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Attorneys for Plaintiff Fresia Mendoza

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MONTEREY

FRESIA MENDOZA, as an aggrieved  
employee pursuant to the Private Attorneys  
General Act ("PAGA"), on behalf of the  
State of California and other aggrieved  
employees,

Plaintiff,

vs.

CHEDRAUI USA, INC., a Delaware  
corporation; and DOES 1 through 10,  
inclusive,

Defendants.

Case No.: 25CV002013

**COMPLAINT – PAGA ENFORCEMENT  
ACTION**

- (1) Claim for Civil Penalties Pursuant to  
PAGA § 2699 for Violations of California  
Labor Code and IWC Wage Order No.  
7-2001, subdivision 14(A); and
- (2) Claim for Civil Penalties Pursuant to  
PAGA § 2699 for Violations of California  
Labor Code and IWC Wage Order No.  
7-2001, subdivision 14(B).

1 Plaintiff Fresia Mendoza, as an aggrieved employee and on behalf of the State of  
2 California and all other aggrieved employees, alleges as follows:

### 3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General  
5 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties  
6 on behalf of the Plaintiff, the State of California, and other current and former employees who  
7 worked for Defendants in California as a non-exempt employee at a California El Super  
8 grocery store location and who suffered violations of Industrial Welfare Commission (“IWC”)   
9 Wage Order No. 7-2001 subdivision 14(A) and/or (B) as set forth in this complaint at any time  
10 between one year prior to the filing of the pre-filing written notice to the Labor and Workforce  
11 Development Agency (“LWDA”) in this case on February 10, 2025, until judgment (“non-  
12 party Aggrieved Employees”). Plaintiff’s share of civil penalties sought in this action does  
13 not exceed \$75,000.

14 2. This Court has jurisdiction over this action pursuant to the California  
15 Constitution, Article VI, section 10. The overall amount in controversy exceeds \$25,000. The  
16 statute under which this action is brought does not specify any other basis for jurisdiction.

17 3. This Court has jurisdiction over all Defendants because, on information and  
18 belief, Defendants are either citizens of California, have sufficient minimum contacts in  
19 California, and otherwise intentionally avail themselves of the California market so as to  
20 render the exercise of jurisdiction over them by the California courts consistent with  
21 traditional notions of fair play and substantial justice. Also, Plaintiff and all other non-party  
22 Aggrieved Employees were employed by Defendants in California.

23 4. There is no basis for federal diversity jurisdiction in this action given that the  
24 State of California, as the real party in interest in this action, is not a “citizen” for purposes of  
25 satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118, 1123 (9th Cir.  
26 Cal. 2013). *Urbino* also holds that civil penalties cannot be aggregated to satisfy the amount  
27 in controversy requirement for federal diversity jurisdiction in this action, and that diversity  
28 jurisdiction cannot be established when Plaintiff’s share of the civil penalties attributable to

violations personally suffered are less than \$75,000. *Id.* at 1122.

5. Venue is proper in this Court because Defendants employ persons in this county, and employed Plaintiff in this county, and thus a substantial portion of the transactions and occurrences related to this action occurred in this county.

6. California Labor Code sections 2698, *et seq.*, the “Labor Code Private Attorneys General Act of 2004,” authorize aggrieved employees to sue as private attorneys general their current or former employers for various civil penalties for violations of various provisions in the California Labor Code. Labor Code section 1198 makes a violation of a Wage Order such as subdivision 14(A) or 14(B) a violation of the Labor Code.

### THE PARTIES

7. Plaintiff Fresia Mendoza worked for Defendants as a non-exempt employee from approximately October 2023 to July 2024. Plaintiff worked for Defendants at their El Super grocery store located at 640 East Boronda Road, Salinas, California 93906. During her employment, Plaintiff worked as a Restaurant Checker and Restaurant Cook. Plaintiff typically worked seven (7) hours per day and six (6) days per week. Plaintiff’s job duties included, without limitation, operating the cash register and performing customer transactions, providing customer service, preparing and making food, labeling bottles, and cleaning.

8. Defendant CHEDRAUI USA, INC. was and is, upon information and belief, a Delaware corporation doing business in California, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California, or the various states of the United States of America.

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

10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 are the partners, agents, owners, shareholders, managers, or employees CHEDRAUI USA, INC. at all relevant times.

11. 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, CHEDRAUI USA, INC. and/or DOES 1 through 10 (collectively, “Defendants” or “EL SUPER”), 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.

12. 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.

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

#### **PAGA REPRESENTATIVE ALLEGATIONS**

14. Defendants operates supermarket chains for produce, meats, and packaged foods, plus discounted bulk items under various brands, including El Super. Defendants operate approximately 68 El Super grocery store locations in the United States, including approximately 54 El Super grocery store locations in California.

15. Upon information and belief, Defendants maintain a single, centralized Human Resources (HR) department at their corporate headquarters in Commerce, California, for all non-exempt employees working for Defendants in California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies to employees throughout California.

16. In particular, on information and belief, Plaintiff and other non-party Aggrieved Employees received the same standardized documents and/or written policies. Upon information and belief, Defendants maintained uniform practices with respect to their

1 provision of seats (or lack thereof) in their grocery stores for all non-exempt employees in  
2 California, including Plaintiff and other non-party Aggrieved Employees, regardless of their  
3 location or position.

4 17. Plaintiff alleges that Defendants' California grocery stores are generally similar  
5 in their layout and design and that the service counters and cashwraps would allow for the  
6 presence and use of a seat or stool by Defendants' employees during the performance of their  
7 work duties at these service counters and cashwraps. However, Defendants have designed  
8 their service counters and cashwraps to require Plaintiff and other non-party Aggrieved  
9 Employees to stand while performing their work duties at those locations. Defendants could  
10 have provided Plaintiff and other non-party Aggrieved Employees with suitable seats at  
11 service counters and cashwraps, with reasonable or no modification to these work area(s), but  
12 instead have denied and continue to deny them seats altogether or deny them suitable seats.  
13 As a result, Plaintiff and other non-party Aggrieved Employees are and have been forced to  
14 stand throughout the day. In addition, Defendants have failed to expressly advise Plaintiff and  
15 other non-party Aggrieved Employees that they could utilize seats while performing their  
16 duties.

17 18. Plaintiff and other non-party Aggrieved Employees have spent a substantial  
18 portion of their day behind Defendants' service counters and cashwraps. The nature of the  
19 work of an employee performing cashier duties can reasonably be accomplished from a seated  
20 position. However, as set forth herein, Defendants systematically, and on a company-wide  
21 basis, do not provide seats and do not provide suitable seats at service counters and cashwraps  
22 and expressly prohibit employees from sitting while working, forcing Plaintiff and other non-  
23 party Aggrieved Employees to stand throughout their work shifts.

24 19. Additionally, Defendants have not placed an adequate number of suitable seats  
25 within reasonable proximity to the work areas of employees who perform duties whose nature  
26 require standing and therefore has not permitted employees to use those seats when not  
27 actively engaged in performing their standing duties (i.e., during "lulls in operation"), even  
28 though sitting would not interfere with the performance of their job duties.

1           20.     Defendants continue to employ non-exempt employees at grocery store  
2 locations throughout California.

3           21.     Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
4 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to  
5 suitable seating and/or were entitled to sit when it did not interfere with the performance of  
6 their cashier duties. In violation of the California Labor Code and applicable IWC Wage  
7 Order, Defendants failed to provide Plaintiff and other non-party Aggrieved Employees  
8 suitable seating.

9           22.     Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
10 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to  
11 have seats in reasonable proximity to their work area(s) and be permitted to use such seats  
12 when it did not interfere with the performance of their duties whose nature require standing  
13 during lulls in performing those tasks. In violation of the California Labor Code and  
14 applicable IWC Wage Order, Defendants failed to provide Plaintiff and other non-party  
15 Aggrieved Employees suitable seating.

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

22           24.     PAGA defines an “aggrieved employee” in Labor Code section 2699(c)(1) as  
23 “any person who was employed by the alleged violator and personally suffered each of the  
24 violations alleged.”

25           25.     Plaintiff and other current and former California employees of Defendants are  
26 “aggrieved employees” as defined by Labor Code section 2699(c)(1) in that they are all  
27 Defendants’ current or former California employees and each of the alleged violations of IWC  
28 Wage Order No. 7-2001, subdivisions 14(A) and 14(B), were committed against them.

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

4           (a) The aggrieved employee or representative shall give written notice by  
5 online filing with the LWDA and by certified mail to the employer of  
6 the specific provisions of the California Labor Code alleged to have  
7 been violated, including the facts and theories to support the alleged  
8 violation.

9           (b) An aggrieved employee's notice filed with the LWDA pursuant to  
10 2699.3(a) and any employer response to that notice shall be  
11 accompanied by a filing fee of seventy-five dollars (\$75).

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

20           27. On February 10, 2025, Plaintiff provided written notice by online filing to the  
21 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor  
22 Code alleged to have been violated, including facts and theories to support the alleged  
23 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written  
24 notice was accompanied with the applicable filing fees of seventy-five dollars (\$75). That  
25 same day, the LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and  
26 assigned Plaintiff PAGA Case Number LWDA-CM-1079149-25. A true and correct copy of  
27 Plaintiff's written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

28           28. As of the filing date of this complaint, over 65 days have passed since Plaintiff

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

3 29. Thus, Plaintiff has satisfied the administrative prerequisites under California  
4 Labor Code section 2699.3(a) to recover civil penalties against Defendants for violations of  
5 California Labor Code section 1198.

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

9 31. As set forth below, Defendants have violated provisions of both the Labor Code  
10 sections regulating hours and days of work as well as the applicable IWC Wage Order,  
11 specifically, Labor Code section 1198 and California Code of Regulations, Title 8, section  
12 11070(14)(A)-(B).

13 32. Pursuant to PAGA, and in particular, California Labor Code sections 1194.5,  
14 2699(a), 2699(k), 2699.3(a), and 2699.5, Plaintiff, acting in the public interest as a private  
15 attorney general, seeks assessment and collection of civil penalties and injunctive relief for  
16 herself, all other non-party Aggrieved Employees, and the State of California against  
17 Defendants for violations of California Labor Code section 1198.

18 **FIRST CAUSE OF ACTION**

19 **FAILURE TO PROVIDE SUITABLE SEATING**

20 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**  
21 **REGULATIONS, TITLE 8, SECTION 11070(14)(A)**

22 **(By Plaintiff on Behalf of the State of California and Aggrieved Employees Against all**  
23 **Defendants)**

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

26 34. California Labor Code sections 2698, *et seq.* permit Plaintiff to recover civil  
27 penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section  
28 2699.5. Section 2699.5 enumerates Labor Code section 1198, among others. Defendants'

1 conduct, as alleged herein, violates section 1198 of the California Labor Code, by failing to  
2 provide suitable seating to Plaintiff and other non-party Aggrieved Employees as set forth  
3 below.

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

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

13 37. During the relevant time period, Defendants violated California Labor Code  
14 section 1198 and California Code of Regulations, Title 8, section 11070(14)(A), because  
15 Plaintiff and other non-party Aggrieved Employees were not allowed to sit, even when the  
16 nature of their work would reasonably permit the use of seats, nor were they provided with  
17 suitable seats. As employees assigned cashier duties, Plaintiff’s and other non-party  
18 Aggrieved Employees’ tasks, including operating the cash register and performing customer  
19 transactions, could be performed from a seated position. Plaintiff and other non-party  
20 Aggrieved Employees could have handled customer transactions and performed other similar  
21 tasks at service counters and/or cashwraps at any of Defendants’ stores while seated, without  
22 affecting the quality and effectiveness of the performance of their job duties.

23 38. Defendants could have placed suitable seats or stools at or near each service  
24 counter and cashwrap for use by Plaintiff and other non-party Aggrieved Employees with  
25 reasonable or no modification to the work area(s). And, in fact, Defendants designed the  
26 service counters and cashwraps to require Plaintiff and other non-party Aggrieved Employees  
27 to stand at the work area(s). However, on a company-wide basis, Defendants did not provide  
28 suitable seats or stools at or near each service counter and cashwrap and expressly prohibited

1 employees from sitting while working. Defendants' management did not inform Plaintiff and  
2 other non-party Aggrieved Employees that they were allowed to sit down, provide any means  
3 for them to sit down, or mention any policy regarding sitting.

4 39. For example, during her employment, when Plaintiff performed cashiering  
5 duties at the service counter and/or cashwrap, she was required to stand the entire time  
6 because Defendants did not provide seating behind the service counters and/or cashwraps.  
7 Other non-party Aggrieved Employees similarly were not permitted to sit while performing  
8 cash register duties because Defendants did not provide seats or stools at the service counters  
9 and/or cashwraps.

10 40. As a result of Defendants' company-wide policy and/or practice prohibiting  
11 employees from sitting during their shifts and failure to provide suitable seating to these  
12 employees, they were forced to stand during shifts and denied seats. Defendants' failure to  
13 provide suitable seating to Plaintiff and other non-party Aggrieved Employees violated and  
14 continues to violate California Labor Code section 1198 and IWC Wage Order No. 7-2001,  
15 subdivision 14(A).

16 41. Plaintiff and other non-party Aggrieved Employees and the State of California  
17 are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f),  
18 and (k).

19 **SECOND CAUSE OF ACTION**

20 **FAILURE TO PROVIDE SUITABLE SEATING**

21 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**  
22 **REGULATIONS, TITLE 8, SECTION 11070(14)(B)**

23 **(By Plaintiff on Behalf of the State of California and Aggrieved Employees Against all**  
24 **Defendants)**

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

27 43. California Labor Code sections 2698, *et seq.* permit Plaintiff to recover civil  
28 penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section

1 2699.5. Section 2699.5 enumerates Labor Code section 1198, among others. Defendants'  
2 conduct, as alleged herein, violates section 1198 of the California Labor Code, by failing to  
3 provide suitable seating to Plaintiff and other non-party Aggrieved Employees as set forth  
4 below.

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

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

16 46. During the relevant time period, Defendants violated California Labor Code  
17 section 1198 and California Code of Regulations, Title 8, section 11070(14)(B), because  
18 Plaintiff and other non-party Aggrieved Employees were not allowed to sit, even during lulls  
19 in their work duties, nor were they provided with suitable seats in reasonable proximity to  
20 their work areas.

21 47. Defendants did not place an adequate number of suitable seats or stools within  
22 reasonable proximity to the work areas of employees who perform duties, whose nature  
23 require standing, and therefore have not permitted employees to use those seats when not  
24 actively engaged in performing their standing duties (i.e., during “lulls in operation”), even  
25 though sitting would not interfere with the performance of their job duties. Defendants could  
26 have provided Plaintiff and other non-party Aggrieved Employees with a suitable seat or stool  
27 within reasonable proximity of their work areas but instead deny employees seats and force  
28 them to stand throughout the day. Moreover, Defendants did not inform Plaintiff and other

1 non-party Aggrieved Employees of their rights to a seat or stool under California law.

2 48. For example, during her employment, Plaintiff experienced lulls in her work at  
3 various times during a typical shift, especially when the store was not busy. During these  
4 lulls, when Plaintiff was not actively performing tasks (the nature of which require standing),  
5 Plaintiff could have taken a moment to sit and rest her legs, back, and feet if seating was  
6 provided. Other non-party Aggrieved Employees similarly were not permitted to sit during  
7 these lulls in operation and were forced to stand throughout the day.

8 49. As a result of Defendants' company-wide failure to provide seats in reasonable  
9 proximity to employees' work areas and failure to permit them to use those seats when not  
10 actively engaged in their standing duties, Plaintiff and other non-party Aggrieved Employees  
11 were forced to stand during shifts and denied seats. Defendants' failure to provide suitable  
12 seating to Plaintiff and other non-party Aggrieved Employees violated and continues to  
13 violate California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision  
14 14(B).

15 50. Plaintiff and other non-party Aggrieved Employees and the State of California  
16 are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f),  
17 and (k).

#### 18 **PRAYER FOR RELIEF**

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

22 1. For civil penalties, injunctive relief, and attorneys' fees in excess of twenty-five  
23 thousand dollars (\$25,000) to the State of California and aggrieved employees.

#### 24 **As to the First Cause of Action**

25 2. That the Court declare, adjudge and decree that Defendants violated California  
26 Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(A) as to Plaintiff  
27 and other non-party Aggrieved Employees (by failing to provide suitable seating);

28 3. For civil penalties pursuant to California Labor Code sections 2699(a), (f), and

(k) for violations of California Labor Code section 1198;

4. For injunctive relief pursuant to California Labor Code sections 1194.5 and/or 2699(k) to bring Defendants into compliance with California's seating requirements;

5. For attorneys' fees and costs pursuant to California Labor Code section 2699(k)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code section 1198;

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

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

**As to the Second Cause of Action**

8. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B) as to Plaintiff and other non-party Aggrieved Employees (by failing to provide suitable seating);

9. For civil penalties pursuant to California Labor Code sections 2699(a), (f), and (k) for violations of California Labor Code section 1198;

10. For injunctive relief pursuant to California Labor Code sections 1194.5 and/or 2699(k) to bring Defendants into compliance with California's seating requirements;

11. For attorneys' fees and costs pursuant to California Labor Code section 2699(k)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code section 1198;

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

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

Dated: April 17, 2025

Respectfully submitted,

Capstone Law APC



By: \_\_\_\_\_

Robert Drexler  
Jonathan Lee  
Robert Myong

Attorneys for Plaintiff Fresia Mendoza

# **EXHIBIT “1”**



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February 10, 2025

VIA ONLINE SUBMISSION

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

Subject: *Fresia Mendoza v. Chedraui USA, Inc.*

Dear PAGA Administrator:

This office represents Fresia Mendoza in connection with her claims under the California Labor Code, and this letter is sent in compliance with the notice requirements of the California Labor Code Private Attorneys General Act, California Labor Code section 2699.3. Ms. Mendoza was an employee of CHEDRAUI USA, INC. d/b/a El Super Markets ("EL SUPER").

The employer may be contacted directly at the address below:

CHEDRAUI USA, INC.  
600 CITADEL DRIVE  
COMMERCE, CA 90040

Ms. Mendoza intends to seek civil penalties, attorneys' 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. Mendoza seeks relief on behalf of herself, the State of California, and other persons who are or were employed by EL SUPER as a non-exempt employee in a California grocery store location ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

EL SUPER employed Ms. Mendoza as a non-exempt employee from approximately October 2023 to July 2024. Ms. Mendoza worked for EL SUPER as a Restaurant Checker and Restaurant Cook at its grocery store in Salinas, California. Ms. Mendoza typically worked seven (7) hours per day and six (6) days per week. Ms. Mendoza's job duties included, without limitation, operating the cash register and performing customer transactions, providing customer service, preparing and making food, labeling bottles, and cleaning.

EL SUPER committed each of the following Labor Code violations against Ms. Mendoza, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c)(1).<sup>1</sup> Ms. Mendoza’s relevant claims are as follows:

**EL SUPER’s Company-Wide and Uniform HR Practices**

CHEDRAUI USA, INC. is a Delaware corporation that operates supermarket chains for produce, meats, and packaged foods, plus discounted bulk items under various brands, including El Super. EL SUPER operates approximately 54 grocery store locations in California. Upon information and belief, EL SUPER maintains a centralized Human Resources (HR) department at its corporate headquarters in Commerce, California, for all non-exempt employees working for EL SUPER at grocery stores in California, including Ms. Mendoza and other aggrieved employees. EL SUPER maintained uniform practices with respect to its provision of seats (or lack thereof) in its retail stores for all non-exempt employees in California, including Ms. Mendoza and other aggrieved employees, regardless of their location or position.

**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.*

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<sup>1</sup> These facts, theories, and claims are based on Ms. Mendoza’s experience and counsel’s review of those records currently available relating to Ms. Mendoza’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. Mendoza 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.

EL SUPER's California grocery stores are generally similar in their layout and design and there was, and continues to be, space at service counters and cash wraps to allow for the presence and use of a seat or stool by Ms. Mendoza and other aggrieved employees during the performance of their work duties. EL SUPER could have provided Ms. Mendoza and other aggrieved employees with a suitable seat at service counters and cash wraps, with reasonable or no modification to these work areas, but instead denied and continues to deny them seats altogether or denies them suitable seats. As a result, Ms. Mendoza and other aggrieved employees are and have been forced to stand throughout the day. In addition, EL SUPER failed to expressly advise Ms. Mendoza and other aggrieved employees that they could utilize seats while performing their duties.

During her employment, Ms. Mendoza performed cashiering duties at the service counter and/or cash wrap and spent a significant portion of her day behind the service counter and/or cash wrap. Other aggrieved employees similarly spent a portion of their day at service counters and/or cash wraps performing cash register duties. The nature of the work of an employee performing cashier duties can reasonably be accomplished from a seated position. Ms. Mendoza and other aggrieved employees could have handled cash register transactions and performed other similar tasks at service counters and/or cash wraps at any of EL SUPER's grocery stores while seated without interference with their ability to perform their job duties. However, as set forth herein, EL SUPER systematically, and on a company-wide basis, does not provide seats or does not provide suitable seats at service counters and/or cash wraps and expressly prohibits employees from sitting while working, forcing Ms. Mendoza and other aggrieved employees to stand throughout their work shifts.

EL SUPER violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because Ms. Mendoza and other aggrieved employees were not allowed to sit, even when the nature of their work would reasonably permit the use of seats, nor were they provided with suitable seats. EL SUPER's management did not inform Ms. Mendoza 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 EL SUPER's company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Ms. Mendoza and other aggrieved employees were forced to stand during shifts and denied seats. EL SUPER's failure to provide suitable seating to Ms. Mendoza and other aggrieved employees violates California Labor Code section 1198 and Industrial Welfare Commission ("IWC") Wage Order No. 7-2001, subdivision 14(A).

Ms. Mendoza and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring EL SUPER into compliance with the applicable IWC Wage Order and Labor Code section 1198, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f), and (k).

**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.*

As stated, EL SUPER’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. Mendoza and other aggrieved employees during lulls in operations. For example, Ms. Mendoza experienced lulls in her work at various times during a typical shift, especially when the grocery store was not busy. During these lulls, when Ms. Mendoza was not actively performing tasks that require standing, Ms. Mendoza could have taken a moment to sit and rest her legs, back, and feet if seating was provided. EL SUPER could provide Ms. Mendoza and other aggrieved employees with a suitable seat or stool in its work areas but instead denies employees seating and forces Ms. Mendoza and other aggrieved employees to stand throughout the day.

EL SUPER did not provide Ms. Mendoza and other aggrieved employees with suitable 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. Mendoza and other aggrieved employees engaged in duties in which the nature of the work required standing, EL SUPER denied them the use of seats nearby during lulls in their work duties. Moreover, EL SUPER did not inform Ms. Mendoza and other aggrieved employees of their rights to a seat or stool under California law.

As a result of EL SUPER’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 suitable seats in reasonable proximity to their work areas, Ms. Mendoza and other aggrieved employees were forced to stand during shifts and denied seats. EL SUPER’s failure to provide suitable seating to Ms. Mendoza and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

Ms. Mendoza and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring EL SUPER into compliance with the applicable IWC Wage Order and Labor Code section 1198, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f), and (k).

Ms. Mendoza, 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 EL SUPER for violations of California Labor Code section 1198 and the applicable IWC Wage Order.

Therefore, on behalf of all aggrieved employees, Ms. Mendoza 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:

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

Best Regards,

A handwritten signature in black ink, appearing to read "Ninel", is placed over a light gray rectangular background.

Ninel Kocharyan

Copy: CHEDRAUI USA, INC. (via U.S. Certified Mail)

| SENDER: COMPLETE THIS SECTION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  | COMPLETE THIS SECTION ON DELIVERY                                                                                                                          |  |
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| <p>1. <b>CHEDRAUI USA, INC.</b><br/>600 Citadel Drive<br/>Commerce, CA 90040</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  | <p>Received by (Printed Name) _____ C. Date of Delivery _____</p>                                                                                          |  |
| <p>2. Article Number (Transfer from service label)<br/><b>7021 1970 0001 9028 3244</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  | <p>Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No<br/>If YES, enter delivery address below: _____</p> |  |
| <p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™</p> <p><input type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Signature Confirmation™</p> <p><input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Restricted Delivery</p> |  |                                                                                                                                                            |  |
| <p>PS Form 3811, July 2020 PSN 7530-02-000-9053</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  | <p>Domestic Return Receipt</p>                                                                                                                             |  |

**CAPSTONE LAW, APC**  
1875 Century Park East  
Suite #1000  
Los Angeles, CA 90067

**CHEDRAUI USA, INC.**  
600 Citadel Drive  
Commerce, CA 90040

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| <p><b>CERTIFIED MAIL®</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                |  |
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| <p>Postage \$ _____ Total Post \$ _____</p>                                                                                                                                                                                                                                                                                                                                                                                                  |  |
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**Neelendra V Chedraui**

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☐ Agent

☐ Addressee

Received by (Printed Name)

Chris O.

C. Date of Delivery

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Restricted Delivery

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