants' management pressured employees to clock out for meal periods
12 to reflect compliant meal periods, upon threat of discipline, regardless of whether they had
13 received a compliant meal period or not, in order to strictly limit meal penalties that would
14 need to be paid by Defendants. Consequently, other aggrieved employees performed work
15 during meal periods for which they were not paid.

16 108. As stated, Defendants knew or should have known that as a result of these
17 company-wide practices and/or policies, Plaintiff and/or other aggrieved employees were
18 performing their assigned duties off-the-clock before and after their shifts and during meal
19 periods, and were suffered or permitted to perform work for which they were not paid.
20 Because Plaintiff and/or other aggrieved employees worked shifts of eight (8) hours a day or
21 more or forty (40) hours a week or more, some of this off-the-clock work qualified for
22 overtime premium pay.

23 109. Furthermore, Defendants did not pay other aggrieved employees the correct
24 overtime rate for the recorded overtime hours that they generated. In addition to an hourly
25 wage, Defendants paid other aggrieved employees incentive pay, nondiscretionary bonuses,
26 and/or other forms of remuneration. However, in violation of the California Labor Code,
27 Defendants failed to incorporate all compensation, including incentive pay, nondiscretionary
28 bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for

1 purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved
2 employees worked overtime and received these other forms of pay, Defendants failed to pay
3 all overtime wages by paying a lower overtime rate than required.

4 110. Defendants' failure to compensate Plaintiff and/or other aggrieved employees
5 with all required overtime pay and failure to properly calculate the overtime rates paid to other
6 aggrieved employees, is in violation of California Labor Code sections 510 and 1198, and the
7 applicable IWC Wage Order. Additionally, Defendants' failure to compensate Plaintiff and/or
8 other aggrieved employees with at least minimum wages for all hours worked is in violation
9 of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable
10 IWC Wage Order.

11 111. As stated, because Defendants frowned upon employees accruing meal period
12 penalties, Defendants' management pressured other aggrieved employees to clock out for
13 meal periods to reflect compliant meal periods, upon threat of discipline, regardless of
14 whether they had received a compliant meal period or not, in order to strictly limit meal
15 penalties that would need to be paid by Defendants. Also, Defendants did not provide other
16 aggrieved employees with second 30-minute meal periods on days that they worked in excess
17 of ten (10) hours in one day. Furthermore, as stated, Defendants engaged in a company-wide
18 practice and/or policy of not paying all meal period premiums owed when compliant meal
19 periods are not provided. Because of this practice and/or policy, Plaintiff and/or other
20 aggrieved employees have not received premium pay for missed, late, and interrupted meal
21 periods. Alternatively, to the extent that Defendants did pay other aggrieved employees for
22 missed, late, and interrupted meal periods, Defendants did not pay other aggrieved employees
23 at the correct rate of pay for premiums because Defendants systematically failed to include all
24 forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms
25 of remuneration, in the regular rate of pay.

26 112. Defendants' failure to provide meal periods to Plaintiff and/or other aggrieved
27 employees and failure to properly calculate the rates of pay for meal period premiums based
28 on all remuneration paid is in violation of California Labor Code sections 226.7, 512(a), 516,

1 and 1198, and the applicable IWC Wage Order.

2 113. As stated, as with meal periods, Defendants also have engaged in a company-
3 wide practice and/or policy of not paying all rest period premiums owed when compliant rest
4 periods are not authorized or permitted. Because of this practice and/or policy, Plaintiff
5 and/or other aggrieved employees have not received premium pay for all missed rest periods.
6 Alternatively, to the extent that Defendants did pay other aggrieved employees one (1)
7 additional hour of premium pay for missed rest periods, Defendants did not pay other
8 aggrieved employees at the correct rate of pay for premiums because Defendants failed to
9 include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or
10 other forms of remuneration, in the regular rate of pay.

11 114. Defendants' failure to properly calculate the rates of pay for rest period
12 premiums based on all remuneration paid is in violation of California Labor Code sections
13 226.7, 516, and 1198, and the applicable IWC Wage Order.

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

19 116. During the relevant time period, Defendants have knowingly and intentionally
20 provided Plaintiff and other aggrieved employees with uniform, incomplete, and inaccurate
21 wage statements. For example, Defendants issued uniform wage statements to Plaintiff and
22 other aggrieved employees that fail to correctly list: gross wages earned; total hours worked;
23 net wages earned; and all applicable hourly rates in effect during the pay period, including
24 rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding
25 number of hours worked at each hourly rate. Specifically, Defendants violated sections
26 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

27 117. Because Defendants did not record the time Plaintiff and other aggrieved
28 employees spent working off-the-clock and/or deducted time from their records for meal

1 periods that were interrupted and/or missed (and therefore time for which they should have
2 been paid), Defendants did not list the correct amount of gross wages and net wages earned by
3 other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5),
4 respectively. For the same reason, Defendants failed to accurately list the total number of
5 hours worked by Plaintiff and other aggrieved employees, in violation of section 226(a)(2),
6 and failed to list the applicable hourly rates of pay in effect during the pay period and the
7 corresponding accurate number of hours worked at each hourly rate, in violation of section
8 226(a)(9).

9 118. Further, because Defendants did not calculate other aggrieved employees'
10 regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest
11 period premiums, Defendants did not list the correct amount of gross wages earned by other
12 aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount
13 of net wages earned by other aggrieved employees in violation of section 226(a)(5).
14 Defendants also failed to correctly list all applicable hourly rates in effect during the pay
15 period, namely, correct rates of pay for overtime wages, meal and rest period premiums,
16 and/or paid sick leave, in violation of section 226(a)(9).

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

25 120. California Labor Code section 1174(d) provides that “[e]very person employing
26 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
27 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
28 plants or establishments at which employees are employed, payroll records showing the hours

1 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
2 applicable piece rate paid to, employees employed at the respective plants or
3 establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500
4 civil penalty if they fail to maintain accurate and complete records as required by section
5 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
6 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other
7 aggrieved employees showing the daily hours they worked and the wages paid thereto as a
8 result of failing to record the off-the-clock hours that they worked.

9 121. California Labor Code section 1198 provides that the maximum hours of work
10 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
11 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
12 employment of any employees for longer hours than those fixed by the order or under
13 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
14 Wage Order, employers are required to keep accurate time records showing when the
15 employee begins and ends each work period and meal period. During the relevant time
16 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
17 and meal period start and stop times for Plaintiff and other aggrieved employees, in violation
18 of section 1198. Furthermore, in light of Defendants’ failure to provide other aggrieved
19 employees with second 30-minute meal periods to which they were entitled, Defendants kept
20 no records of meal start and end times for second meal periods. Defendants’ conduct violates
21 California Labor Code 226(a), 1174(d), and 1198.

22 122. At all relevant times herein, California Labor Code section 222.5 requires
23 employers to pay for the costs an employee incurs for obtaining any required medical or
24 physical examination.

25 123. During the relevant time period, Defendants implemented, on a company-wide
26 basis, an employer-imposed requirement that other aggrieved employees undergo mandatory
27 drug testing and/or physical examinations, but required them to do so at their own expense.
28 Defendants had a company-wide policy requiring that other aggrieved Employees travel to a

1 specified medical facility on their own time and use their own means of transportation to
2 undergo drug testing and/or physical examinations. At all times, Defendants were in control
3 of scheduling the date and time for the testing and/or examinations, selecting the
4 provider/facility where the testing and/or examinations were to take place, and determining
5 the scope of the testing and/or examinations.

6 124. However, Defendants did not compensate other aggrieved employees for the
7 time they spent traveling to and from the medical facilities, for the time they spent undergoing
8 the drug testing and/or physical examinations, or reimburse them for the travel expenses they
9 incurred getting to and from the medical facilities. Defendants' policy and/or practice of not
10 paying for all necessary costs other aggrieved employees incurred obtaining mandatory drug
11 testing and/or physical examinations is in violation of California Labor Code sections 222.5
12 and 2802. Additionally, Defendants' failure to compensate other aggrieved employees at least
13 minimum wages for the time they spent traveling to and from the medical facilities and
14 undergoing the mandatory drug testing and/or physical examinations is in violation of
15 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

16 125. At all relevant times herein, California Labor Code section 1198 makes it
17 illegal to employ an employee under conditions of labor that are prohibited by the applicable
18 wage order. California Labor Code section 1198 requires that "... the standard conditions of
19 labor fixed by the commission shall be the ... standard conditions of labor for employees.
20 The employment of any employee ... under conditions of labor prohibited by the order is
21 unlawful."

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

25 127. "The 'nature of the work' refers to an employee's tasks performed at a given
26 location for which a right to a suitable seat is claimed, rather than a 'holistic' consideration of
27 the entire range of an employee's duties anywhere on the jobsite during a complete shift. If
28 the tasks being performed at a given location reasonably permit sitting, and provision of a seat

1 would not interfere with performance of any other tasks that may require standing, a seat is
2 called for.” *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). “Whether the
3 nature of the work reasonably permits sitting is a question to be determined objectively based
4 on the totality of the circumstances. An employer’s business judgment and the physical layout
5 of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of
6 the work, not an individual employee’s characteristics.” *Id.* The burden of proof to show
7 suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer
8 must show that compliance is “infeasible because no suitable seating exists.” *See id.*

9 128. Defendants’ California grocery stores are generally similar in their layout and
10 design and there was, and continues to be, space behind cash wraps to allow for the presence
11 and use of a seat or stool by Plaintiff and other aggrieved employees (with reasonable or no
12 modification to these work areas) during the performance of their work duties. Defendants
13 could provide Plaintiff and other aggrieved employees with a seat or stool at their cash wraps,
14 but instead denied employees seating and forced Plaintiff and other aggrieved employees to
15 stand throughout the day.

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

22 130. As a result of Defendants’ company-wide policy and/or practice of prohibiting
23 employees from sitting during their shifts and company-wide failure to provide suitable
24 seating, Plaintiff and other aggrieved employees were forced to stand during shifts and denied
25 seats. Defendants’ failure to provide suitable seating to other aggrieved employees violates
26 California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(A).

27 131. California Code of Regulations, Title 8, section 11070(14)(B) provides that
28 “[w]hen employees are not engaged in the active duties of their employment and the nature of

1 the work requires standing, an adequate number of suitable seats shall be placed in reasonable
2 proximity to the work area and employees shall be permitted to use such seats when it does
3 not interfere with the performance of their duties.”

4 132. During the relevant time period, Defendants violated California Labor Code
5 section 1198 and California Code of Regulations, Title 8, section 11070(14)(B), because
6 Plaintiff and other aggrieved employees are not allowed to sit, even during lulls in their work
7 duties, nor are they provided with suitable seats in reasonable proximity to their work areas.

8 133. Defendants’ California grocery stores are generally similar in their layout and
9 design and there was, and continues to be, space near their work areas (with reasonable or no
10 modification to these work areas) to allow for the presence and use of a seat or stool by
11 Plaintiff and other aggrieved employees during lulls in operation. Defendants could have
12 provided Plaintiff and other aggrieved employees with a seat or stool in their work areas, but
13 instead denied, and continue to deny, employees seating, forcing them to stand throughout the
14 day.

15 134. Defendants did not provide Plaintiff and other aggrieved employees with seats
16 or stools in reasonable proximity to their work areas to allow them to use seats when it would
17 not interfere with the performance of their duties for times when they were not engaged in
18 active duties that require standing. In other words, to the extent Plaintiff and other aggrieved
19 employees engaged in duties in which the nature of the work required standing, Defendants
20 denied them the use of seats nearby during lulls in their work duties. Moreover, Defendants
21 did not inform Plaintiff and other aggrieved employees of their rights to a seat or stool under
22 California law.

23 135. As a result of Defendants’ company-wide policy and/or practice prohibiting
24 employees performing duties from sitting at any time, even when they are not engaged in
25 active duties requiring standing, and company-wide failure to provide seats in reasonable
26 proximity to their work areas, Plaintiff and other aggrieved employees were forced to stand
27 during shifts and denied seats. Defendants’ failure to provide suitable seating to Plaintiff and
28 other aggrieved employees violated and continues to violate California Labor Code section

1 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

2 136. California Labor Code section 1198 makes it illegal to employ an employee
3 under conditions of labor that are prohibited by the applicable IWC Wage Order. California
4 Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the
5 commission shall be the . . . standard conditions of labor for employees. The employment of
6 any employee . . . under conditions of labor prohibited by the order is unlawful.”

7 137. California Code of Regulations, Title 8, section 11070(5)(A) provides that
8 “[e]ach workday an employee is required to report for work and does report, but is not put to
9 work or is furnished less than half said employee’s usual or scheduled day’s work, the
10 employee shall be paid for half the usual or scheduled day’s work, but in no event for less
11 than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which
12 shall not be less than the minimum wage.” The “primary purpose of the reporting time
13 regulation” is “to guarantee at least partial compensation for employees who report to work
14 expecting to work a specified number of hours, and who are deprived of that amount because
15 of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch*
16 *Cellular*, 209 Cal. App. 4th 556 (2012).

17 138. Upon information and belief, Defendants violated California Labor Code
18 section 1198 and California Code of Regulations, Title 8, section 11070(5)(A), because
19 Defendants failed to pay other aggrieved employees reporting time pay when they reported to
20 work for their scheduled shift but were put to work for less than half of the usual or scheduled
21 day’s work. For example, on occasions when employees reported to work for their scheduled
22 shifts, Defendants’ management sent employees home within the first hour of clocking in
23 because business was slow or to limit overtime accrual. When this would occur, Defendants
24 did not pay other aggrieved employees for at least half of their scheduled day’s work or the
25 minimum reporting time pay when they were subject work for less than half of their usual or
26 scheduled shift. Accordingly, other aggrieved employees were not properly compensated with
27 reporting time pay in violation of California Labor Code section 1198 and California Code of
28 Regulations, Title 8, section 11070(5)(A).

1 139. California Code of Regulations, Title 8, section 11070(4)(C) provides that,
2 “When an employee works a split shift, one (1) hour’s pay at the minimum wage shall be paid
3 in addition to the minimum wage for that workday, except when the employee resides at the
4 place of employment.” California Code of Regulations, Title 8, defines a split shift as “a
5 work schedule, which is interrupted by non-paid non-working periods established by the
6 employer, other than bona fide rest or meal periods.”

7 140. Defendants violated California Labor Code section 1198 and California Code
8 of Regulations, Title 8, section 11070(4)(C), because Defendants failed to pay other aggrieved
9 employees a split-shift premium when they returned to work for an additional shift in the same
10 day, after having been clocked out for several hours. For example, Defendants scheduled
11 other aggrieved employees for early morning shifts to perform price changes on labels and
12 also scheduled them to work closing shifts in the evening, with more than several hours in
13 between each shift. When this occurred, Defendants did not always pay other aggrieved
14 employees an additional hour at minimum wage. Accordingly, Defendants required other
15 aggrieved employees to work split shifts but failed to pay them an additional hour at minimum
16 wage, in violation of California Labor Code section 1198. Defendants’ failure to provide
17 other aggrieved employees with split-shift pay when they returned to work for an additional
18 shift in the same day, after having been clocked out for several hours, violates California
19 Labor Code section 1198 and California Code of Regulations Title 8, Section 11070(4)(C).

20 141. At all relevant times herein, as stated, California Labor Code section 2802
21 requires employers to pay for all necessary expenditures and losses incurred by the employee
22 in the performance of his or her job. IWC Wage Order No. 7-2001, provides that: “[w]hen
23 tools or equipment are required by the employer or are necessary to the performance of a job,
24 such tools and equipment shall be provided and maintained by the employer, except that an
25 employee whose wages are at least two (2) times the minimum wage provided herein may be
26 required to provide and maintain hand tools and equipment customarily required by the trade
27 or craft.”

28 142. During the relevant time period, Defendants, on a company-wide basis,

1 required other aggrieved employees to use their own personal mobile devices, including, but
2 not limited to cellular phones, and/or mobile data to carry out their job duties, but failed to
3 reimburse them for the cost of their work-related mobile device expenses. Other aggrieved
4 employees were required to use their personal mobile devices for work-related tasks,
5 including responding to calls from Defendants' management to discuss work-related matters.
6 Although Defendants required other aggrieved employees to utilize their personal mobile
7 devices and/or mobile data to carry out their work-related responsibilities, Defendants failed
8 to reimburse them for these costs. Defendants' company-wide policy and/or practice of not
9 reimbursing employees for expenses necessarily incurred in violation of California Labor
10 Code section 2802.

11 143. Therefore, Plaintiff and/or other aggrieved employees are entitled to recover
12 civil penalties pursuant to Labor Code section 2699(a), (f), and (g).

13 **NINTH CAUSE OF ACTION**

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

15 **Unlawful Business Practices**

16 **(Against all Defendants)**

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

19 145. Defendants are "persons" as defined by California Business & Professions
20 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
21 and/or associations.

22 146. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
23 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
24 suffered injury in fact and has lost money as a result of Defendants' unlawful business
25 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
26 meaning of Code of Civil Procedure section 1021.5.

27 147. Defendants' activities, as alleged herein, are violations of California law, and
28 constitute unlawful business acts and practices in violation of California Business &

1 Professions Code sections 17200, *et seq.*

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

- 5 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
6 class members, to work overtime without paying them proper
7 compensation in violation of California Labor Code sections 510 and
8 1198, and the applicable IWC Wage Order, as alleged herein;
- 9 (b) Failing to pay at least minimum wage to Plaintiff and class members in
10 violation of California Labor Code sections 1182.12, 1194, 1197,
11 1197.1, and 1198, and the applicable IWC Wage Order, as alleged
12 herein;
- 13 (c) Failing to provide uninterrupted meal periods to Plaintiff and class
14 members in violation of California Labor Code sections 226.7, 512(a),
15 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- 16 (d) Failing to authorize and permit Plaintiff and class members to take
17 uninterrupted rest periods in violation of California Labor Code sections
18 226.7, 516, and 1198 and the applicable IWC Wage Order, as alleged
19 herein;
- 20 (e) Failing timely to pay all earned wages to Plaintiff and class members in
21 violation of California Labor Code section 204, as alleged herein; and
- 22 (f) Failing to reimburse Plaintiff and class members for all business
23 expenses necessarily incurred in violation of California Labor Code
24 section 2802, as alleged herein.

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

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

TENTH CAUSE OF ACTION

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

Unfair Business Practices

(Against all Defendants)

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

152. Defendants are “persons” as defined by California Business & Professions Code sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

153. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in fact and has lost money as a result of Defendants' unfair business practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

154. Defendants’ activities, namely Defendants’ company-wide practice and/or policy of not paying Plaintiff and class members all meal and rest period premiums due to them under Labor Code section 226.7, deprived Plaintiff and class members of the compensation guarantee and enhanced enforcement implemented by section 226.7. The statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to compensate employees, and secondarily to shape employer conduct.” *Safeway, Inc. v. Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to Plaintiff and class members as part of their employment with Defendants,

1 and thus Defendants' practice and/or policy of denying these statutory benefits constitutes an
2 unfair business practice in violation of California Business & Professions Code sections
3 17200, *et seq.* (*Id.*)

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

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

15 **REQUEST FOR JURY TRIAL**

16 Plaintiff requests a trial by jury.

17 **PRAYER FOR RELIEF**

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

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

23 **Class Certification**

- 24 2. That this case be certified as a class action;
25 3. That Plaintiff be appointed as the representative of the Class;
26 4. That counsel for Plaintiff be appointed as class counsel.

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

- 28 5. That the Court declare, adjudge, and decree that Defendants violated California

1 Labor Code sections 510 and 1198, and the applicable IWC Wage Order by willfully failing to
2 pay all overtime wages due to Plaintiff and class members;

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

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

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

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

11 **As to the Second Cause of Action**

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

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

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

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

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

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

24 **As to the Third Cause of Action**

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

28 17. That the Court make an award to the Plaintiff and class members of one (1)

hour of pay at each employee's regular rate of pay for each workday that a meal period was not provided;

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

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

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

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

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

As to the Fourth Cause of Action

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

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

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

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

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

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

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

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1 **As to the Fifth Cause of Action**

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

6 31. For all actual, consequential and incidental losses and damages, according to
7 proof;
8 For waiting time penalties according to proof pursuant to California Labor Code section 203
9 for all employees who have left Defendants' employ;

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

12 33. For attorneys' fees pursuant to California Code of Civil Procedure section
13 1021.5, or as otherwise provided by law; and

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

16 **As to the Sixth Cause of Action**

17 35. That the Court declare, adjudge and decree that Defendants violated California
18 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members
19 overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay
20 during their employment;

21 36. For all actual, consequential and incidental losses and damages, according to
22 proof;

23 37. For statutory penalties according to proof pursuant to California Labor Code
24 section 210;

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

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

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

3 **As to the Seventh Cause of Action**

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

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

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

11 44. For all actual, consequential, and incidental losses and damages, according to
12 proof;

13 45. For attorneys' fees and costs pursuant to California Labor Code section
14 2802(c), or as otherwise provided by law; and

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

17 **As to the Eighth Cause of Action**

18 47. That the Court declare, adjudge and decree that Defendants violated the
19 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
20 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198 (by failing
21 to include all forms of remuneration in the "regular rate" of pay for purposes of paying
22 overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, 1197.1, and
23 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
24 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
25 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
26 statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all
27 earned wages upon termination); 204 (by failing to timely pay all earned wages during
28 employment); 222.5 (by failing to pay the costs of mandatory physical examinations and/or

1 drug testing); 1198 and the applicable IWC Wage Order (by failing to provide suitable
2 seating); 1198 and the applicable IWC Wage Order (by failing to provide reporting time pay);
3 1198 and the applicable IWC Wage Order (by failing to pay split-shift premiums); and 2802
4 (by failing to reimburse business expenses);

5 48. For civil penalties pursuant to the California Labor Code, including sections
6 210, 226.3, 256, 558, 1174.5, 1197.1, and/or 2699(a), (f), and (g), for violations of California
7 Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12,
8 1194, 1197, 1197.1, 1198, and 2802;

9 49. 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, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12,
12 1194, 1197, 1197.1, 1198, and 2802;

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

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

16 **As to the Ninth Cause of Action**

17 52. That the Court declare, adjudge and decree that Defendants' conduct of failing
18 to provide Plaintiff and class members all overtime wages due to them, failing to provide
19 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and
20 class members all meal periods, failing to authorize and permit Plaintiff and class members to
21 take all rest periods, failing to timely pay Plaintiff and class members all earned wages during
22 employment, and failing to reimburse Plaintiff and class members for business-related
23 expenses, constitutes an unlawful business practice in violation of California Business and
24 Professions Code sections 17200, *et seq.*;

25 53. For restitution of unpaid wages to Plaintiff and all class members and
26 prejudgment interest from the day such amounts were due and payable;

27 54. For the appointment of a receiver to receive, manage and distribute any and all
28 funds disgorged from Defendants and determined to have been wrongfully acquired by

Defendants as a result of violations of California Business & Professions Code sections 17200, *et seq.*;

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

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

As to the Tenth Cause of Action

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

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

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

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

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

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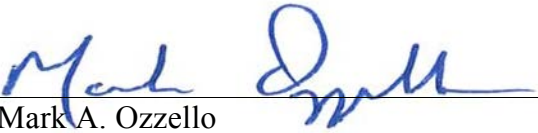
1 62. For such other and further relief as the Court may deem equitable and
2 appropriate.

3
4 Dated: September 2, 2022

Respectfully submitted,

5 Capstone Law APC

6
7 By:



8 Mark A. Ozzello

Brandon K. Brouillette

9 Joseph Hakakian

10 Attorneys for Plaintiff Jeannine Urban
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EXHIBIT 1



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

June 10, 2022

VIA ONLINE SUBMISSION

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

Subject: *Jeannine Urban v. Bristol Farms*

Dear PAGA Administrator:

This office represents Jeannine Urban in connection with her claims under the California Labor Code. Ms. Urban was an employee of BRISTOL FARMS ("LAZY ACRES").

The employer may be contacted directly at the address below:

BRISTOL FARMS
915 E 230TH ST
CARSON CA 90745

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

LAZY ACRES employed Ms. Urban as an hourly paid, non-exempt employee from approximately September 2019 to July 2021. Ms. Urban worked for LAZY ACRES as a Baker, Assistant Bakery Manager, and Cashier in Encinitas, California. During her employment, Ms. Urban typically worked eight (8) hours or more per day, five (5) days per week. At the time her employment ended, Ms. Urban was compensated approximately \$18.00 per hour. Her job duties included, without limitation, baking, organizing food displays, attending to customers, cashiering, and cleaning. LAZY ACRES has committed one or more of the following Labor Code violations against Ms. Urban, the facts and theories of which follow, making her an "aggrieved employee" pursuant to California Labor Code

section 2699(c):¹

LAZY ACRES's Company-Wide and Uniform Payroll and HR Practices

BRISTOL FARMS is a California corporation that owns and operates a chain of grocery stores in Southern California. BRISTOL FARMS acquired "Lazy Acres Market" in 2005 and continues to operate five (5) locations in California under this name. Upon information and belief, LAZY ACRES maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Carson, California, for all non-exempt, hourly paid employees working for LAZY ACRES in California, including Ms. Urban and other aggrieved employees. At all relevant times, LAZY ACRES issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Urban and other aggrieved employees, regardless of its location or position.

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

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

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

LAZY ACRES willfully failed to pay all overtime wages owed to Ms. Urban and other aggrieved employees. During the relevant time period, Ms. Urban and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

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

First, during the relevant period, LAZY ACRES had a company-wide practice and/or policy of requiring Ms. Urban and other aggrieved employees to continue to perform work-related tasks while off-the-clock. For example, Ms. Urban and other aggrieved employees were sometimes required to undergo off-the-clock temperature checks and/or COVID-19 screenings prior to the start of their scheduled shifts. As another example, other aggrieved employees were required to gather shopping carts from the parking lot or communicate with LAZY ACRES's management via their personal cellular phones after they clocked out for their shifts. Thus, LAZY ACRES failed to track this time spent working after scheduled shifts, and Ms. Urban and other aggrieved employees received no compensation for this time.

Furthermore, LAZY ACRES had a company-wide loss prevention policy requiring employees to undergo mandatory security checks by a managerial employee before leaving the store premises. As a result of LAZY ACRES's policy, other aggrieved employees were required to undergo security screenings after clocking out at the end of a shift prior to leaving the store premises. Although LAZY ACRES's requirement that other aggrieved employees undergo security checks was mandatory, LAZY ACRES did not compensate them for the time it took them to wait in line and undergo these checks.

Second, during the relevant period, LAZY ACRES had, and continues to have, a company-wide policy staffing its supermarkets strictly based on the labor hours or labor budget set by the corporate office, which has resulted in, and continues to result in, chronic understaffing and a lack of adequate meal period coverage, because there were too few employees on duty to handle the workload and attend to customers. In addition, LAZY ACRES also had a practice of failing to schedule meal periods and/or adhere to a schedule for meal periods, which further caused Ms. Urban and other aggrieved employees to not be relieved of their duties for compliant meal periods. Moreover, on information and belief, LAZY ACRES had, and continues to have, a policy and/or practice of requiring employees to respond when supervisors and management called them on the store intercom, even during unpaid meal periods. However, LAZY ACRES's company-wide timekeeping system prevented Ms. Urban and/or other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked Ms. Urban and/or other aggrieved employees out once they clocked out for a meal period and would not permit them to clock back in from a meal before 30 minutes elapsed.

Third, because LAZY ACRES frowned upon employees accruing meal period penalties, LAZY ACRES's management pressured employees to clock out for meal periods to reflect compliant meal periods, upon threat of discipline, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by LAZY ACRES. Consequently, other aggrieved employees performed work during meal periods for which they were not paid.

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

Furthermore, LAZY ACRES did not pay other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, LAZY ACRES paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of

remuneration. However, in violation of the California Labor Code, LAZY ACRES failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, LAZY ACRES failed to pay all overtime wages by paying a lower overtime rate than required.

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

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

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

As set forth above, during the relevant time period, LAZY ACRES required that Ms. Urban and other aggrieved employees perform work off-the-clock after their scheduled shifts, including undergoing mandatory temperature checks and/or health screenings, gathering carts from the parking lot, communicating with supervisors on their personal cellular phones regarding work-related matters, and/or submitting to off-the-clock security checks.

As also stated, due to LAZY ACRES's company-wide policies and/or practices of utilizing labor budgets, understaffing, assigning heavy workloads, failing to schedule meal periods and/or adhere to a schedule for meal periods, and subsequent lack of meal period coverage, Ms. Urban and/or other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods. Moreover, on information and belief, LAZY ACRES had, and continues to have, a policy and/or practice of requiring employees to respond when supervisors and management called them on the store's loudspeakers, even during unpaid meal periods. However, LAZY ACRES's company-wide timekeeping system prevented Ms. Urban and/or other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked them out once they clocked out for a meal period and would not permit them to clock back in from a meal before 30 minutes elapsed.

Furthermore, because LAZY ACRES frowned upon employees accruing meal period penalties, LAZY ACRES's management pressured employees to clock out for meal periods to reflect compliant meal periods, upon threat of discipline, in order to strictly limit meal penalties that would need to be paid. Consequently, other aggrieved employees performed work during meal periods for which they were not paid.

Moreover, LAZY ACRES maintained and implemented a company-wide policy of requiring employees to travel to a medical facility on their own time and using their own personal vehicles or alternate transportation to undergo mandatory drug testing and/or physical examinations. At all times, LAZY ACRES was in control of scheduling the date and time for the testing and/or physical

examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. LAZY ACRES gave other aggrieved employees strict instructions to undergo drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or physical examinations for the sole benefit of LAZY ACRES. Other aggrieved employees were required to travel in their own personal vehicles or obtain alternate transportation and spend time undergoing LAZY ACRES's mandatory drug tests and/or physical examinations. However, LAZY ACRES did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities and undergoing the mandatory drug testing and/or physical examinations.

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

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

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

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

As stated above, LAZY ACRES had, and continues to have, a company-wide policy and/or practice of understaffing its locations due to labor budgeting, which, combined with assigning heavy workloads, has resulted in a lack of meal period coverage and prevented Ms. Urban and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. LAZY ACRES also had a practice of failing to schedule meal periods and/or adhere to a schedule of meal periods, which further caused Ms. Urban and other aggrieved employees to not be relieved of their duties for compliant meal periods.

Moreover, on information and belief, LAZY ACRES had, and continues to have, a policy and/or practice of requiring employees to respond to supervisors' and management's calls over the store's

loudspeakers, even during unpaid meal periods. However, as stated, LAZY ACRES's company-wide timekeeping system further prevented Ms. Urban and/or other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Ms. Urban and/or other aggrieved employees once they clocked out for a meal period and would not permit them to clock back in from a meal before 30 minutes elapsed. Furthermore, because LAZY ACRES frowned upon employees accruing meal period penalties, LAZY ACRES's management pressured other aggrieved employees to clock out for meal periods to reflect compliant meal periods, upon threat of discipline, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by LAZY ACRES.

As a result of LAZY ACRES's practices and/or policies, Ms. Urban and other aggrieved employees had to work through part or all of their meal periods, have their meal periods interrupted, and/or wait extended periods of time before taking meal periods. For example, during her employment, Ms. Urban would take her meal period after working five (5) hours once per week, due to the heavy workload and lack of coverage.

Moreover, LAZY ACRES did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Ms. Urban and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times mentioned herein, LAZY ACRES knew or should have known that as a result of its policies, Ms. Urban and other aggrieved employees were not actually relieved of all duties to take all timely, uninterrupted meal periods. LAZY ACRES further knew or should have known that it did not pay Ms. Urban and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

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

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

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

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order

provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, LAZY ACRES regularly failed to authorize and permit Ms. Urban and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, LAZY ACRES’s company-wide policy and practice of understaffing and the resultant lack of rest period coverage, prevented Ms. Urban and other aggrieved employees from being relieved of all duty to take their rest periods. LAZY ACRES also failed to schedule rest periods, which, coupled with LAZY ACRES’s failure to provide adequate rest period coverage, further led to Ms. Urban and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Furthermore, LAZY ACRES maintained and implemented a company-wide practice and/or policy requiring that Ms. Urban and other aggrieved employees remain on LAZY ACRES’s premises during their rest periods. Because Ms. Urban and other aggrieved employees were restricted from leaving the LAZY ACRES’s premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, LAZY ACRES effectively maintained control over Ms. Urban and other aggrieved employees during rest periods, and, as a result of this rest period policy, LAZY ACRES did not relinquish control over Ms. Urban and other aggrieved employees during rest periods.

As a result of LAZY ACRES’s practices and policies, Ms. Urban and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Ms. Urban missed her rest periods approximately three (3) times per week due to understaffing, the heavy workload, and lack of rest period coverage.

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

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

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

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

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

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

Further, because LAZY ACRES did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, LAZY ACRES did not list the correct amount of gross wages in compliance with section 226(a)(1) and did not list the correct amount of net wages in violation of section 226(a)(5). LAZY ACRES also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages

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

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, LAZY ACRES engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Ms. Urban and other aggrieved employees in violation of section 1198. Furthermore, in light of LAZY ACRES’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, LAZY ACRES kept no records of meal start and end times for second meal periods.

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

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

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

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

During the relevant time period, LAZY ACRES failed to pay Ms. Urban and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages,

meal and rest period premiums, and/or reporting time pay, within any time period specified by California Labor Code section 204.

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

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

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

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

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

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Examinations and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, LAZY ACRES implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo mandatory drug testing and/or physical examinations, but required them to do so at their own expense. As stated, LAZY ACRES had a company-wide policy requiring that other aggrieved employees travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing and/or physical examinations. At all times, LAZY ACRES was in control of scheduling the date and time for the testing and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations.

However, LAZY ACRES did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities, for the time they spent undergoing the drug testing and/or physical examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. LAZY ACRES's policy and/or practice of not paying for all costs other aggrieved employees incurred obtaining mandatory drug testing and/or physical examinations is in violation of California Labor Code section 222.5.

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11070(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

Upon information and belief, LAZY ACRES violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(5)(A), because LAZY ACRES failed to pay other aggrieved employees reporting time pay when they reported to work for their scheduled shift, but were put to work for less than half of the usual or scheduled day’s work. For example, on occasions when employees reported to work for their scheduled shifts, LAZY ACRES’s management sent employees home within the first hour of clocking in because business was slow or to limit overtime accrual. When this would occur, LAZY ACRES did not pay other aggrieved employees for at least half of their scheduled day’s work or the minimum reporting time pay when they were subject work for less than half of their usual or scheduled shift.

Accordingly, other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(5)(A). Other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

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

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11070(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

“The ‘nature of the work’ refers to an employee’s tasks performed at a given location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for.” *Kilby v. CVS Pharmacy, Inc.*, 368

P.3d 554, 558 (Cal. 2016). “Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s characteristics.” *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is “infeasible because no suitable seating exists.” *See id.*

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

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

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

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

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

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

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

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

LAZY ACRES’s California grocery stores are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Ms. Urban and other aggrieved employees during lulls in operation. LAZY ACRES could have provided Ms. Urban and other aggrieved employees with a seat or stool in its work areas, but instead denied, and continues to deny, employees seating, forcing them to stand throughout the day.

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

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

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 4(C) – Failure to Pay Split-Shift Premiums

California Labor Code section 1198 provides that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11070(4)(C) provides that, “When an employee works a split shift, one (1) hour’s pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.” California Code of Regulations, Title 8, defines a split shift as “a work schedule, which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.”

LAZY ACRES willfully violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(4)(C), because LAZY ACRES failed to pay other aggrieved employees a split-shift premium when they returned to work for an additional shift in the same day, after having been clocked out for several hours. For example, LAZY ACRES scheduled other aggrieved employees for early morning shifts to perform price changes on labels and also scheduled them to work closing shifts in the evening, with more than several hours in between each shift. When this occurred, LAZY ACRES did not always pay other aggrieved employees an additional hour at minimum wage. Accordingly, LAZY ACRES required other aggrieved employees to work split shifts but failed to pay them an additional hour at minimum wage, in violation of California Labor Code section 1198.

LAZY ACRES's failure to provide other aggrieved employees with split-shift pay when they returned to work for an additional shift in the same day, after having been clocked out for several hours, violates California Labor Code section 1198 and California Code of Regulations Title 8, Section 11070(4)(C). Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

First, during the relevant time period, LAZY ACRES, on a company-wide basis, required other aggrieved employees to use their own personal mobile devices, including, but not limited to cellular phones, and/or mobile data to carry out their job duties, but failed to reimburse them for the cost of their work-related mobile device expenses. Other aggrieved employees were required to use their personal mobile devices for work-related tasks, including responding to calls from LAZY ACRES's management to discuss work-related matters. Although LAZY ACRES required other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, LAZY ACRES failed to reimburse them for these costs.

Second, during the relevant time period, LAZY ACRES had a company-wide policy of requiring other aggrieved employees to travel to medical facilities on their own time and using their personal vehicles to obtain mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. At all times, LAZY ACRES was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. LAZY ACRES gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or physical examinations for the sole benefit of LAZY ACRES. Although

LAZY ACRES required other aggrieved employees to use their own vehicles or obtain alternate transportation to undergo drug testing and/or physical examinations, LAZY ACRES never reimbursed them for their travel expenses.

Third, LAZY ACRES on a company-wide basis, expected Ms. Urban and other aggrieved employees to report to work in clean and presentable uniforms, including a t-shirt bearing LAZY ACRES's logo. However, LAZY ACRES did not provide their employees with sufficient uniforms to wear for their shifts throughout the week. For example, LAZY ACRES only provided Ms. Urban and other aggrieved employees with three (3) uniform shirts at the beginning of their employment. Because LAZY ACRES failed to provide Ms. Urban and other aggrieved employees with an adequate number of uniform items in relation to their scheduled shifts and for the tasks they were required to perform, Ms. Urban and other aggrieved employees were forced to wash their uniforms more frequently than they otherwise do laundry, and incur expenses in doing so. Thus, LAZY ACRES failed to maintain uniforms they required Ms. Urban and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

LAZY ACRES could have provided Ms. Urban and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices, company vehicles, and/or an adequate number of uniforms or access to laundering services. Or, LAZY ACRES could have reimbursed employees for their mobile device usage, mileage, travel expenses, and costs of their laundering expenses or provided a uniform maintenance allowance. Instead, LAZY ACRES passed these operating costs off onto Ms. Urban and other aggrieved employees. At all relevant times, Ms. Urban did not earn at least two (2) times the minimum wage.

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

California Labor Code § 558(a)

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

Accordingly, Ms. Urban seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Urban, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for herself, all other aggrieved employees, and the State of California against LAZY ACRES for violations of California Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

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

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Best Regards,


Anthony Castillo

Copy: BRISTOL FARMS (via U.S. Certified Mail)