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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

22CV408856

LISANDRO MONJARAZ ALMARAZ,
individually, and on behalf of all others
similarly situated,

Plaintiff,

v.

RAMON LUNA COMPANY, a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.:

CLASS ACTION COMPLAINT:

1. Failure to Provide Required Meal Periods
2. Failure to Provide Required Rest Breaks
3. Failure to Pay Overtime Wages
4. Failure to Pay Minimum Wages
5. Failure to Pay Timely Wages
6. Failure to Pay All Wages Due to Discharged and Quitting Employees
7. Failure to Maintain Required Records
8. Failure to Furnish Accurate Itemized Statements
9. Failure to Provide and Properly Calculate Mandatory California Sick Leave
10. Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties
11. Unfair and Unlawful Business Practices

REPRESENTATIVE ACTION

12. Penalties Under the Labor Code Private Attorneys General Act

DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

2 This is a class and representative action brought by Lisandro Monjaraz Almaraz
3 (“Plaintiff”), on behalf of himself and all other similarly situated individuals, against Ramon Luna
4 Company (“Defendant”), in order to hold Defendant accountable for its wage theft and other
5 violations of California wage and hour laws. Plaintiff makes the following allegations on
6 information and belief, except as to allegations pertaining to Plaintiff individually, which are
7 based on his respective personal knowledge

8 1. Defendant owns and manages one or more grocery stores and a warehouse located
9 throughout Northern California, including in Mountain View, California.

10 2. In order to minimize labor costs and thereby maximize profits, Defendant has
11 implemented unlawful policies with respect to meal and rest breaks. Defendant also requires its
12 non-exempt employees, who are informed that customer service is always the top priority, to work
13 through meal and rest breaks, and to remain on call during such breaks. Employees of Defendant
14 are unable to take meal and rest breaks based upon the scheduling and demands of Defendant, as
15 the needs of its customers come first. As a result, Plaintiff and other non-exempt employees have
16 been denied the ability to take the meal and rest breaks that they were and are legally entitled to
17 take.

18 3. Defendant has implemented an unlawful rounding practice, which in conjunction
19 with its strict attendance policy, results in the systematic underpayment of both regular and
20 overtime wages to Plaintiff and other non-exempt employees.

21 4. Moreover, Defendant has uniformly failed to pay Plaintiff and other non-exempt
22 employees proper overtime wages due to the fact that it willfully turns a blind eye to off-the-clock
23 work that Plaintiff and other non-exempt employees perform as a direct consequence of
24 Defendant’s understaffing and imposition of an unreasonable workload.

25 5. Plaintiff and other non-exempt employees similarly do not receive reimbursements
26 for the expenses they incur in the discharge of their job duties. These expenses include cellular
27 phone usage and personal protective equipment during the COVID-19 pandemic.

6. Plaintiff seeks declaratory, compensatory and other statutorily available relief for himself and a Class of all current and former non-exempt employees of Defendant during the applicable limitations period to compensate these workers for the wages Defendant has stolen from them and to protect current and future workers from being subjected to similar unlawful working conditions perpetrated by Defendant.

JURISDICTION AND VENUE

7. The Superior Court of the State of California has jurisdiction in this matter because Defendant is a California corporation that is qualified to do business in California and regularly conducts business in California. All putative class members and aggrieved employees are also residents of California. No federal question is at issue because Plaintiff's claims are based solely on California law.

8. Venue is proper in this judicial district and the County of Santa Clara because Plaintiff, and other persons similarly situated, performed work for Defendant in the County of Santa Clara, and Defendant's illegal payroll policies and practices, which are the subject of this action were applied to Plaintiff, and other persons similarly situated, in the County of Santa Clara.

THE PARTIES

9. Plaintiff is a former employee of Defendant. At all relevant times herein, Plaintiff was employed by Defendant in the produce department, a non-exempt position, at Defendant's market located in Mountain View, California.

10. Plaintiff, on behalf of himself and all other similarly situated individuals, brings this class action to recover, among other things, wages and penalties from unpaid wages earned and due, including but not limited to, Defendant's failure to provide legally compliant meal and rest breaks and failure to provide proper compensation for missed and otherwise unlawful meal and rest breaks, unpaid and illegally calculated regular and overtime compensation, failure to pay minimum wages, failure to pay all wages earned, failure to pay all wages due to discharged or quitting non-exempt employees, failure to maintain required records, failure to provide accurate itemized wage statements, failure to comply with California Labor Code § 246, failure to provide

1 California COVID-19 supplemental paid sick leave, failure to provide suitable resting facilities,
2 and failure to provide suitable seating.

3 11. During the statute of limitations period, Defendant has been a corporation existing
4 under the laws of the State of California and it has conducted business in the State of California.

5 12. Defendant conducts business as the Ramon Luna Company and employs
6 individuals to work in its grocery stores, markets and warehouse throughout Northern California.

7 13. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
8 Plaintiff at this time, and Plaintiff therefore sues such DOE defendants under fictitious names.
9 Upon information and belief, each Defendant designated as a DOE is in some manner highly
10 responsible for the occurrences alleged herein, and Plaintiff and Class members' injuries and
11 damages, as alleged herein, were proximately caused by the conduct of such DOE defendants.
12 Plaintiff will seek leave of the Court to amend this Complaint to allege the true names and
13 capacities of such DOE defendants when ascertained.

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

17 **CLASS ACTION ALLEGATIONS**

18 15. Plaintiff brings this action on behalf of himself and the following similarly situated
19 Class of individuals ("Class members"):

20 All non-exempt employees who have performed work for Defendant in the state of
21 California at any time during the relevant statute of limitations period.

22 16. Plaintiff reserves the right to name additional Class representatives as may be
23 necessary and appropriate. Plaintiff also reserves the right to modify or amend the definition of
24 the proposed Class and/or add subclasses before the Court determines whether certification is
25 appropriate

26 17. This action is appropriately suited for a class action because:

27 A. The proposed Class is a significant number. Plaintiff is informed and believes that
28 the proposed Class consists of at least 50 current and former non-exempt employees. Joinder of

1 all current and former non-exempt employees individually would be impractical.

2 B. This action involves common questions of law and fact to the proposed Class
3 because the action focuses on the Defendant's systematic course of illegal payroll practices and
4 policies, which was applied to all non-exempt employees in uniform violation of the California
5 Labor Code, IWC Wage Orders, and the California Business and Professions Code, which
6 prohibits unfair business practices arising from such violations. Here are a few common questions
7 of law and fact that can be answered on a classwide basis:

- 8 • Whether Defendant failed to provide non-exempt employees with legally
9 compliant meal periods and rest breaks;
- 10 • Whether Defendant failed to pay overtime to non-exempt employees in
11 compliance with California law;
- 12 • Whether Defendant failed to pay minimum wages to non-exempt employees in
13 compliance with California law;
- 14 • Whether Defendant failed to timely pay wages to non-exempt employees in
15 compliance with California law;
- 16 • Whether Defendant failed to maintain required records and accurate wage
17 statements for non-exempt employees;
- 18 • Whether Defendant failed to provide and properly calculate mandatory
19 California sick leave;
- 20 • Whether Defendant failed to reimburse employees for business expenses
21 incurred; and
- 22 • Whether Defendant engaged in unfair and/or unlawful business practices.

23 C. Plaintiff's claims are typical of the proposed Class because Defendant subjected all
24 of its non-exempt employees to the similar and overlapping violations of the California Labor
25 Code, the applicable IWC wage order, and the California Business and Professions Code.

26 D. Plaintiff is able to fairly and adequately protect the interests of all members of the
27 proposed Class because it is in his best interests to prosecute the claims alleged herein to obtain
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1 full compensation due to the proposed Class for all services rendered and hours worked. Plaintiff
2 has also retained counsel that is experienced in wage and hour class action litigation.

3 **FIRST CAUSE OF ACTION**

4 **Failure to Provide Required Meal Periods**

5 **[Cal. Lab. Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 7-2001, § 11]**

6 **(On Behalf of Plaintiff and the Class Against all Defendants)**

7 18. Plaintiff incorporates herein by specific reference, as though fully set forth, the
8 allegations in paragraphs 1 through 17.

9 19. During the statute of limitations period, as part of Defendant's unlawful policies
10 and practices to deprive its non-exempt employees of all wages earned and due, Defendant
11 required, permitted or otherwise suffered Plaintiff and Class members to perform work during
12 their meal periods, to completely skip their meal periods, to take late and short meal periods, and
13 Defendant has otherwise failed to provide the required meal periods to Plaintiff and Class
14 members as required under California Labor Code §§ 226.7, 512, and § 11 of the applicable IWC
15 Order.

16 20. Defendant has implemented several common policies and practices that have
17 caused Plaintiff and Class members to systematically miss and otherwise take non-compliant meal
18 periods.

19 21. Defendant grossly understaffs its stores such that Class members regularly miss or
20 take non-compliant meal periods. As a direct consequence of this understaffing, Plaintiff and
21 Class members have so much work to complete within their scheduled shifts that they are forced
22 to skip their meal periods altogether, to take them after working longer than five (5) hours, to
23 perform work during their meal periods, or return to work after taking less than a thirty (30)
24 minute meal period.

25 22. Moreover, Defendant failed to implement adequate policies or procedures to
26 provide meal periods to its non-exempt employees. Among other things, Defendant overworked
27 Plaintiff and Class members and did not adequately advise them of their rights to take meal
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1 periods, and systematically denied them the opportunity to take meal periods, including second
2 meal periods during shifts of ten (10) hours or longer.

3 23. Defendant has also violated California Labor Code §§ 226.7, IWC Wage Order No.
4 7-2001, § 11, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et*
5 *seq.*, by failing to compensate Plaintiff and Class members who were not authorized and permitted
6 to take a complete, timely, uninterrupted meal period, in accordance with the applicable wage
7 order, one additional hour of compensation at the proper regular rate of pay for each workday that
8 such a meal period was not authorized or permitted.

9 24. Defendant further violated California Labor Code sections 226.7, 510, 1194, 1197,
10 and IWC Wage Order No. 7-2001 by failing to compensate Plaintiff and Class members for all
11 hours worked during their meal periods.

12 25. As a proximate result of the aforementioned violations, Plaintiff and Class
13 members have been damaged in an amount according to proof at trial, and seek all wages earned
14 and due, interest, penalties, expenses, and costs of suit.

15 **SECOND CAUSE OF ACTION**

16 **Failure to Provide Required Rest Breaks**

17 **[Cal. Lab. Code §§ 226.7, 512; IWC Wage Order No. 7-2001, § 12]**

18 **(On Behalf of Plaintiff and the Class Against all Defendants)**

19 26. Plaintiff incorporates herein by specific reference, as though fully set forth, the
20 allegations in paragraphs 1 through 25.

21 27. At all times relevant herein, as part of Defendant's illegal policies and practices to
22 deprive its non-exempt employees of all wages earned and due, Defendant failed to permit
23 Plaintiff and Class members to take rest breaks as required under California Labor Code §§ 226.7
24 and 512, and § 12 of the applicable IWC Wage Order.

25 28. As with meal periods, Defendant's policies and practices caused Plaintiff and Class
26 members to miss or otherwise take non-compliant rest periods by, among other things, giving
27 them unreasonable amounts of work that had to be completed within their shift such that rest
28 periods simply could not be taken. This was the result of systematic understaffing. In addition,

1 Defendant did not adequately notify Plaintiff and Class members of their right to take rest periods,
2 and systematically denied them the opportunity to take rest periods.

3 29. Defendant further violated California Labor Code § 226.7, IWC Wage Order No. 7-
4 2001, § 12, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et. seq.*,
5 by failing to pay Plaintiff and Class members who were not provided with a rest break, in
6 accordance with the applicable wage order, one additional hour of compensation at the proper
7 regular rate of pay for each workday that a rest break was not provided.

8 30. As a proximate result of the aforementioned violations, Plaintiff and Class
9 members have been damaged in an amount according to proof at trial, and seek all wages earned
10 and due, interest, penalties, expenses, and costs of suit.

11 **THIRD CAUSE OF ACTION**

12 **Failure to Pay Overtime Wages**

13 **[Cal. Lab. Code §§ 510, 1194, 1198; IWC Wage Order No. 7-2001, § 3]**

14 **(On Behalf of Plaintiff and the Class against all Defendants)**

15 31. Plaintiff incorporates herein by specific reference, as though fully set forth, the
16 allegations in paragraphs 1 through 30.

17 32. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Order No. 7-
18 2001, § 3, Defendant is required to compensate Plaintiff and Class members for all overtime,
19 which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in
20 excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours
21 on the seventh consecutive workday, with double time for all hours worked in excess of twelve
22 (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh
23 consecutive day of work in any workweek.

24 33. Plaintiff and Class members are current and former non-exempt employees entitled
25 to the protections of California Labor Code §§ 510, 1194, and IWC Wage Order No. 7-2001.
26 During the Class period, Defendant failed to compensate Plaintiff and Class members for all
27 overtime hours worked as required under the foregoing provisions of the California Labor Code
28 and IWC Wage Order by, among other methods: failing to properly calculate the regular rate of

1 pay for the purposes of calculating overtime pay owed and due; requiring, permitting or suffering
2 Plaintiff and Class members to work off the clock; requiring, suffering, or permitting Plaintiff and
3 Class members to work through meal and rest periods but not compensating them for this time,
4 failing to include this time in all hours worked; rounding the time worked by Plaintiff and Class
5 members unfavorably to benefit Defendant; and other methods to be discovered.

6 34. In a short-sighted attempt to maximize profits, Defendant has understaffed its
7 stores and its employees are not adequately scheduled. Not only has this practice resulted in
8 widespread missed meal and rest breaks, but it has also caused Plaintiff and Class members to
9 perform significant amounts of work while off-the-clock. Plaintiff is further informed and
10 believes that Defendant's managers and supervisors know and are aware that Plaintiff and Class
11 members perform work off-the-clock performing work before and after their scheduled shifts.

12 35. Plaintiff and Class members also perform substantial work off-the-clock as a result
13 of Defendant's unlawful rounding practice. Defendant implements a rounding practice wherein it
14 rounds the time worked by non-exempt employees to the nearest quarter-hour. Defendant pays
15 Plaintiff and Class members based on the rounded time which unfavorable benefits Defendant.
16 This rounding practice results in systematic off-the-clock work and unpaid overtime.

17 36. Plaintiff and Class members must get to work by no later than the start of their
18 shifts – and usually earlier. Thus, they are not afforded the benefit of clocking in for work a few
19 minutes late. Likewise, Plaintiff and Class members are in a rush to complete their mandatory job
20 duties, so they are rarely afforded the benefit of clocking out early at the end of their shifts. This
21 results in the widespread underpayment of time worked, including overtime.

22 37. In violation of California law, Defendant has knowingly and willfully refused to
23 perform its obligations to compensate Plaintiff and Class members for all wages earned and all
24 hours worked at the legally required rates of pay. As a proximate result, Plaintiff and Class
25 members have suffered, and continue to suffer, substantial losses related to the use and enjoyment
26 of such wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel
27 Defendant to fully perform its obligations under state law, all to their respective damages in
28 amounts according to proof at time of trial, and within the jurisdiction of this Court.

38. Defendant's conduct described herein violates California Labor Code §§ 510, 1194, 1198 and IWC Wage Order No. 7-2001, § 3. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor Code and IWC Wage Orders, Plaintiff and Class members are entitled to recover the unpaid balance of wages owed to them by Defendant, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

FOURTH CAUSE OF ACTION

Failure to Pay Minimum Wages

[Cal. Lab. Code §§ 1194, 1197; IWC Wage Order No. 7-2001, § 4]

(On Behalf of Plaintiff and the Class against all Defendants)

39. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 38.

40. Pursuant to Cal. Lab. Code §§ 1194, 1197, and § 4 of IWC Wage Order No. 7, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

41. During the statute of limitations period, the hourly rates for Plaintiff and Class members were precisely at minimum wage. Based on this common practice, Defendant failed to actually pay Plaintiffs and Class members minimum wages for all hours worked by requiring, permitting or suffering them to work off-the-clock, such as requiring them to work through meal, rest breaks, but not compensating them for this time, and failing to include this time in all hours worked, and other methods to be discovered.

42. Defendant's conduct described herein violates Cal. Lab. Code §§ 1194, 1197, and § 4 of IWC Wage Order No. 7. As a proximate result of the aforementioned violations, Plaintiff and Class members have been damaged in an amount according to proof at trial. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and any other applicable law, Plaintiff and Class members are entitled to recover the unpaid balance of wages owed to them by Defendant, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

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3 **FIFTH CAUSE OF ACTION**

4 **Failure to Pay Timely Wages**

5 **[Cal. Lab. Code §§ 204, 210]**

6 **(On Behalf of Plaintiff and the Class against all Defendants)**

7 43. Plaintiff incorporates herein by specific reference, as though fully set forth, the
8 allegations in paragraphs 1 through 42.

9 44. California Labor Code § 204 provides that all wages earned by any person in any
10 employment between the 1st and 15th days, inclusive, of any calendar month, other than those
11 wages due upon termination of an employee, are due and payable between the 16th and 26th day
12 of the month during which the labor was performed. California Labor Code § 204 further
13 provides that all wages earned by any person in any employment between the 16th and the last
14 day, inclusive, of any calendar month, other than those wages due upon termination of an
15 employee, are due and payable between the 1st and the 10th day of the following month.
16 California Labor Code § 204 further provides that all wages earned for labor in excess of the
17 normal work period shall be paid no later than the payday for the next regular payroll period.

18 45. During the statute of limitations period, Defendant, among other things, willfully
19 failed to pay Plaintiff and Class members all wages earned and due to them, including but not
20 limited to, meal and rest break premiums, overtime and minimum wages, and payment for work
21 performed off-the-clock, within any time period permissible under Labor Code § 204.

22 46. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and
23 Class members are entitled to all available statutory penalties, including but not limited to, civil
24 penalties pursuant to California Labor Code §§ 200, 210, 558, 1194, 1197.1, 2699(a), and other
25 applicable provisions under the California Labor Code and IWC Wage Orders, and an award of
26 costs, expenses, and reasonable attorneys' fees.

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3 **SIXTH CAUSE OF ACTION**

4 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

5 **[Cal. Lab. Code §§ 201, 202, 203]**

6 **(On Behalf of Plaintiff and the Class against all Defendants)**

7 47. Plaintiff incorporates herein by specific reference, as though fully set forth, the
8 allegations in paragraphs 1 through 46.

9 48. Pursuant to California Labor Code §§ 201, 202, and 203, Defendant is required to
10 pay all earned and unpaid wages to an employee who is discharged. California Labor Code § 201
11 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid
12 at the time of discharge are due and payable immediately.

13 49. Furthermore, pursuant to California Labor Code § 202, Defendant is required to
14 pay all accrued wages due to an employee no later than seventy-two (72) hours after the employee
15 quits his or her employment, unless the employee provided seventy-two (72) hours previous notice
16 of his or her intention to quit, in which case the employee is entitled to his or her wages at the time
17 of quitting.

18 50. California Labor Code § 203 provides that if an employer willfully fails to pay, in
19 accordance with California Labor Code §§ 201 and 202, any wages of an employee who is
20 discharged or who quits, the employer is liable for waiting time penalties in the form of continued
21 compensation to the employee at the same rate for up to thirty (30) workdays.

22 51. During the statute of limitations period, Defendant has willfully failed to pay
23 accrued wages and other compensation to Plaintiff and Class members in accordance with
24 California Labor Code §§ 201 and 202. Defendant does not have a sufficient policy to provide
25 Plaintiff and Class members with their final paychecks within the timeframes required under
26 California law. In addition, because Defendant has failed and continues to fail to properly
27 compensate Plaintiff and Class members for all hours worked when due, overtime wages,
28 minimum wages, and compensation for non-compliant meal and rest breaks, Defendant has also

1 willfully failed and continues to fail to pay accrued wages and other compensation to Plaintiff and
2 Class members in accordance with California Labor Code §§ 201 and 202. Moreover, Defendant
3 fails to pay Class members employed on a temporary basis weekly in accordance with Labor Code
4 §201.3.

5 52. As a result, Plaintiff and Class members are entitled to all available statutory
6 penalties, including the waiting time penalties provided in California Labor Code § 203, together
7 with interest thereon, as well as other available remedies.

8 53. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and
9 Class members have been deprived of compensation in an amount according to proof at the time
10 of trial, but in excess of the jurisdiction of this Court, and are entitled to recovery of such amounts,
11 plus interest thereon, and attorneys' fees and costs, pursuant to California Labor Code § 1194.

12 **SEVENTH CAUSE OF ACTION**

13 **Failure to Maintain Required Records**

14 **[Cal. Lab. Code §§ 226, 1174; IWC Wage Order No. 7-2001, § 7]**

15 **(On Behalf of Plaintiff and the Class against all Defendants)**

16 54. Plaintiff incorporates herein by specific reference, as though fully set forth, the
17 allegations in paragraphs 1 through 53.

18 55. During the statute of limitations period, as part of Defendant's illegal payroll
19 policies and practices to deprive Plaintiff and Class members of all wages earned and due,
20 Defendant knowingly and intentionally failed to maintain records as required under California
21 Labor Code §§ 226, 1174, and IWC Wage Order No. 7-2001, § 7, including but not limited to, the
22 following records: total daily hours worked by each non-exempt employee; applicable rates of
23 pay; all deductions; meal periods; time records showing when each non-exempt employee begins
24 and ends each workday; and accurate itemized wage statements.

25 56. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and
26 Class members have been damaged in an amount according to proof at trial, and are entitled to all
27 wages earned and due, plus interest thereon. Additionally, Plaintiff and Class members are
28 entitled to all available statutory penalties, including but not limited to civil penalties pursuant to

1 California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and
2 reasonable attorneys' fees, including but not limited to those provided in California Labor Code §
3 226(e), as well as other available remedies.

4 **EIGHTH CAUSE OF ACTION**

5 **Failure to Furnish Accurate Itemized Wage Statements**

6 **[Cal. Lab. Code §§ 226; IWC Wage Order No. 7-2001, § 7]**

7 **(On Behalf of Plaintiff and the Class against all Defendants)**

8 57. Plaintiff incorporates herein by specific reference, as though fully set forth, the
9 allegations in paragraphs 1 through 56.

10 58. During the statute of limitations period, Defendant routinely failed to provide
11 Plaintiff and Class members with timely, accurate, and itemized wage statements in writing
12 showing each employee's gross wages earned, total hours worked, all deductions made, net wages
13 earned, and all applicable hourly rates in effect during each pay period and the corresponding
14 number of hours worked at each hourly rate, in violation of California Labor Code § 226 and IWC
15 Wage Order No. 7-2001, § 7.

16 59. Defendant's wage statements violate Labor Code § 226 by, among other things,
17 failing to provide Plaintiff and Class members with proper meal and rest breaks and not including
18 in their wage statements one (1) additional hour of compensation at their regular rates of pay for
19 each non-compliant meal or rest break. In addition, Defendant required Plaintiff and Class
20 members to work off-the-clock without compensation and illegally rounded the time that they
21 worked, rendering the wage statements inaccurate.

22 60. Defendant knowingly and intentionally failed to provide Plaintiff and Class
23 members with timely, accurate, and itemized wage statements in accordance with California Labor
24 Code § 226(a) so as to prevent Plaintiff and Class members from being able to determine whether
25 they were being paid for, among other things, all of the hours they worked and at the proper rates
26 of pay.

27 61. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and
28 Class members have been damaged in an amount according to proof at trial, and seek all wages

1 earned and due, plus interest thereon. Additionally, Plaintiff and Class members are entitled to all
2 available penalties, including but not limited to penalties pursuant to California Labor Code §§
3 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees,
4 including but not limited to those provided in California Labor Code § 226(e), as well as other
5 available remedies.

6 **NINTH CAUSE OF ACTION**

7 **Failure To Provide And Properly Calculate Mandatory California**

8 **Sick Leave [Cal. Labor Code §246]**

9 **(On Behalf of Plaintiff and the Class against all Defendants)**

10 62. Plaintiff incorporates herein by specific reference, as though fully set forth, the
11 allegations in paragraphs 1 through 61.

12 63. Pursuant to California Labor Code §246, any employee who works in the State of
13 California and who works more than "30 or more days within a year ... is entitled to be paid sick
14 days" Labor Code §246(l) provides an employer shall calculate sick pay under the following
15 methods: (1) Paid sick time for nonexempt employees shall be calculated in the same manner as
16 the regular rate of pay for the workweek in which the employee uses paid sick time, whether or
17 not the employee actually works overtime in that workweek." Alternatively, pursuant to Labor
18 Code §246(l)(2), states, "Paid sick time for nonexempt employees shall be calculated by dividing
19 the employee's total wages, including overtime premium pay, by the employee's total hours
20 worked in the full pay periods of the prior 90 days of employment."

21 64. During the applicable statute of limitations period, Defendant failed to comply with
22 Labor Code Section §246 by not providing Plaintiff and the other Class members with sick pay
23 pursuant to the two (2) methods as set forth in Labor Code §246(l)(1) or (2). Additionally,
24 Plaintiff is informed and believes, during the applicable statute of limitations period, Defendant
25 violated California Labor Code § 246(l)(1) by failing to pay sick leave to the Class Member
26 employees at their regular rate of pay taking into consideration non-discretionary bonus payments
27 and other methods to be discovered. Alternatively, Plaintiff is informed and believes, during the
28 applicable statute of limitations period, Defendant violated Labor Code § 246(l)(2) by failing to

1 divide the Class members total wages by their total hours worked in the “full pay periods of the
2 prior 90 days of employment”.

3 **TENTH CAUSE OF ACTION**

4 **Failure to Indemnify for Necessary Expenditures Incurred in Discharge of Duties**

5 **[Cal. Lab. Code § 2802]**

6 **(On Behalf of Plaintiff and the Class against all Defendants)**

7 65. Plaintiff incorporates herein by specific reference, as though fully set forth, the
8 allegations in paragraphs 1 through 64.

9 66. California Labor Code § 2802(a) requires an employer to indemnify an employee
10 for all necessary expenditures or losses incurred by the employee in direct consequence of the
11 discharge of her his or her duties, or of his or her obedience to the directions of the employer.

12 67. During the statute of limitations period, Defendant knowingly and willfully failed
13 to indemnify Plaintiff and Class Members for all business expenses and/or losses incurred in direct
14 consequence of the discharge of their duties while working under the direction of Defendant,
15 including but not limited to, cellular phone usage and personal protective gear during the COVID-
16 19 pandemic, in violation of California Labor Code § 2802.

17 68. As a proximate result of Defendant’s unlawful actions and omissions, Plaintiff and
18 Class members have been damaged in an amount according to proof at trial, and seek
19 reimbursement of all necessary expenditures, plus interest thereon pursuant to California Labor
20 Code § 2802(b). Additionally, Plaintiff and Class Members are entitled to all available statutory
21 penalties and an award of costs, expenses, and reasonable attorneys’ fees, including those provided
22 in California Labor Code § 2802(c), as well as other available remedies.

23 **ELEVENTH CAUSE OF ACTION**

24 **Unfair and Unlawful Business Practices**

25 **[Cal. Bus. & Prof. Code § 17200 *et. seq.*]**

26 **(On Behalf of Plaintiff and the Class against all Defendants)**

27 69. Plaintiff incorporates herein by specific reference, as though fully set forth, the
28 allegations in paragraphs 1 through 68.

1 70. Each and every one of Defendant's acts and omissions in violation of the California
2 Labor Code and/or the applicable IWC Wage Order as alleged herein, including but not limited to,
3 Defendant's failure to provide required meal and rest breaks, failure to pay proper overtime and
4 minimum wage compensation, unlawful rounding and requiring off-the-clock work, failure to pay
5 all wages due to discharged or quitting employees or to pay timely wages, failure to furnish
6 accurate itemized wage statements or to maintain required records, failure to provide and properly
7 calculate mandatory California sick leave, and failure to indemnify employees for necessary
8 expenditures incurred in the discharge of their duties, constitute an unfair and unlawful business
9 practice under California Business and Professions Code § 17200 et seq.

10 71. Defendant's violations of California wage and hour laws constitute a business
11 practice because Defendant's aforementioned acts and omissions were done repeatedly over a
12 significant period of time, and in a systematic manner, to the detriment of Plaintiff and Class
13 members.

14 72. Among other practices, Defendant has avoided payment of wages, overtime wages,
15 the provision of meal and rest breaks, and other benefits as required by the California Labor Code,
16 the California Code of Regulations, and the applicable IWC Wage Order. Further, Defendant has
17 failed to record, report, and pay the correct sums of assessment to the state authorities under the
18 California Labor Code and other applicable regulations.

19 73. As a result of these unfair and unlawful business practices, Defendant has reaped
20 unfair and illegal profits during the Class period at the expense of Plaintiff and Class members,
21 and members of the public. Defendant should be made to disgorge its ill-gotten gains and to
22 restore them to Plaintiff and Class members.

23 74. Defendant's unfair and unlawful business practices entitle Plaintiff and Class
24 members to seek preliminary and permanent injunctive relief, including but not limited to orders
25 that Defendant account for, disgorge, and restore to Plaintiff and Class members the wages and
26 other compensation unlawfully withheld from them. Plaintiff and Class members are entitled to
27 restitution of all monies to be disgorged from Defendant in an amount according to proof at the
28 time of trial.

1
2
3 **TWELFTH CAUSE OF ACTION**

4 **Representative Action for Civil Penalties Pursuant to the Private Attorneys**

5 **General Act (“PAGA”)**

6 **[Cal. Lab. Code §§ 2698- 2699.5]**

7 **(On Behalf of Plaintiff and all Other Aggrieved Employees against all Defendants)**

8 75. Plaintiff incorporates herein by specific reference as though fully set forth the
9 allegations in paragraphs 1 through 74, with exception of the allegations in Paragraphs 15 through
10 17 (A) – (D).

11 76. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code
12 § 2699(c), and is a proper representative to bring a civil action on behalf of himself and other
13 current and former non-exempt employees of Defendant pursuant to the procedures specified in
14 California Labor Code § 2699.3, because Plaintiff was employed by Defendant and the alleged
15 violations of the California Labor Code were committed against Plaintiff.

16 77. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Labor
17 Code §§ 2698-2699.5, Plaintiff seeks to recover civil penalties, including but not limited to
18 penalties under California Labor Code §§ 2699, 210, 225.5, 226.3, 246, 558, 1174.5, 1197.1,
19 1199, and IWC Wage Order No. 7-2001, § 20, from Defendant in a representative action for the
20 violations set forth above, including but not limited to violations of California Labor Code §§ 201,
21 202, 203, 226, 226.7, 246, 510, 512, 1174, 1194, 1197, and 1198, . Plaintiff is also entitled to an
22 award of reasonable attorneys’ fees and costs pursuant to California Labor Code § 2699(g)(1).

23 78. Defendant also failed to follow other Labor Code provisions. For instance,
24 Defendant also failed to provide supplemental COVID-19 sick leave. As of March 29, 2021,
25 Defendant employs 26 or more aggrieved employees. As such, Defendant is required to provide
26 80 hours of COVID-19 supplemental paid sick leave and compensate Plaintiff and the other Class
27 members at their regular rate of pay for supplemental sick leave, i.e. highest regular rate of pay,
28 taking into consideration non-discretionary bonuses, etc. See, California Labor Code

1 §248.1(b)(3)(A). Defendant has an obligation to provide COVID-19 supplemental sick leave is in
2 addition to regular sick leave. See, California Labor Code §248.1(b)(2)(D).

3 79. Moreover, based upon the incorporation of California Labor Code §246 into
4 California Labor Code §248.1(b)(2)(D), starting on March 29, 2021 or shortly thereafter,
5 Defendant is required to accurately reflect any offset and/or the current amount of COVID-19
6 supplemental sick leave available to Plaintiff and the other Class members. See, California Labor
7 Code §248.1(b)(2)(D). Further, Defendant is prohibited from requiring aggrieved employees from
8 use any other paid or unpaid leave, paid time off, or vacation time provided by Defendant before
9 the aggrieved employees were provided, used or in lieu of COVID-19 supplemental paid sick
10 leave. See, California Labor Code §248.1 (b)(4). Defendant is also in violation of California
11 Labor Code §§248.2, 248.3, 248.6 also for the reasons provided herein.

12 80. Defendant also failed to follow other provisions of IWC Wage Order No. 7-2001.
13 Defendant failed to provide for suitable resting and seating for Plaintiff and the other Class
14 members. IWC Wage Order No. 7-2001, § 13 provides: “Suitable resting facilities shall be
15 provided in an area separate from the toilet rooms and shall be available to employees during work
16 hours.” Defendant failed to provide suitable resting facilities by not providing a break room, or
17 any other appropriate designated area on the work premises, where Plaintiff and the other Class
18 members could take meal periods and rest breaks.

19 81. Moreover, Defendant failed to comply with IWC Wage Order No. 7-2001, § 14
20 which provides:

21 “(A) All working employees shall be provided with suitable seats when the nature of the
22 work reasonably permits the use of seats. (B) When employees are not engaged in the
23 active duties of their employment and the nature of the work requires standing, an adequate
24 number of suitable seats shall be placed in reasonable proximity to the work area and
25 employees shall be permitted to use such seats when it does not interfere with the
26 performance of their duties.”

27 82. Defendant has failed to provide suitable seating by not providing any seats or stools
28 at the cash registers operated by Class members. The nature of the work reasonably permits the

1 use of seats when cashiers assist customers by ringing up transactions. To the extent that the use of
2 seats could interfere with their work duties, at all times herein it is and has been reasonable for
3 Defendant to place seats in reasonable proximity to the cash registers to be used by Plaintiff and
4 the other Class members when doing so would not interfere with their job duties.

5 83. Pursuant to California Labor Code §§ 2699.3, on September 13, 2022, Plaintiff
6 gave written notice by certified mail to the California Labor and Workforce Development Agency
7 (“LWDA”) and Defendant of the specific provisions of the California Labor Code and IWC Wage
8 Orders alleged to have been violated, including the facts and theories to support the alleged
9 violations. Within sixty-five (65) calendar of the postmark date of Plaintiff’s notice letter, the
10 LWDA did not provide notice to Plaintiff that it intends to investigate the alleged violations.
11 Therefore, Plaintiff has complied with all of the requirements set forth in California Labor Code §
12 2699.3 to commence a representative action under PAGA.

13 **PRAYER FOR RELIEF**

14 **WHEREFORE**, Plaintiff, individually and on behalf of all other persons similarly
15 situated, respectfully prays for relief against Defendant and DOES 1 through 50, inclusive, and
16 each of them, as follows:

- 17 1. For compensatory damages in an amount to be ascertained at trial;
- 18 2. For restitution of all monies due to Plaintiff and Class members, as well as
19 disgorged profits from the unfair and unlawful business practices of Defendant;
- 20 3. For meal and rest break compensation pursuant to California Labor Code § 226.7
21 and IWC Wage Order No. 7-2001;
- 22 4. For liquidated damages pursuant to California Labor Code § 1194.2;
- 23 5. For preliminary and permanent injunctive relief enjoining Defendant from violating
24 the relevant provisions of the California Labor Code and the IWC Wager Orders, and from
25 engaging in the unlawful business practices complained of herein;
- 26 6. For waiting time penalties pursuant to California Labor Code § 203;
- 27
- 28

7. For statutory and civil penalties according to proof, including but not limited to all penalties authorized by the California Labor Code §§ 210, 225.5, 226(e), 226.3, 1174.5, 1197.1, and 2699;

8. For interest on the unpaid wages at 10 percent per annum pursuant to California Labor Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;

9. For sick leave owed and due to Plaintiff and Class members.

10. For reasonable attorneys' fees and costs pursuant to California Labor Code §§ 218.5, 226, 1194, 2802, and 2699, and California Civil Code § 1021.5, and/or any other applicable provisions providing for attorneys' fees and costs;

11. For declaratory relief;

12. For an order requiring and certifying the First through Eleventh Causes of Action as a class action;

13. For an order appointing Plaintiff as Class representative and Plaintiff's counsel as Class counsel; and

14. For such further relief that the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial with respect to all issues triable of right by jury.

DATED: December 22, 2022

THE LAW OFFICE OF SCOTT E. WHEELER

By:

Scott Ernest Wheeler

THE WAND LAW FIRM, P.C.

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Attorneys for Plaintiff and the Putative Class