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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

JAN 09 2023

BY: Michelle Gomez-Casillas, Deputy

Attorneys for Plaintiff Rosa Umana Peraza

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

ROSA UMANA PERAZA, as an aggrieved employee pursuant to the Private Attorneys General Act ("PAGA"), on behalf of the State of California and other non-party Aggrieved Employees, Plaintiff, vs. SUPER CENTER CONCEPTS, INC., a California corporation; SUPER CENTER CONCEPTS HOLDINGS, LLC, a California limited liability company; and DOES 1 through 10, inclusive, Defendants.	Case No.: CIVSB 2302012 **COMPLAINT – PAGA ENFORCEMENT ACTION** (1) Claim for Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.* **Jury Trial Demanded** by fax

Plaintiff Rosa Umana Peraza, as an aggrieved employee and on behalf of the State of California and all other non-party Aggrieved Employees, alleges as follows:

JURISDICTION AND VENUE

1. This is an enforcement action under the Labor Code Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* ("PAGA") to recover civil penalties and any other available relief on behalf of Plaintiff, the State of California, and other current and former employees who worked for Defendants in California as a non-exempt, hourly paid employee and received at least one wage statement and against whom one or more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating hours and days of work in the applicable Industrial Welfare Commission ("IWC") Wage Order were committed, as set forth in this complaint, at any time between one year prior to the filing of the pre-filing written notice to the Labor and Workforce Development Agency ("LWDA") in this case on November 2, 2022, until judgment ("non-party Aggrieved Employees"). Plaintiff's share of civil penalties sought in this action does not exceed $75,000.

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

3. This Court has jurisdiction over all Defendants because, on information and belief, Defendants are either citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction in this action given that the State of California, as the real party in interest in this action, is not a "citizen" for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction in this action, and that diversity 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.

4. Venue is proper in this Court because Defendants employ or employed persons within the County of San Bernardino and have violated the requirements of the California Labor Code and applicable IWC Wage Order in this county which give rise to the penalties sought in this action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of the California Labor Code and applicable IWC Wage Order in at least five (5) locations within the County of San Bernardino, including Defendants' grocery stores located in Chino (12375 Central Avenue, Chino, California 91710), Fontana (16055 Foothill Boulevard, Fontana, California 92335), Ontario (815 West Holt Boulevard, Ontario, California, 91762), Rialto (151 West Base Line Road, Rialto, California 92376), and San Bernardino (1108 West 2nd Street, San Bernardino, California 92410). Pursuant to California Civil Code of Procedure section 393, venue is proper for the recovery of a penalty imposed by statute in the county in which the cause, or some part of the cause, arose. Because Defendants have employees in San Bernardino County, and Plaintiff could bring an action filed under PAGA in any county in which an aggrieved employee worked and Labor Code violations occurred, venue is proper. *Crestwood Behavioral Health, Inc. v. Superior Court of Alameda County*, 60 Cal. App. 5th 1069 (2021).

5. California Labor Code sections 2698, *et seq.*, the "Labor Code Private Attorneys General Act of 2004" ("PAGA"), 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.

THE PARTIES

6. Plaintiff Rosa Umana Peraza is a resident of Los Angeles, in Los Angeles County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately September 2021 to August 2022. Plaintiff worked as a Temporary Clerk and Hot Foods Clerk at their grocery store located at 4040 West Washington Boulevard, Los Angeles, California (Store #201). During her employment, Plaintiff typically worked seven (7) hours or more per day, and six (6) days or more per week. At the time Plaintiff's

employment with Defendants ended, she earned $16.40 per hour. Her job duties included, without limitation, preparing food items, attending to customers, and cleaning and maintaining the kitchen area.

7. On information and belief, Defendants required some employees, including Plaintiff, to execute an arbitration agreement at the time of their hire or during their employment. On further information and belief, Defendants' arbitration agreement was and is both procedurally and substantively unconscionable. Specifically, Defendants presented employees with a "Mutual Agreement to Arbitrate Claims" ("Arbitration Agreement") during the onboarding process, which had to be reviewed and acknowledged immediately. Specifically, the Arbitration Agreement was one of several documents presented to new employees for signature during the orientation process, including Confidential Information Agreement; Attendance Policy and Acknowledgment; COVID-19 Policy & Procedures; Designation of Employment Status: "Full-Time" Or "Part-Time" Status; Company Policy Update Re: Disciplinary Policy Update; Acknowledgment & Receipt of Company Employee Handbook; Employee's Acknowledgment of Safety Policies and Programs New Hire Orientation; Policy: Face Covering Required During COVID-19 Pandemic; General Safety Rules; Employee Preference with Regard to the Release of Personal Contact Information in the Context of Legal Proceedings brought Against Superior; New Hires Meal and Rest Period Policies; Meal Period Waiver for 6 Hours; Meal Period Waiver for 10-12 Hours; Misunderstandings and Grievances; and Return to Work Policy, among other documents. Also, employees did not have a meaningful opportunity to negotiate the terms of the Arbitration Agreement. Rather, it was provided to Defendants' employees for them to sign on a take-it or leave-it basis, along with all of the other on-boarding documents. Further, Defendants did not set forth in the agreement or otherwise provide employees with the rules which will govern the arbitration, instead forcing employees to seek this information out on their own ("Employee may obtain a copy of the JAMS Rules by requesting a copy from the Human Resources Department or by accessing the JAMS website at www.jamsadr.com.").

8. SUPER CENTER CONCEPTS, INC. was and is, upon information and belief,

a California corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California.

9. SUPER CENTER CONCEPTS HOLDINGS, LLC was and is, upon information and belief, a California limited liability company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California.

10. 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.

11. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 were the partners, agents, owners, or managers of SUPER CENTER CONCEPTS, INC. and SUPER CENTER CONCEPTS HOLDINGS, LLC, at all relevant times.

12. 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, SUPER CENTER CONCEPTS, INC.; SUPER CENTER CONCEPTS HOLDINGS, LLC; and/or DOES 1 through 10 (collectively, “Defendants” or “SUPER CENTER”), 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.

13. 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.

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

15. Under California law, Defendants are jointly and severally liable as employers for the violations alleged herein because they have each exercised sufficient control over the wages, hours, working conditions, and employment status of Plaintiff and other non-party Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiff and other non-party Aggrieved Employees, supervised and controlled their work schedule and/or conditions of employment, determined their rate of pay, and maintained their employment records. Defendants suffered or permitted Plaintiff and other non-party Aggrieved Employees to work and/or "engaged" Plaintiff and other non-party Aggrieved Employees so as to create a common-law employment relationship. As joint employers of Plaintiff and other non-party Aggrieved Employees, Defendants are jointly and severally liable for the civil penalties available to Plaintiff and other non-party Aggrieved Employees under the law.

16. Plaintiff is informed and believes, and thereon alleges, that at all relevant times, Defendants, and each of them, have acted as joint employers with respect to Plaintiff and other non-party Aggrieved Employees because Defendants have:

(a) jointly exercised meaningful control over the work performed by Plaintiff and other non-party Aggrieved Employees;

(b) jointly exercised meaningful control over Plaintiff's and other non-party Aggrieved Employees' wages, hours, and working conditions, including the quantity, quality standards, speed, scheduling, and operative details of the tasks performed by Plaintiff and other non-party Aggrieved Employees;

(c) jointly required that Plaintiff and other non-party Aggrieved Employees perform work which is an integral part of Defendants' businesses; and

(d) jointly exercised control over Plaintiff and other non-party Aggrieved Employees as a matter of economic reality in that Plaintiff and other non-party Aggrieved Employees were dependent on Defendants, who shared the power to set the wages of Plaintiff and other non-party Aggrieved Employees and determined their working conditions, and who jointly reaped the benefits from the underpayment of their wages and noncompliance with other statutory provisions governing their employment.

17. Plaintiff is informed and believes, and thereon alleges, that at all relevant times there has existed a unity of interest and ownership between Defendants such that any individuality and separateness between the entities has ceased.

18. SUPER CENTER CONCEPTS, INC.; SUPER CENTER CONCEPTS HOLDINGS, LLC; and/or DOES 1 through 10 are therefore alter egos of each other.

19. Adherence to the fiction of the separate existence of Defendants would permit an abuse of the corporate privilege, and would promote injustice by protecting Defendants from liability for the wrongful acts committed by them under the name SUPER CENTER.

20. Plaintiff further alleges, upon information and belief, that the Defendants SUPER CENTER CONCEPTS, INC. and SUPER CENTER CONCEPTS HOLDINGS, LLC are alter egos of each other for the following reasons:

(a) On the California Secretary of State's website (https://bizfileonline.sos.ca.gov/), SUPER CENTER CONCEPTS, INC. and SUPER CENTER CONCEPTS HOLDINGS, LLC have the same principal address and mailing address, "15510 CARMENITA ROAD, SANTA FE SPRINGS, CA 90670";

(b) According to "Statement of Information" forms filed with the California Secretary of State, SUPER CENTER CONCEPTS, INC. serves as the manager and/or member of SUPER CENTER CONCEPTS HOLDINGS, LLC;

(c) According to the California Secretary of State's website, SUPER CENTER CONCEPTS, INC. and SUPER CENTER CONCEPTS HOLDINGS, LLC share the same agent for service of process, CORPORATION SERVICE COMPANY WHICH WILL DO BUSINESS IN CALIFORNIA AS CSC – LAWYERS

INCORPORATING SERV[ICE] [(C1592199)]; and

(d) On information and belief, SUPER CENTER CONCEPTS, INC. and SUPER CENTER CONCEPTS HOLDINGS, LLC utilize the same standardized employment forms and issue the same employment policies.

PAGA REPRESENTATIVE ALLEGATIONS

21. Defendants own and operate one of the largest grocery store chains in California, with approximately 50 “Superior Grocers” or “The Market by Superior” grocery store locations. Upon information and belief, Defendants maintain a single, centralized Human Resources (HR) department at their corporate headquarters in Santa Fe Springs, California, for all non-exempt, hourly paid 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, including timekeeping policies and meal and rest period policies, to employees throughout California.

22. In particular, Plaintiff and other non-party Aggrieved Employees, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees’ assigned locations or positions. Upon information and belief, Defendants set forth uniform policies and procedures in several documents provided at an employee’s time of hire.

23. Upon information and belief, Defendants maintain a centralized Payroll department at their corporate headquarters in Santa Fe Springs, California, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations and jobsites in California, including Plaintiff and other non-party Aggrieved Employees. Based upon information and belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid employees in California, irrespective of their work locations. Upon information and belief, Defendants process payroll for departing employees

in the same manner throughout the State of California, regardless of the manner in which each employee's employment ends.

24. Defendants continue to employ non-exempt or hourly paid employees in California.

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

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

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

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

29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to meal periods in accordance with the California Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay at their regular rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and other non-party Aggrieved Employees were not provided with all meal periods or payment of one (1) additional hour of pay at their regular rates of pay when they did not receive a timely,

uninterrupted, thirty (30) minute meal period.

30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to rest periods in accordance with the California Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay at their regular rates of pay when they were not authorized and permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees were not authorized and permitted to take compliant rest periods, nor did Defendants provide Plaintiff and other non-party Aggrieved Employees with payment of one (1) additional hour of pay at their regular rates of pay when they were not authorized and permitted to take a compliant rest period.

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

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

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

34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to timely payment of all wages earned upon termination of employment. In violation of the

California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages due, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within permissible time periods.

35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that other non-party Aggrieved Employees were entitled to the portion of wages previously paid and subsequently unlawfully deducted by Defendants.

36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that other non-party Aggrieved Employees were entitled to payment of wages as designated by statute. In violation of the California Labor Code, Defendants secretly paid other non-party Aggrieved Employees lower wages than required by statute while purporting to pay them proper wages.

37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that other non-party Aggrieved Employees were entitled to suitable seating and/or were entitled to sit when it did not interfere with the performance of their duties and also have seats nearby to use during a lull in tasks that do require moving about or standing. In violation of the California Labor Code and applicable IWC Wage Order, Defendants failed to provide other non-party Aggrieved Employees with suitable seating.

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

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

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

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

42. Plaintiff and other current and former employees of Defendants are "aggrieved employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current or former employees and one or more of the alleged violations were committed against them.

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

(a) The aggrieved employee shall give written notice by online filing (hereinafter "Employee's Notice") to the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

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

(c) The LWDA shall provide notice (hereinafter "LWDA Notice") to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within sixty (60) calendar days of the postmark date of the Employee's Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days of the postmark date of the Employee's Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

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

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

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

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

45. On November 2, 2022, Plaintiff provided written notice by online filing to the LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff's written

notice was accompanied with the applicable filing fee of seventy-five dollars ($75). The LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned Plaintiff PAGA Case Number LWDA-CM-917501-22. A true and correct copy of Plaintiff's written notice to the LWDA and Defendants dated November 2, 2022, is attached hereto as "Exhibit 1."

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

47. Thus, Plaintiff has satisfied the administrative prerequisites under California Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for violations of California Labor Code sections 201, 202, 204, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

48. Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties under Labor Code section 558 for herself, all other non-party Aggrieved Employees, and the State of California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the applicable IWC Wage Order. Plaintiff, acting in the public interest as a private attorney general, does not seek the recovery of unpaid wages under Labor Code section 558 from Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the applicable IWC Wage Order.

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

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

51. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other non-party Aggrieved Employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

FIRST CAUSE OF ACTION

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

(Against all Defendants)

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

53. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 221, 223, 224, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 516 and 1182.12.

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

(a) Violation of Labor Code sections 510 and 1198, and the applicable IWC

Wage Order for Defendants’ failure to compensate Plaintiff and other non-party Aggrieved Employees with all required overtime pay, as set forth below;

(b) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and the applicable IWC Wage Order for Defendants’ failure to compensate Plaintiff and other non-party Aggrieved Employees with at least minimum wages for all hours worked, as set forth below;

(c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order for Defendants’ failure to provide Plaintiff and other non-party Aggrieved Employees with meal periods, as set forth below;

(d) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order for Defendants’ failure to authorize and permit Plaintiff and other non-party Aggrieved Employees to take rest periods, as set forth below;

(e) Violation of Labor Code sections 226(a) and 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiff and other non-party Aggrieved Employees, as set forth below;

(f) Violation of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as set forth below;

(g) Violation of Labor Code sections 204 for failure to pay all earned wages during employment, as set forth below;

(h) Violation of Labor Code section 201 and 202 for failure to pay all earned wages upon termination, as set forth below;

(i) Violation of Labor Code sections 221 and 224 for unlawfully deducting a portion of wages previously paid to other non-party Aggrieved

Employees, as set forth below;

(j) Violation of Labor Code section 223 for secretly paying other non-party Aggrieved Employees lower wages than required by statute, while purporting to pay the proper wages, as set forth below;

(k) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failing to provide suitable seating to other non-party Aggrieved Employees, as set forth below; and

(l) Violation of Labor Code sections 2802 for failure to reimburse other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below.

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

55. 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."

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

57. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and other non-party Aggrieved Employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

58. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve

(12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

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

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

61. First, Defendants had a company-wide policy and/or practice of discouraging and impeding Plaintiff and other non-party Aggrieved Employees from recording hours worked that were outside of their scheduled shifts, in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting overtime, coupled with Defendants' use of labor budgets and assignment of heavy workloads *(see infra),* led Plaintiff and other non-party Aggrieved Employees to work off-the-clock after their scheduled shift times. For example, approximately three (3) times per week, Plaintiff's managers pressured her to clock out at the end of her scheduled shift, but also required her to continue working before she could leave for the day, completing tasks such as throwing away trash, sanitizing the deli slicer, and sweeping and mopping the kitchen floor, which could take up to up to 20 minutes per instance. This off-the-clock work could have been recorded by Defendants, but they refused to do so to avoid payment of additional wages to Plaintiff and other non-party Aggrieved Employees. Thus, Defendants failed to track all of the time that

employees spent performing work-related tasks after their scheduled shifts, and Plaintiff and other non-party Aggrieved Employees received no compensation for this time.

62. Second, on information and belief, as stated, Defendants had, and continue to have, a company-wide policy and/or practice of strictly staffing their store locations based on the labor hours allocated by each location's labor or payroll budget set by corporate. Defendants' uniform use of labor budgets, combined with the assignment of heavy workloads, resulted in chronic understaffing and a lack of adequate meal period coverage, such that there were too few employees on duty to handle the workload and attend to customers. Defendants also had a practice of failing to adhere to a schedule for meal periods, which further caused Plaintiff and other non-party Aggrieved Employees to not be relieved of their duties for compliant meal periods. For example, Plaintiff worked through her meal periods approximately three (3) times per week in order to keep up with customer demand, which often included preparing large, time-sensitive catering orders, in addition to providing customer service to walk-up customers. Additionally, Plaintiff's meal periods were often interrupted because she would be required to attend to customers walking up to the Hot Foods counter whenever it was left unattended, due to the lack of coverage. Because Defendants did not employ or staff a sufficient number of employees to meet customer demand, there was no one available to relieve employees needing meal period coverage, and Plaintiff and other non-party Aggrieved Employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Consequently, Plaintiff and other non-party Aggrieved Employees were required to work through and had their unpaid meal periods interrupted in order to complete their assigned duties and handle customer demand, time for which they were not paid.

63. Further, on information and belief, because Defendants frowned upon employees accruing meal period penalties, Defendants pressured Plaintiff and other non-party Aggrieved Employees to clock out for meal periods, on threat of discipline, even when they did not receive a compliant meal period. Furthermore, Defendants' company-wide timekeeping system prevented Plaintiff and other non-party Aggrieved Employees from

recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Plaintiff and other non-party Aggrieved Employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. Thus, Defendants did not record all hours worked during meal periods and Plaintiff and other non-party Aggrieved Employees performed work during meal periods for which they were not paid.

64. Defendants knew or should have known that, as a result of these company-wide practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing their assigned duties off-the-clock after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Plaintiff and other non-party Aggrieved Employees worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and other non-party Aggrieved Employees were not paid overtime wages for all of the overtime hours they actually worked.

65. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees the balance of overtime compensation as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

FAILURE TO PAY MINIMUM WAGES

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

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

67. As stated above, due to Defendants' restrictions on overtime accrual, Defendants systematically failed to pay Plaintiff and other non-party Aggrieved Employees for actual hours worked, because these hours were not accurately recorded. As stated, because Defendants discouraged and impeded Plaintiff and other non-party Aggrieved Employees from recording hours worked that were outside of their scheduled shifts, Plaintiff and other non-party Aggrieved Employees were required to perform work off-the-clock after their scheduled shifts.

68. Additionally, as stated above, due to Defendants' company-wide practices of utilizing labor budgets, understaffing, assignment of heavy workloads, failure to adhere to a schedule for meal periods, and subsequent lack of meal period coverage, Plaintiff and other non-party Aggrieved Employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work during their meal periods, time for which they were not paid.

69. Moreover, as stated, on information and belief, in order to limit meal penalties that Defendants would otherwise owe, Defendants pressured Plaintiff and other non-party Aggrieved Employees to clock out for meal periods, on threat of discipline, to reflect compliant meal periods, even when they did not receive a compliant meal period. Also, as set forth above, during the relevant time period, Defendants systematically failed to pay Plaintiff and other non-party Aggrieved Employees for actual hours worked during unpaid meal periods, because Defendants' timekeeping system locked out Plaintiff and other non-party Aggrieved Employees for 30 minutes when they clocked out for a meal period. Thus, Defendants systematically failed to pay Plaintiff and other non-party Aggrieved Employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

70. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, Defendants did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,

1194, 1197, and 1198.

71. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

FAILURE TO PROVIDE AND RECORD MEAL PERIODS

VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198

72. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and non-party Aggrieved Employees' employment by Defendants.

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

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

75. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198, and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

76. As stated above, Defendants had, and continue to have, company-wide policies

and/or practices of understaffing their store locations due to labor budgeting, which, combined with heavy workloads and a failure to adhere to a schedule for meal periods, has resulted in a lack of meal period coverage and prevented Plaintiff and other non-party Aggrieved Employees from taking all timely, uninterrupted meal periods to which they were entitled.

77. As a result, Plaintiff and other non-party Aggrieved Employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, as stated, Plaintiff worked through her meal periods and had them interrupted often, in order to address customer demand and assist walk-up customers. As a further example, approximately twice per week, Plaintiff took her meal periods late, after having worked in excess of five (5) hours into her shift, due to the lack of coverage and in order to meet Defendants' customer service expectations.

78. Furthermore, as stated, because Defendants frowned upon employees accruing meal period penalties, Defendants' management pressured Plaintiff and other non-party Aggrieved Employees to clock out for meal periods, on threat of discipline, to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that would need to be paid by Defendants. For example, Plaintiff was required to clock out for her meal period to record that she had received compliant meal periods on shifts when she had not, in fact, received these timely meal periods. Also, as stated, Defendants' company-wide timekeeping system prevented Plaintiff and other non-party Aggrieved Employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Plaintiff and other non-party Aggrieved Employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed.

79. Also, Defendants did not provide other non-party Aggrieved Employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Plaintiff and other non-party Aggrieved Employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

80. Moreover, Defendants had a company-wide policy of requiring all newly hired

employees to sign blanket meal period waivers at or near their time of hire. Defendants took the position that non-exempt, hourly paid employees had waived their rights to first and/or second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. Furthermore, Defendants' meal period waiver form requires employees to provide one day's advanced written notice should they wish to revoke the waiver. Defendants' presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours and for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal period waivers signed at or near the time of hire, and imposition on employees to revoke the waivers in writing and in advance, discouraged and impeded Plaintiff and other non-party Aggrieved Employees from taking all meal periods to which they were entitled.

81. Furthermore, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

> [A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That Defendants required Plaintiff and other non-party Aggrieved Employees to sign meal period waivers simultaneously at or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because Defendants' obligation to provide Plaintiff and other non-party Aggrieved Employees with meal periods did not arise until they had employed them for a full five (5) hours.

82. At all times mentioned herein, Defendants knew or should have known that as a result of their policies, Plaintiff and other non-party Aggrieved Employees were not actually relieved of all duties to take timely, uninterrupted meal periods. Defendants further knew or

should have known that they did not pay Plaintiff and other non-party Aggrieved Employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

83. Furthermore, Defendants engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees have not received premium pay for missed, late, and interrupted meal periods.

84. Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

FAILURE TO AUTHORIZE AND PERMIT REST PERIODS

VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198

85. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other non-party Aggrieved Employees' employment by Defendants.

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

87. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services,*

Inc., 2 Cal. 5th 257, 269-270 (2016).

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

89. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants' policies and/or practices of understaffing and assignment of heavy workloads prevented Plaintiff and other non-party Aggrieved Employees from being relieved of all duty in order to take their rest periods. Defendants also failed to schedule rest periods, which, coupled with Defendants' failure to provide adequate rest period coverage, further led to Plaintiff and other non-party Aggrieved Employees not being authorized and permitted to take compliant rest periods.

90. Furthermore, upon information and belief, Defendants maintained a company-wide on-premises rest period policy, which mandated that Plaintiff and other non-party Aggrieved Employees remain on Defendants' premises during their rest periods. Because Plaintiff and other non-party Aggrieved Employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, Defendants effectively maintained control over Plaintiff and other non-party Aggrieved Employees during rest periods.

91. As a result of Defendants' practices and policies, Plaintiff and other non-party Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, throughout her employment, Plaintiff had to forego her rest periods almost entirely because the store was busy, did not have coverage, and there was an expectation for all employees to work through their rest periods. When Plaintiff was finally able to take her rest periods, they were often interrupted because she was required to keep up

with customer demand.

92. Defendants have also engaged in a systematic, company-wide practice and/or policy of not paying rest period premiums owed when rest periods are not authorized and permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees have not received premium pay for all missed rest periods.

93. Accordingly, Defendants failed to authorize and permit all compliant rest periods and failed to pay the full rest period premiums due. Defendants' conduct violates the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS

VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198

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

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

96. Because Defendants did not record the time Plaintiff and other non-party Aggrieved Employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should

have been paid), Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff and other non-party Aggrieved Employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, Defendants failed to accurately list the total number of hours worked by Plaintiff and other non-party Aggrieved Employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

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

98. California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . ." Labor Code section 1174.5 provides that employers are subject to a $500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-party Aggrieved Employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

99. California Labor Code section 1198 provides that the maximum hours of work

and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, Defendants engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and stop times for Plaintiff and other non-party Aggrieved Employees, in violation of section 1198. Furthermore, in light of Defendants' failure to provide other non-party Aggrieved Employees with second 30-minute meal periods to which they were entitled, Defendants kept no records of meal start and end times for second meal periods.

100. Defendants' conduct violates California Labor Code 226(a), 1174(d), and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

FAILURE TO PAY WAGES DURING EMPLOYMENT

VIOLATION OF LABOR CODE SECTION 204

101. At all relevant times herein set forth, California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed. Labor Code section 204 further provides that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

102. At all relevant times herein, California Labor Code section 204 also requires

that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, at all relevant times herein, Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

103. During the relevant time period, Defendants willfully failed to pay Plaintiff and other non-party Aggrieved Employees all wages due to them within any time period specified by California Labor Code section 204 including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums.

104. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

FAILURE TO PAY WAGES UPON TERMINATION

VIOLATION OF LABOR CODE SECTIONS 201 AND 202

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

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

107. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates

Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or 2699(a), (f), and (g).

COLLECTING OR RECEIVING WAGES ALREADY PAID

VIOLATION OF LABOR CODE SECTIONS 221 AND 224

108. At all relevant times herein, California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a deduction is expressly authorized in writing by the employee." The applicable wage order, IWC Wage Order No. 7-2001, provides that: "[n]o employer shall make any deduction from the wage or require any reimbursement from an employee for any cash shortage, breakage, or loss of equipment, unless it can be shown that the shortage, breakage, or loss is caused by a dishonest or willful act, or by the gross negligence of the employee."

109. During the relevant time period, Defendants unlawfully deducted a portion of wages previously paid to other non-party Aggrieved Employees in violation of California Labor Code section 221. Defendants systematically, and on a company-wide basis, maintained a loss prevention "policy" that allowed them to improperly deduct wages from other non-party Aggrieved Employees' pay. On information and belief, Defendants required employees to pay for any cash shortage, breakage, or loss of equipment occurred in the usual course of business, as a result of a mistake, accident, or simple negligence rather than dishonesty, willfulness, or gross negligence. On information and belief, such deductions were not expressly authorized in writing by other non-party Aggrieved Employees.

110. Defendants' policy of deducting money from other non-party Aggrieved Employees' paychecks without their written authorization constitutes an unlawful deduction of wages, in violation of Labor Code sections 221 and 224. Other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (g).

SECRET PAYMENT OF A LOWER WAGE

VIOLATION OF LABOR CODE SECTION 223

111. At all relevant times herein, California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

112. During the relevant time period, as stated above, Defendants willfully and systematically deducted money from other non-party Aggrieved Employees' wages without their express written authorization, pursuant to their loss prevention policy, which resulted in a discount in their wages. Defendants' deduction from their employees' wages resulted in the payment of less than statutorily required wages to other non-party Aggrieved Employees. In doing so, Defendants acted with the intent to deprive other non-party Aggrieved Employees of statutory wages including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law. Thus, Defendants paid other non-party Aggrieved Employees lower wages than those they were entitled to while purporting that other non-party Aggrieved Employees were properly paid.

113. Defendants' failure to pay other non-party Aggrieved Employees the correct designated wage, while purporting to pay legal wages, is a violation of California Labor Code section 223. Other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (g).

FAILURE TO PROVIDE SUITABLE SEATING

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

114. At all relevant times herein, 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."

115. 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."

116. Defendants' California stores are generally similar in their layout and design and there was, and continues to be, space behind cash wraps to allow for the presence and use of a seat or stool by other non-party Aggrieved Employees (with reasonable or no modification to these work areas) during the performance of their work duties. Defendants could have provided other non-party Aggrieved Employees with a seat or stool at their cash wraps, but instead denied them seating and forced other non-party Aggrieved Employees to stand throughout the day.

117. Other non-party Aggrieved Employees spent a portion substantial portion of their day behind or at these cash wraps. The nature of the work of an employee performing cashier duties can reasonably be accomplished from a seated position. However, Defendants systematically, and on a company-wide basis, do not provide seats or stools at or near the cash wraps, forcing other non-party Aggrieved Employees to stand throughout their work shifts.

118. Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A), because other non-party Aggrieved Employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. Defendants' management did not inform other non-party Aggrieved Employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

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

120. Other non-party Aggrieved Employees are therefore entitled to recover civil

penalties pursuant to Labor Code sections 2699(a), (f), and (g).

FAILURE TO PROVIDE SUITABLE SEATING

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

121. At all relevant times herein, California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC 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."

122. California Code of Regulations, Title 8, section 11070 subdivision 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."

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

124. Defendants' California 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 other non-party Aggrieved Employees during lulls in operation. Defendants could have provided other non-party Aggrieved Employees with a seat or stool in their work areas, but instead denied other non-party Aggrieved Employees suitable seating altogether and effectively forced other non-party Aggrieved Employees to stand throughout the day.

125. Defendants did not provide other non-party Aggrieved Employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not

interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent other non-party Aggrieved Employees engaged in duties in which the nature of the work required standing, Defendants denied them the use of seats nearby during lulls in their work duties. Moreover, Defendants did not inform other non-party Aggrieved Employees of their rights to a seat or stool under California law.

126. As a result of Defendants' company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, other non-party Aggrieved Employees were forced to stand during shifts and denied seats. Defendants' failure to provide suitable seating to other non-party Aggrieved Employees violated and continues to violate California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

127. Other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES

VIOLATION OF LABOR CODE SECTION 2802

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

129. As stated, Defendants systematically, and on a company-wide basis, maintained a loss prevention "policy" that required employees to pay for any cash shortage, breakage, or loss of equipment, on threat of discipline, even though such shortages, breakages, or loss of equipment occurred in the usual course of business, as a result of a mistake, accident, or simple negligence rather than dishonesty, willfulness, or gross negligence. Thus, Defendants forced other non-party Aggrieved Employees to incur a necessary loss in direct consequence of the performance of their duties.

130. Defendants could have absorbed the ordinary and predictable losses that occurred during the usual course of business. Instead, Defendants passed these operating costs off onto other non-party Aggrieved Employees.

131. Defendants' company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred and passing on their operating costs to other non-party Aggrieved Employees violates California Labor Code section 2802. Other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

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

1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars ($25,000). Plaintiff reserves the right to amend her prayer for relief to seek a different amount.

As to the First Cause of Action

2. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516,

and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 204 (by failing to timely pay all earned wages during employment); 201 and 202 (by failing to timely pay all earned wages upon termination); 221 and 224 (by collecting and/or receiving wages already paid); 223 (by secretly paying wages lower than required by statute); 1198 and the applicable IWC Wage Order (by failing to provide suitable seating); and 2802 (by failing to reimburse business expenses);

3. For civil penalties, pursuant to California Labor Code sections 210, 225.5, 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202, 204, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;

4. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 204, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;

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

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

Dated: January 9, 2023

Respectfully submitted,

Capstone Law APC

By: ______________________________

Orlando Villalba
Helga Hakimi
Roxanna Tabatabaeepour

Attorneys for Plaintiff Rosa Umana Peraza

EXHIBIT “1”

Capstone LAW APC

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November 2, 2022

VIA ONLINE SUBMISSION

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

Subject: *Rosa Umana Peraza v. Super Center Concepts, Inc., et al.*

Dear PAGA Administrator:

This office represents Rosa Umana Peraza in connection with her claims under the California Labor Code. Ms. Umana Peraza was an employee of SUPER CENTER CONCEPTS, INC. and/or SUPER CENTER CONCEPTS HOLDINGS, LLC. For the purpose of this letter, Ms. Umana Peraza collectively refers to these entities as "SUPER CENTER."

The employers may be contacted directly at the addresses below:

SUPER CENTER CONCEPTS, INC.
15510 CARMENITA ROAD
SANTA FE SPRINGS, CA 90670

SUPER CENTER CONCEPTS HOLDINGS, LLC
15510 CARMENITA ROAD
SANTA FE SPRINGS, CA 90670

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

SUPER CENTER employed Ms. Umana Peraza as a non-exempt, hourly paid employee from approximately September 2021 to August 2022. During her employment with SUPER CENTER, Ms. Umana Peraza worked as a Temporary Clerk and Hot Foods Clerk for SUPER CENTER at its grocery store located at 4040 West Washington Boulevard, Los Angeles, California (Store #201). She typically worked seven (7) or more hours per day, six (6) days per week, and approximately 40 hours or more per week. At the time her employment with SUPER CENTER ended, Ms. Umana Peraza was compensated approximately $16.40 per hour. Her job duties included, without limitation, preparing food items, attending to customers, and cleaning and maintaining the kitchen area.

SUPER CENTER has committed one or more of the following Labor Code violations against Ms.

Umana Peraza, the facts and theories of which follow, making her an "aggrieved employee" pursuant to California Labor Code section 2699(c):[1]

SUPER CENTER's Company-Wide and Uniform Payroll and HR Practices

SUPER CENTER CONCEPTS, INC. is a California corporation and SUPER CENTER CONCEPTS HOLDINGS, LLC is a California limited liability company. Together, they own and operate one of the largest grocery store chains in California, with approximately 50 "Superior Grocers" or "The Market by Superior" grocery store locations. Upon information and belief, SUPER CENTER maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Santa Fe Springs, California, for all non-exempt, hourly paid employees working for SUPER CENTER in California, including Ms. Umana Peraza and other aggrieved employees. At all relevant times, SUPER CENTER issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Umana Peraza and other aggrieved employees, regardless of their location or position.

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

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

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

SUPER CENTER willfully failed to pay all overtime wages owed to Ms. Umana Peraza and other aggrieved employees. During the relevant time period, Ms. Umana Peraza and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8)

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[1] These facts, theories, and claims are based on Ms. Umana Peraza's experience and counsel's review of those records currently available relating to Ms. Umana Peraza'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. Umana Peraza 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.

hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant time period, SUPER CENTER had a company-wide policy and/or practice of discouraging and impeding Ms. Umana Peraza and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting overtime, coupled with SUPER CENTER's use of labor budgets and assignment of heavy workloads (*see infra*), led Ms. Umana Peraza and other aggrieved employees to work off-the-clock after their scheduled shift times. For example, approximately three (3) times per week, Ms. Umana Peraza's managers pressured her to clock out at the end of her scheduled shift, but also required her to continue working before she could leave for the day, completing tasks such as throwing away trash, sanitizing the deli slicer, and sweeping and mopping the kitchen floor, which could take up to up to 20 minutes per instance. This off-the-clock work could have been recorded by SUPER CENTER, but it refused to do so to avoid payment of additional wages to Ms. Umana Peraza and other aggrieved employees. Thus, SUPER CENTER failed to track all of the time that employees spent performing work-related tasks after their scheduled shifts, and Ms. Umana Peraza and other aggrieved employees received no compensation for this time.

Second, on information and belief, as stated, SUPER CENTER had, and continues to have, a company-wide policy and/or practice of strictly staffing its store locations based on the labor hours allocated by each location's labor or payroll budget set by corporate. SUPER CENTER's uniform use of labor budgets, combined with the assignment of heavy workloads, resulted in chronic understaffing and a lack of adequate meal period coverage, such that there were too few employees on duty to handle the workload and attend to customers. SUPER CENTER also had a practice of failing to adhere to a schedule for meal periods, which further caused Ms. Umana Peraza and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Ms. Umana Peraza worked through her meal periods approximately three (3) times per week in order to keep up with customer demand, which often included preparing large, and time-sensitive catering orders in addition to providing customer service to walk-up customers. Additionally, Ms. Umana Peraza's meal periods were often interrupted because she would be required to attend to customers walking up to the Hot Foods counter whenever it was left unattended, due to the lack of coverage. Because SUPER CENTER did not employ or staff a sufficient number of employees to meet customer demand, there was no one available to relieve employees needing meal period coverage, and Ms. Umana Peraza and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Consequently, Ms. Umana Peraza and other aggrieved employees were required to work through and had their unpaid meal periods interrupted in order to complete their assigned duties and handle customer demand, time for which they were not paid.

Further, on information and belief, because SUPER CENTER frowned upon employees accruing meal period penalties, SUPER CENTER pressured Ms. Umana Peraza and other aggrieved employees to clock out for meal periods, on threat of discipline, even when they did not receive a compliant meal period. Furthermore, SUPER CENTER's company-wide timekeeping system prevented Ms. Umana Peraza and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Ms. Umana Peraza and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. Thus, SUPER CENTER did not record all hours worked during meal periods and Ms. Umana Peraza and other aggrieved employees performed work during meal periods for which they were not paid.

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

Furthermore, SUPER CENTER did not pay other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, SUPER CENTER paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, SUPER CENTER failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, SUPER CENTER failed to pay all overtime wages by paying a lower overtime rate than required.

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

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

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

As stated above, due to SUPER CENTER's restrictions on overtime accrual, SUPER CENTER systematically failed to pay Ms. Umana Peraza and other aggrieved employees for actual hours worked, because these hours were not accurately recorded. As stated, because SUPER CENTER discouraged and impeded Ms. Umana Peraza and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, Ms. Umana Peraza and other aggrieved employees were required to perform work off-the-clock after their scheduled shifts.

Additionally, as stated above, due to SUPER CENTER's company-wide practices of utilizing labor budgets, understaffing, assignment of heavy workloads, failure to adhere to a schedule for meal periods, and subsequent lack of meal period coverage, Ms. Umana Peraza and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work during their meal periods, time for which they were not paid.

Moreover, as stated, on information and belief, in order to limit meal penalties that SUPER CENTER would otherwise owe, SUPER CENTER pressured Ms. Umana Peraza and other aggrieved employees to clock out for meal periods, on threat of discipline, to reflect compliant meal periods, even when they did not receive a compliant meal period. Also, as set forth above, during the relevant time period, SUPER CENTER systematically failed to pay Ms. Umana Peraza and other aggrieved employees for actual hours worked during unpaid meal periods, because SUPER CENTER's timekeeping system locked out Ms. Umana Peraza and other aggrieved employees for 30 minutes when they clocked out for a meal period. Thus, SUPER CENTER systematically failed to pay Ms. Umana Peraza and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

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

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

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

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

As stated above, SUPER CENTER had, and continues to have, company-wide policies and/or practices of understaffing its store locations due to labor budgeting, which, combined with heavy workloads and a failure to adhere to a schedule for meal periods, has resulted in a lack of meal period coverage and prevented Ms. Umana Peraza and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled.

As a result, Ms. Umana Peraza and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, as stated, Ms. Umana Peraza worked through her meal periods and had them interrupted often, in order to address customer demand and assist walk-up customers. As a further example, approximately twice per week, Ms. Umana Peraza took her meal periods late, after having worked in excess of five (5) hours into her shift, due to the lack of coverage and in order to meet SUPER CENTER's customer service expectations.

Furthermore, as stated, because SUPER CENTER frowned upon employees accruing meal period penalties, SUPER CENTER's management pressured Ms. Umana Peraza and other aggrieved employees to clock out for meal periods, on threat of discipline, to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that would need to be paid by SUPER CENTER. For example, Ms. Umana Peraza was required to clock out for her meal period to record that she had received compliant meal periods on shifts when she had not, in fact, received these timely meal periods. Also, as stated, SUPER CENTER's company-wide timekeeping system prevented Ms. Umana Peraza and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Ms. Umana Peraza and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed.

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

Moreover, SUPER CENTER had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. SUPER CENTER took the position that non-exempt, hourly paid employees had waived their rights to first and/or second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. Furthermore, SUPER CENTER's meal period waiver form requires employees to provide one day's advanced written notice should they wish to revoke the waiver. SUPER CENTER's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours and for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal period waivers signed at or near the time of hire, and imposition on employees to revoke the waivers in writing and in advance, discouraged and impeded Ms. Umana Peraza and other aggrieved employees from taking all meal periods to which they were entitled.

Furthermore, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

> [A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)).

That SUPER CENTER required Ms. Umana Peraza and other aggrieved employees to sign meal period waivers simultaneously at or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because SUPER CENTER's obligation to provide Ms. Umana Peraza and other aggrieved employees with meal periods did not arise until they had employed them for a full five (5) hours.

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

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

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

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

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

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

During the relevant time period, SUPER CENTER regularly failed to authorize and permit Ms. Umana Peraza and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, SUPER CENTER's policies and/or practices of understaffing and assignment of heavy workloads prevented Ms. Umana Peraza and other aggrieved employees from being relieved of all duty in order to take their rest periods. SUPER CENTER also failed to schedule rest periods, which, coupled with SUPER CENTER's failure to provide adequate rest period coverage, further led to Ms. Umana Peraza and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Furthermore, upon information and belief, SUPER CENTER maintained a company-wide on-premises rest period policy, which mandated that Ms. Umana Peraza and other aggrieved employees remain on SUPER CENTER's premises during their rest periods. Because Ms. Umana Peraza and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, SUPER CENTER effectively maintained control over Ms. Umana Peraza and other aggrieved employees during rest periods.

As a result of SUPER CENTER's practices and policies, Ms. Umana Peraza and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, throughout her employment, Ms. Umana Peraza had to forego her rest periods almost entirely because the store was busy, did not have coverage, and there was an expectation for all employees to work through their rest periods. When Ms. Umana Perza was finally able to take her rest periods, they were often interrupted because she was required to keep up with customer demand.

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

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

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

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

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

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

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

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

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . ." Labor Code section 1174.5 provides that employers are subject to a $500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), SUPER CENTER willfully failed to maintain accurate payroll records for Ms. Umana Peraza and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

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

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

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

<u>Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment</u>

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

During the relevant time period, SUPER CENTER failed to pay Ms. Umana Peraza and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within any time period specified by California Labor Code section 204.

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

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

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

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

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

Violation of California Labor Code §§ 221 and 224 – Unlawful Deductions

California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a deduction is expressly authorized in writing by the employee." The applicable wage order, IWC Wage Order No. 7-2001, provides that: "[n]o employer shall make any deduction from the wage or require any reimbursement from an employee for any cash shortage, breakage, or loss of equipment, unless it can be shown that the shortage, breakage, or loss is caused by a dishonest or willful act, or by the gross negligence of the employee."

During the relevant time period, SUPER CENTER unlawfully deducted a portion of wages previously paid to other aggrieved employees in violation of California Labor Code section 221. SUPER CENTER systematically, and on a company-wide basis, maintained a loss prevention "policy" that allowed it to improperly deduct wages from other aggrieved employees' pay. On information and belief, SUPER CENTER required employees to pay for any cash shortage, breakage, or loss of equipment, on threat of discipline, even though such shortages, breakages, or loss of equipment occurred in the usual course of business, as a result of a mistake, accident, or simple negligence rather than dishonesty, willfulness, or gross negligence. On information and belief, such deductions were not expressly authorized in writing by other aggrieved employees.

SUPER CENTER's policy of deducting money from other aggrieved employees' paychecks without their written authorization constitutes an unlawful deduction of wages, in violation of Labor Code sections 221 and 224. Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 223 – Secret Payment of Lower Wages

California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

During the relevant time period, as stated above, SUPER CENTER willfully and systematically deducted money from other aggrieved employees' wages without their express written authorization, pursuant to its loss prevention policy, which resulted in a discount in their wages. SUPER CENTER's deduction from its employees' wages resulted in the payment of less than statutorily required wages to other aggrieved employees. In doing so, SUPER CENTER acted with the intent to deprive other aggrieved employees of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law. Thus, SUPER CENTER paid other aggrieved employees lower wages than those they were entitled to while purporting that other aggrieved employees were properly paid.

Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

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

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

"The 'nature of the work' refers to an employee's tasks performed at a given location for which a right to a suitable seat is claimed, rather than a 'holistic' consideration of the entire range of an employee's duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for." *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). "Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer's business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee's characteristics." *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is "infeasible because no suitable seating exists." *See id.*

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

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

SUPER CENTER violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because other aggrieved employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. SUPER CENTER's management did not inform 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 SUPER CENTER's company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, other aggrieved employees were forced to stand during shifts and denied seats. SUPER CENTER's failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(A).

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring SUPER CENTER into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

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

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.*

SUPER CENTER's California 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 other aggrieved employees during lulls in operation. SUPER CENTER could have provided other aggrieved employees with a seat or stool in its work areas, but instead denied, and continues to deny, employees seating, forcing them to stand throughout the day.

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

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

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

As stated, SUPER CENTER systematically, and on a company-wide basis, maintained a loss prevention "policy" that required employees to pay for any cash shortage, breakage, or loss of equipment, on threat of discipline, even though such shortages, breakages, or loss of equipment occurred in the usual course of business, as a result of a mistake, accident, or simple negligence rather than dishonesty, willfulness, or gross negligence. Thus, SUPER CENTER forced other aggrieved employees to incur a necessary loss in direct consequence of the performance of their duties.

SUPER CENTER could have absorbed the ordinary and predictable losses that occurred during the usual course of business. Instead, SUPER CENTER passed these operating costs off onto other aggrieved employees.

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

California Labor Code § 558(a)

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

Accordingly, Ms. Umana Peraza seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Umana Peraza, 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 SUPER CENTER for violations of California Labor Code sections 201, 202, 204, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

<u>Pre-Litigation Demand</u>

This notice shall further serve as Ms. Umana Peraza's reasonable attempt to settle her dispute with SUPER CENTER prior to litigation. Pursuant to *Graham v. Daimler Chrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform SUPER CENTER of Ms. Umana Peraza's aforementioned grievances and the proposed remedies as detailed below, while affording SUPER CENTER a reasonable opportunity to satisfy Ms. Umana Peraza's demands.

Demand is hereby made that SUPER CENTER shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. SUPER CENTER shall pay Ms. Umana Peraza and all other aggrieved employees employed by SUPER CENTER at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.

2. SUPER CENTER shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked and provided lawful meal and rest periods.

3. SUPER CENTER shall conduct a survey or interview all current and former aggrieved employees in California who worked for SUPER CENTER in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for any cash shortage, breakage, or loss of equipment, with the investigation to be completed within 60 days, with the investigation to be completed within 60 days.

4. SUPER CENTER shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. SUPER CENTER also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.

5. SUPER CENTER shall pay accrued legal interest to Ms. Umana Peraza and all aggrieved employees at the rate of 10% per annum for said unpaid wages.

6. SUPER CENTER shall provide Ms. Umana Peraza and all aggrieved employees employed by SUPER CENTER at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).

7. SUPER CENTER shall pay each aggrieved employee unpaid wages and compensation for violations arising from its practice of unlawful deductions (Labor Code sections 221 and 224) and secret payment of lower wages (Labor Code section 223).

8. SUPER CENTER shall implement and provide suitable seating to all aggrieved employees.

9. SUPER CENTER shall reimburse all aggrieved employees who were required to pay for any business expenses incurred for SUPER CENTER's benefit, including, but not limited to, ordinary and predictable losses (such as cash shortages, breakages, or loss of equipment) that occurred during the usual course of business, as required by Labor Code section 2802.

10. SUPER CENTER shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.

11. SUPER CENTER shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq*., including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 7-2001, section 20.

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

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

Best Regards,

Alexander Lima

Copy: SUPER CENTER CONCEPTS, INC. (via U.S. Certified Mail); SUPER CENTER CONCEPTS HOLDINGS, LLC (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
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9590 9402 7306 2122 [illegible] 25

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HOLDINGS, LLC
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X Valery

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B. Received by (*Printed Name*): Valerie F.

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9590 9402 ... 17 49

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X Valerie F

☐ Agent
☐ Addressee

B. Received by *(Printed Name)* Valerie F.

C. Date of Delivery 11/4/22

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3. Service Type

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- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2020 PSN 7530-02-000-9053 Domestic Return Receipt