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on behalf of himself and all others similarly situated

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

RICARDO NOVELLA, an individual and on
behalf of all others similarly situated,

Plaintiff,

v.

RJM VALLEJO MINI MARKET, INC., a
California corporation; MJM VALLEJO
MINI-MARKET INC., a California
corporation; MARTIN VALLEJO, an
individual; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 30-2023-01312351-CU-OE-CXC

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT VIOLATIONS;
7. FAILURE TO TIMELY PAY WAGES;
8. FAILURE TO INDEMNIFY;
9. FAILURE TO PAY INTEREST ON DEPOSITS;
10. VIOLATION OF LABOR CODE § 227.3
11. UNFAIR COMPETITION; and
12. CIVIL PENALTIES UNDER THE LABOR CODE PRIVATE ATTORNEYS' GENERAL ACT (2004) FOR VIOLATIONS OF LABOR CODE SECTIONS 210, 226.3, 558, 1174.5, 1197.1, AND 2699, *et seq.*

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

1 Plaintiff Ricardo Novella (“Plaintiff”), on behalf of himself and all others similarly situated,
2 alleges as follows:

3 **GENERAL ALLEGATIONS**

4 **INTRODUCTION**

5 1. This is a class action, pursuant to Code of Civil Procedure section 382, against RJM
6 VALLEJO MINI MARKET, INC. and any of its respective subsidiaries or affiliated companies
7 within the State of California (“RJM Vallejo”), MJM VALLEJO MINI-MARKET INC. and any of
8 its respective subsidiaries or affiliated companies within the State of California (“MJM Vallejo”),
9 and Martin Vallejo (“Mr. Vallejo” and collectively, with RJM Vallejo, MJM Vallejo, and DOES 1
10 through 100, as further defined below, “Defendants”) on behalf of Plaintiff and all other current and
11 former non-exempt California employees employed by or formerly employed by Defendants
12 (“Class Members”).

13 2. This is also a representative action, pursuant to the Labor Code Private Attorneys
14 General Act of 2004, codified at Labor Code section 2698, et seq. (“PAGA”), against RJM
15 VALLEJO MINI MARKET, INC., MJM VALLEJO MINI-MARKET INC., and any of their
16 respective subsidiaries or affiliated companies within the State of California, and Martin Vallejo, as
17 a proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”), on
18 behalf of Plaintiff and all other current and former non-exempt employees of Defendants working
19 within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims
20 for failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section
21 226, Labor Code section 227.3, Labor Code section 246, et seq., Labor Code section 2802, restraints
22 on competition, whistleblowing and freedom of speech on behalf of all employees of Defendants
23 working within the Civil Penalty Period (collectively, “Aggrieved Employees”).

24 **PARTIES**

25 **A. Plaintiff**

26 3. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff
27 is informed and believes, and based thereon alleges, that Defendants employed Plaintiff as a non-
28 exempt employee, with duties that included, but were not limited to, cooking hamburgers, preparing

1 coffee, and cleaning bathrooms. Plaintiff is informed and believes, and based thereon alleges, that
2 Plaintiff Ricardo Novella has worked for Defendants since approximately February of 2018.

3 **B. Defendants**

4 4. Plaintiff is informed and believes and based thereon allege that defendant RJM
5 Vallejo is, and at all times relevant hereto was, a corporation organized and existing under and by
6 virtue of the laws of the State of California and doing business in the County of Orange, State of
7 California. At all relevant times herein, RJM Vallejo employed Plaintiff and similarly situated
8 employees within the State of California

9 5. Plaintiff is informed and believes and based thereon alleges that defendant MJM
10 Vallejo is, and at all times relevant hereto was, a corporation organized and existing under and by
11 virtue of the laws of the State of California and doing business in the County of Los Angeles, State
12 of California. At all relevant times herein, MJM Vallejo employed Plaintiff and similarly situated
13 employees within the State of California.

14 6. Plaintiff is informed and believes and based thereon alleges that defendant Mr.
15 Vallejo is, and at all times relevant hereto was, an individual residing in California, as well as the
16 Chief Executive Officer of RJM Vallejo, MJM Vallejo, and DOES 1 through 100, as further defined
17 below. Plaintiff is further informed and believes and based thereon alleges that Mr. Vallejo violated,
18 or caused to be violated, the above-referenced and below-referenced Labor Code provisions in
19 violation of Labor Code section 558.1. Plaintiff is further informed and believes that Mr. Vallejo
20 operates approximately eight (8) ArcoAMPM locations throughout California.

21 7. The true names and capacities, whether individual, corporate, associate, or otherwise,
22 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
23 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
24 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
25 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
26 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
27 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is
28 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent

1 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
2 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
3 other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall
4 include RJM Vallejo, MJM Vallejo, and any of their parent, subsidiary, or affiliated companies
5 within the State of California, as well as Mr. Vallejo and DOES 1 through 100 identified herein.
6 Plaintiff is further informed and believes that Defendants do business as Arco AMPM.

7 **JOINT LIABILITY ALLEGATIONS**

8 8. Plaintiff is informed and believes and based thereon alleges that all the times
9 mentioned herein, each of the Defendants was the agent, principal, employee, employer,
10 representative, joint venture or co-conspirator of each of the other defendants, either actually or
11 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
12 employment, joint venture, and conspiracy.

13 9. All of the acts and conduct described herein of each and every corporate defendant
14 was duly authorized, ordered, and directed by the respective and collective defendant corporate
15 employers, and the officers and management-level employees of said corporate employers. In
16 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
17 their said employees, agents, and representatives, and each of them; and upon completion of the
18 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
19 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
20 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
21 aforementioned corporate employees, agents and representatives.

22 10. Plaintiff is further informed and believes and based thereon alleges that Mr. Vallejo
23 violated, or caused to be violated, the above-referenced and below-referenced Labor Code
24 provisions in violation of Labor Code section 558.1.

25 11. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
26 thereon alleges that Defendants, and each of them, are joint employers.

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12. Jurisdiction exists in the Superior Court of the State of California pursuant to Code of Civil Procedure section 410.10.

13. Venue is proper in Orange County, California pursuant to Code of Civil Procedure sections 392, et seq. because, among other things, Orange County is where the causes of action explained of herein arose; the county in which the employment relationship began; the county in which performance of the employment contract, or part of it, between Plaintiff and Defendants was to be performed; the county in which the employment contract, or part of it, between Plaintiff and Defendants was actually performed; and the county in which Defendants, or some of them, reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff and Class Members in Orange County, and because Defendants employ numerous Class Members in Orange County.

14. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term “civil penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”) plus reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current and former employees of Defendants during the civil penalty period.

15. Specifically, Plaintiff seeks to recover PAGA civil penalties through a representative on permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v. Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the PAGA allegations described herein is not required.

16. During the period beginning one (1) year preceding the provision of notice to the
 TDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
 Defendants violated, inter *alia*, Labor Code sections 96, 98.6, 201, 202, 203, 204, 210, 226, 226.3,
 227, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197, 1197.1,
 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

1 17. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
2 such as Plaintiff, on behalf of Plaintiff and all other aggrieved current and former employees within
3 the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures
4 specified in Labor Code section 2699.3.

5 18. On or around March 14, 2023, Plaintiff provided written notice pursuant to Labor
6 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants'
7 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
8 as well as by certified mail, with return receipt requested to Defendants, and each of them.

9 19. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
10 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
11 calendar days of the March 14, 2023 postmarked date of the herein-described notice sent by Plaintiff
12 to the LWDA and Defendants.

13 **FACTUAL BACKGROUND**

14 20. For at least four (4) years prior to the filing of this action and continuing to the
15 present, Defendants have, at times, failed to pay overtime wages to Plaintiff and Class Members, or
16 some of them, in violation of California state wage and hour laws as a result of, without limitation,
17 Plaintiff and Class Members working over eight (8) hours per day, forty (40) hours per week, and
18 seven consecutive work days in a work week without being properly compensated for hours worked
19 in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours
20 worked on the seventh consecutive work day in a work week by, among other things, failing to
21 accurately track and/or pay for all minutes actually worked at the proper overtime rate of pay,
22 engaging, suffering, or permitting employees to work off the clock, including, without limitation,
23 by requiring Plaintiff and Class Members: to come early to work and leave late work without being
24 able to clock in for all that time, to complete pre-shift tasks before clocking in and post-shift tasks
25 after clocking out and to clock out for meal periods and continue working, and failing to include all
26 forms of remuneration in calculating the regular rate of pay for purposes of paying overtime, to the
27 detriment of Plaintiff and Class Members.

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1 21. For at least four (4) years prior to the filing of this Action and continuing to the
2 present, Defendants have, at times, failed to pay minimum wages to Plaintiff and Class Members,
3 or some of them, in violation of California state wage and hour laws as a result of, among other
4 things, at times, failing to accurately track and/or pay for all hours actually worked at their regular
5 rate of pay that is above the minimum wage; engaging, suffering, or permitting employees to work
6 off the clock, including, without limitation, by requiring Plaintiff and Class Members: to come early
7 to work and leave late work without being able to clock in for all that time, to complete pre-shift
8 tasks before clocking in and post-shift tasks after clocking out, and to clock out for meal periods
9 and continue working, to the detriment of Plaintiff and Class Members.

10 22. For at least four (4) years prior to the filing of this Action and continuing to the
11 present, Defendants have, at times, failed to provide Plaintiff and Class Members, or some of them,
12 full, timely thirty (30) minute uninterrupted meal period for days on which they worked more than
13 five (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on
14 which they worked in excess of ten (10) hours in a work day, and failing to provide compensation
15 for such unprovided meal periods as required by California wage and hour laws.

16 23. For at least four (4) years prior to the filing of this action and continuing to the
17 present, Defendants have, at times, failed to authorize and permit Plaintiff and Class Members, or
18 some of them, to take rest periods of at least ten (10) minutes per four (4) hours worked or major
19 fraction thereof and failed to provide compensation for such unprovided rest periods as required by
20 California wage and hour laws.

21 24. For at least three (3) years prior to the filing of this action and continuing to the
22 present, Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the
23 full amount of their wages owed to them upon termination and/or resignation as required by Labor
24 Code sections 201 and 202, including for, without limitation, failing to pay overtime wages,
25 minimum wages, premium wages, and vacation pay pursuant to Labor Code section 227.3.

26 25. For at least one (1) year prior to the filing of this Action and continuing to the present,
27 Defendants have, at times, failed to furnish Plaintiff and Class Members, or some of them, with
28 itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages

1 earned; all applicable hourly rates in effect during the pay period and the corresponding number of
2 hours worked at each hourly rate; the name and address of the legal entity that is the employer; and
3 other such information as required by Labor Code section 226, subdivision (a). As a result thereof,
4 Defendants have further failed to furnish employees with an accurate calculation of gross and gross
5 wages earned, as well as gross and net wages paid.

6 26. For at least one (1) year prior to the filing of this action and continuing to the present,
7 Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the full
8 amount of their wages for labor performed in a timely fashion as required under Labor Code section
9 204.

10 27. For at least three (3) years prior to the filing of this action and continuing to the
11 present, Defendants have, at times, failed to indemnify Class Members, or some of them, for the
12 costs incurred in purchasing and/or providing unreturned deposits for mandatory work uniforms;
13 laundering mandatory work uniforms; mileage and/or gas costs incurred in driving personal vehicles
14 for work-related purposes; using cellular phones for work-related purposes; and purchasing tools
15 necessary to perform work duties.

16 28. For at least three (3) years prior to the filing of the action and continuing to the
17 present, Defendants have, at times, failed to return interest on deposits made by Plaintiff and Class
18 Members, or some of them, for uniforms.

19 29. For at least four (4) years prior to the filing of this action and continuing to the
20 present, Defendants have had a consistent policy of failing to provide Plaintiff and similarly situated
21 employees or former employees within the State of California with compensation at their final rate
22 of pay for unused vested paid vacation days pursuant to Labor Code section 227.3.

23 30. Plaintiff, on his own behalf and on behalf of Class Members, brings this action
24 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 226, 226.7,
25 227.3, 404, 510, 512, 558.1, 1194, 1194.2, 1197, 2802, and California Code of Regulations, Title 8,
26 section 11040, seeking overtime wages, minimum wages, payment of premium wages for missed
27 meal and rest periods, failure to pay timely wages, waiting time penalties, wage statement penalties,
28 failure to indemnify work-related expenses, failure to pay interest on deposits made, failing to pay

1 vested vacation time at the proper rate of pay, other such provisions of California law, and
2 reasonable attorneys' fees and costs.

3 31. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, pursuant to
4 Business and Professions Code sections 17200 through 17208, also seeks (an) injunction(s)
5 prohibiting Defendants from further violating the Labor Code and requiring the establishment of
6 appropriate and effective means to prevent further violations, as well as all monies owed but
7 withheld and retained by Defendants to which Plaintiff and Class Members are entitled, as well as
8 restitution of amounts owed.

9 32. At all relevant times mentioned herein, Defendants have had a policy or practice of
10 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
11 Protection Act of 2011) by, among other things, failing to provide Plaintiffs and other Aggrieved
12 Employees with the rates of pay and overtime rates of pay applicable to their employment;
13 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the
14 name, address, and telephone number of the workers' compensation insurance carrier; information
15 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
16 under Labor Code section 2810.5.

17 33. At all relevant times mentioned herein, Defendants failed to provide Plaintiff and
18 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to
19 California law (including, without limitation Labor Code section 245, *et seq.*), and also did not
20 permit its use upon request as contemplated under California laws, to the detriment of Plaintiff and
21 all other Aggrieved Employees.

22 34. Plaintiff, in his representative capacity, seeks civil penalties under Labor Code
23 sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate the
24 California Labor Code as described above, including on behalf of Plaintiff and other Aggrieved
25 Employees pursuant to PAGA.

26 **CLASS ACTION ALLEGATIONS**

27 35. Plaintiff brings this action on behalf of Plaintiff and Class Members as a class action
28 pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class of all current

1 and former non-exempt employees of Defendants within the State of California at any time
2 commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that notice
3 of the class action is provided to the class (collectively referred to as "Class Members").

4 36. Plaintiff reserves the right under California Rule of Court rule 3.765, subdivision (b)
5 to amend or modify the class description with greater specificity, further divide the defined class
6 into subclasses, and to further specify or limit the issues for which certification is sought.

7 37. This action has been brought and may properly be maintained as a class action under
8 the provisions of Code of Civil Procedure section 382 because there is a well-defined community
9 of interest in the litigation and the proposed Class is easily ascertainable.

10 **A. Numerosity**

11 38. The potential Class Members as defined are so numerous that joinder of all the
12 members of the Class is impracticable. While the precise number of Class Members has not been
13 determined yet, Plaintiff is informed and believes that there are over seventy-five (75) Class
14 Members employed by Defendants within the State of California.

15 39. Accounting for employee turnover during the relevant periods necessarily increases
16 this number. Plaintiff alleges Defendants' employment records would provide information as to the
17 number and location of all Class Members. Joinder of all members of the proposed Class is not
18 practicable.

19 **B. Commonality**

20 40. There are questions of law and fact common to Class Members. These common
21 questions include, but are not limited to:

22 A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all
23 hours worked at a proper overtime rate of pay?

24 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to
25 pay for all other time worked at the employee's regular rate of pay and a rate
26 of pay that is greater than the applicable minimum wage?

27 C. Did Defendants violate Labor Code section 512 by not authorizing or
28 permitting Class Members to take compliant meal periods?

- 1 D. Did Defendants violate Labor Code section 226.7 by not providing Class
2 Members with additional wages for missed or interrupted meal periods?
- 3 E. Did Defendants violate applicable Wage Orders by not authorizing or
4 permitting Class Members to take compliant rest periods?
- 5 F. Did Defendants violate Labor Code section 226.7 by not providing Class
6 Members with additional wages for missed rest periods?
- 7 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay
8 Class Members upon termination or resignation all wages earned?
- 9 H. Are Defendants liable to Class Members for waiting time penalties under Labor
10 Code section 203?
- 11 I. Did Defendants violate Labor Code section 226, subdivision (a) by not
12 furnishing Class Members with accurate wage statements?
- 13 J. Did Defendants fail to pay Class Members in a timely fashion as required under
14 Labor Code section 204?
- 15 K. Did Defendants fail to indemnify Class Members for all necessary expenditures
16 or losses incurred in direct consequence of the discharge of their duties or by
17 obedience to the directions of Defendants as required under Labor Code section
18 2802?
- 19 L. Did Defendants fail to return deposits made by Class Members with accrued
20 interest thereon as required under Labor Code section 404?
- 21 M. Did Defendants violate Labor Code section 227.3 by not providing Class
22 Members with compensation at their final rate of pay for vested paid vacation
23 time.
- 24 N. Did Defendants violate the Unfair Competition Law, Business and Professions
25 Code section 17200, *et seq.*, by their unlawful practices as alleged herein?
- 26 O. Are Class Members entitled to restitution of wages under Business and
27 Professions Code section 17203?
- 28

1 P. Are Class Members entitled to costs and attorneys' fees?

2 Q. Are Class Members entitled to interest?

3 C. **Typicality**

4 41. The claims of Plaintiff herein alleged are typical of those claims which could be
5 alleged by any Class Members, and the relief sought is typical of the relief which would be sought
6 by each Class Member in separate actions. Plaintiff and Class Members sustained injuries and
7 damages arising out of and caused by Defendants' common course of conduct in violation of laws
8 and regulations that have the force and effect of law and statutes as alleged herein.

9 D. **Adequacy of Representation**

10 42. Plaintiff will fairly and adequately represent and protect the interest of Class
11 Members. Counsel who represents Plaintiff is competent and experienced in litigating wage and
12 hour class actions.

13 E. **Superiority of Class Action**

14 43. A class action is superior to other available means for the fair and efficient
15 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
16 questions of law and fact common to Class Members predominate over any questions affecting only
17 individual Class Members. Class Members, as further described therein, have been damaged and
18 are entitled to recovery by reason of Defendants' policies and/or practices that have resulted in the
19 violation of the Labor Code at times, as set out herein.

20 44. Class action treatment will allow Class Members to litigate their claims in a manner
21 that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of
22 any difficulties that are likely to be encountered in the management of this action that would
23 preclude its maintenance as a class action.

24 **FIRST CAUSE OF ACTION**

25 **(Failure to Pay Overtime Wages – Against All Defendants)**

26 45. Plaintiff realleges and incorporates by reference all of the allegations contained in
27 the preceding paragraphs as though fully set forth hereat.

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1 46. At all relevant times, Plaintiff and Class Members were employees or former
2 employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as applicable
3 Wage Orders.

4 47. At all times relevant to this Complaint, Labor Code section 510 was in effect and
5 provided: “(a) Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in
6 one workday and any work in excess of forty hours in any one workweek . . . shall be compensated
7 at the rate of no less than one and one-half times the regular rate of pay for an employee.”

8 48. At all times relevant to this Complaint, Labor Code section 510 further provided that
9 “[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice
10 the regular rate of pay for an employee. In addition, any work in excess of eight hours on any
11 seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of
12 pay.”

13 49. Four (4) years prior to the filing of the Complaint in this Action through the present,
14 Plaintiff and Class Members, at times, worked for Defendants during shifts that consisted of more
15 than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7)
16 consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a
17 result of, including but not limited to, Defendants failing to accurately track and/or pay for all hours
18 actually worked at the proper overtime rate of pay; engaging, suffering, or permitting employees to
19 work off the clock, including, without limitation, by requiring Plaintiff and Class Members: to come
20 early to work and leave late work without being able to clock in for all that time, to complete pre-
21 shift tasks before clocking in and post-shift tasks after clocking out, and to clock out for meal periods
22 and continue working, failing to include all forms of remuneration, including non-discretionary
23 bonuses, incentive pay, meal allowances, mask allowances, gift cards and other forms of
24 remuneration into the regular rate of pay for the pay periods where overtime was worked and the
25 additional compensation was earned for the purpose of calculating the overtime rate of pay to the
26 detriment of Plaintiff and Class Members.

27 50. Accordingly, by requiring Plaintiff and Class Members to, at times, work greater
28 than eight (8) hours per workday, forty (40) hours per workweek, and/or seven (7) straight workdays

1 without properly compensating overtime wages at the proper overtime rate of pay, Defendants, on
2 occasion, willfully violated the provisions of the Labor Code, among others, sections 510, 1194, and
3 applicable IWC Wage Orders, and California law.

4 51. As a result of the unlawful acts of Defendants, Plaintiff and Class Members have
5 been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery,
6 plus interest and penalties thereon, attorneys' fees and costs, pursuant to Labor Code section 1194
7 and 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil Code section 3287.

8 **SECOND CAUSE OF ACTION**

9 **(Failure to Pay Minimum Wages – Against All Defendants)**

10 52. Plaintiff realleges and incorporates by reference all of the allegations contained in
11 the preceding paragraphs as though fully set forth hereat.

12 53. At all relevant times, Plaintiff and Class Members were employees or former
13 employees of Defendants covered by Labor Code sections 1197, 1199 and applicable Wage Orders.

14 54. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiff and
15 Class Members were entitled to receive minimum wages for all hours worked or otherwise under
16 Defendants' control.

17 55. For four (4) years prior to the filing of the Complaint in this Action through the
18 present, Defendants failed, at times, to accurately track and/or pay for all hours actually worked at
19 their regular rate of pay that is above the minimum wage; engaged, suffered, or permitted employees
20 to work off the clock, including, without limitation, by requiring Plaintiff and Class Members: to
21 come early to work and leave late work without being able to clock in for all that time, to complete
22 pre-shift tasks before clocking in and post-shift tasks after clocking out, and to clock out for meal
23 periods and continue working, and failing to pay split pay shift premiums and/or reporting pay
24 premiums, to the detriment of Plaintiff and Class Members.

25 56. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
26 suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages
27 for all hours worked or otherwise due.

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57. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover the full amount of unpaid minimum wages, interest and penalties thereon, liquidated damages, reasonable attorneys' fees and costs of suit.

THIRD CAUSE OF ACTION

(Failure to Provide Meal Periods – Against All Defendants)

58. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

59. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendants covered by Labor Code section 512 and applicable Wage Orders.

60. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer shall employ an employee for a work period of more than five (5) hours without a timely meal break of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties. Furthermore, no employer shall employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second timely meal period of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties.

61. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee with a meal period as provided in the applicable Wage Order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

62. For four (4) years prior to the filing of the Complaint in this Action through the present, Plaintiff and Class Members were, at times, not provided complete, timely 30-minute, duty-free uninterrupted meal periods every five hours of work without waiving the right to take them, as permitted. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the Class Member's regular rate of compensation on the occasions that Class Members were not provided compliant meal periods.

63. By their failure to provide Plaintiff and Class Members compliant meal periods as contemplated by Labor Code section 512, among other California authorities, and failing, at times,

1 to provide compensation for such unprovided meal periods, as alleged above, Defendants willfully
2 violated the provisions of Labor Code section 512 and applicable Wage Orders.

3 64. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
4 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay
5 owed for missed, untimely, interrupted, incomplete and/or on-duty meal periods.

6 65. Plaintiff and Class Members are entitled to recover the full amount of their unpaid
7 additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus
8 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,
9 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

10 **FOURTH CAUSE OF ACTION**

11 **(Failure to Provide Rest Periods – Against All Defendants)**

12 66. Plaintiff realleges and incorporates by reference all of the allegations contained in
13 the preceding paragraphs as though fully set forth hereat.

14 67. At all relevant times, Plaintiff and Class Members were employees or former
15 employees of Defendants covered by applicable Wage Orders.

16 68. California law and applicable Wage Orders require that employers "authorize and
17 permit" employees to take ten (10) minute rest periods in about the middle of each four (4) hour
18 work period "or major fraction thereof." Accordingly, employees who work shifts of three and-a-
19 half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who
20 work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20) minutes
21 of paid rest period, and employees who work shifts of more than ten (10) hours must be provided
22 thirty (30) minutes of paid rest period.

23 69. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
24 with a meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare
25 Commission, the employer shall pay the employee one (1) additional hour of pay at the employee's
26 regular rate of compensation for each work day that the rest period is not provided.

27 70. For four (4) years prior to the filing of the Complaint in this Action through the
28 present, Plaintiff and Class Members were, at times, not authorized or permitted to take complete,

1 timely 10-minute, duty-free uninterrupted rest periods every four (4) hours of work or major fraction
2 thereof. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the Class
3 Member's regular rate of compensation on the occasions that Class Members were not authorized
4 or permitted to take compliant rest periods.

5 71. By their failure, at times, to authorize and permit Plaintiff and Class Members to take
6 rest periods contemplated by California law, and one (1) additional hour of pay at the employee's
7 regular rate of compensation for such unprovided rest periods, as alleged above, Defendants
8 willfully violated the provisions of Labor Code section 226.7 and applicable Wage Orders.

9 72. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
10 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay
11 owed for rest periods that they were not authorized or permitted to take.

12 73. Plaintiff and Class Members are entitled to recover the full amount of their unpaid
13 additional pay for unprovided compliant rest periods, in amounts to be determined at trial, plus
14 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,
15 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

16 **FIFTH CAUSE OF ACTION**

17 **(Failure to Pay All Wages Due Upon Termination – Against All Defendants)**

18 74. Plaintiff realleges and incorporates by reference all of the allegations contained in
19 the preceding paragraphs as though fully set forth hereat.

20 75. At all relevant times, Plaintiff and Class Members were employees or former
21 employees of Defendants covered by Labor Code sections 201, 202 and 203, as well as applicable
22 Wage Orders.

23 76. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members were
24 entitled upon termination to timely payment of all wages earned and unpaid prior to termination.
25 Discharged Class Members were entitled to payment of all wages earned and unpaid prior to
26 discharge immediately upon termination. Class Members who resigned were entitled to payment
27 of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation
28

1 or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and
2 unpaid at the time of resignation.

3 77. Plaintiff is informed and believes, and based thereon alleges, that in the three (3)
4 years before the filing of the Complaint in this Action through the present, Defendants, due to the
5 failure, at times, to provide overtime wages mentioned above, failed to pay Plaintiff and Class
6 Members all wages earned prior to resignation or termination in accordance with Labor Code
7 sections 201 or 202.

8 78. Plaintiff is informed and believes Defendants' failure, at times, to pay Plaintiff and
9 Class Members all wages earned prior to termination or resignation in accordance with Labor Code
10 sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiff
11 and Class Members at the time of termination in accordance with Labor Code sections 201 and 202,
12 but intentionally adopted policies or practices incompatible with the requirements of Labor Code
13 sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to termination
14 or resignation.

15 79. Pursuant to Labor Code section 203, Plaintiff and Class Members are entitled to
16 waiting time penalties from the date their earned and unpaid wages were due, upon termination or
17 resignation, until paid, up to a maximum of thirty (30) days.

18 80. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
19 suffered damages in an amount subject to proof, to the extent they were not paid for all wages earned
20 prior to termination or resignation.

21 81. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
22 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
23 waiting time penalties, interest, and their costs of suit, as well.

24 **SIXTH CAUSE OF ACTION**

25 **(Failure to Provide Accurate Wage Statements – Against All Defendants)**

26 82. Plaintiff realleges and incorporates by reference all of the allegations contained in
27 the preceding paragraphs as though fully set forth hereat.

28 ///

1 83. At all relevant times, Plaintiff and Class Members were employees or former
2 employees of Defendants covered by Labor Code section 226, as well as applicable Wage Orders.

3 84. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and Class Members
4 were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
5 statement that accurately reflects, among other things, gross wages earned; total hours worked; net
6 wages earned; all applicable hourly rates in effect during the pay period and the corresponding
7 number of hours worked at each hourly rate; and the name and address of the legal entity that is the
8 employer, among other things.

9 85. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year
10 before the filing of the Complaint in this Action through the present, Defendants failed to comply
11 with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their
12 failure, at times, to furnish Plaintiff and Class Members with accurate itemized statements that
13 accurately reflect, among other things, gross wages earned; total hours worked; net wages earned;
14 all applicable hourly rates in effect during the pay period and the corresponding number of hours
15 worked at each hourly rate; and the name and address of the legal entity that is the employer, among
16 other things.

17 86. Defendants' failure to, at times, provide Plaintiff and Class Members with accurate
18 wage statements was knowing, intentional, and willful. Defendants had the ability to provide
19 Plaintiff and the other Class Members with accurate wage statements, but, at times, willfully
20 provided wage statements that Defendants knew were not accurate.

21 87. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
22 suffered injury. The absence of accurate information on Class Members' wage statements at times
23 has delayed timely challenge to Defendants' unlawful pay practices; requires discovery and
24 mathematical computations to determine the amount of wages owed; causes difficulty and expense
25 in attempting to reconstruct time and pay records; and led to submission of inaccurate information
26 about wages and amounts deducted from wages to state and federal governmental agencies, among
27 other things.

28 ///

1 88. Pursuant to Labor Code section 226, subdivision (e), Plaintiff and Class Members
2 are entitled to recover \$50 for the initial pay period during the period in which violation of Labor
3 Code section 226 occurred and \$100 for each violation of Labor Code section 226 in a subsequent
4 pay period, not to exceed an aggregate \$4,000.00 per employee.

5 89. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
6 Procedure section 1032, Civil Code section 3287, Plaintiff and Class Members are entitled to
7 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable
8 attorneys' fees, and costs of suit.

9 **SEVENTH CAUSE OF ACTION**

10 **(Failure to Timely Pay Wages During Employment – Against All Defendants)**

11 90. Plaintiff reallege each and every allegation set forth in the preceding paragraphs and
12 incorporate each by reference as though fully set forth hereat.

13 91. At all relevant times, Plaintiff and Class Members were employees or former
14 employees of Defendants covered by Labor Code section 204 and applicable Wage Orders.

15 92. Labor Code section 204 provides that “[l]abor performed between the 1st and 15th
16 days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month
17 during which the labor was performed, and labor performed between the 16th and the last day,
18 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
19 month.”

20 93. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely
21 independent and apart from, any other penalty provided in this article, every person who fails to pay
22 the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and
23 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars
24 (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful
25 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
26 percent of the amount unlawfully withheld.”

27 94. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year
28 before the filing of the Complaint in this Action through the present, Defendants employed policies

1 and practices that resulted in, at times, not paying Plaintiff and Class Members in accordance with
2 Labor Code section 204.

3 95. Pursuant to Labor Code section 210, Plaintiff and Class Members are entitled to
4 recover penalties for Defendants' violations of Labor Code section 204, in the amount of one
5 hundred dollars (\$100) for each initial violation per Class Member, and two hundred dollars (\$200)
6 for each subsequent violation in connection with each payment that was made in violation of Labor
7 Code section 204 per Class Member, plus 25 percent of the amount unlawfully withheld.

8 96. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and
9 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recovery of penalties,
10 interest, and their costs of suit, as well.

11 **EIGHTH CAUSE OF ACTION**

12 **(Violation of Labor Code § 2802 – Against All Defendants)**

13 97. Plaintiff reallege and incorporate by reference all of the allegations contained in the
14 preceding paragraphs as though fully set forth hereat.

15 98. At all relevant times, Plaintiff and Class Members were employees or former
16 employees of Defendants covered by Labor Code section 2802 and applicable Wage Orders.

17 99. Labor Code section 2802, subdivision (a) provides that “an employer shall indemnify
18 his or her employee for all necessary expenditures or losses incurred by the employee in direct
19 consequence of the discharge of his or her duties . . .”

20 100. For three (3) years prior to the filing of the Complaint in this Action through the
21 present, Defendants required Plaintiff and Class Members, or some of them, to incur, at times,
22 necessary expenditures or losses in direct consequence of the discharge of their duties or at the
23 obedience to the directions of Defendants that included, without limitation: purchasing and/or
24 providing unreturned deposits for mandatory work uniforms; laundering mandatory work uniforms;
25 mileage and/or gas costs incurred in driving personal vehicles for work-related purposes; using
26 cellular phones for work-related purposes; and purchasing tools necessary to perform work duties.

27 101. During that time period, Plaintiff is informed and believes, and based thereon allege
28 that Defendants failed and refused, and still fail and refuse, at times, to reimburse Plaintiff sand

1 Class Members for those losses and/or expenditures.

2 102. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
3 suffered damages in an amount subject to proof, to the extent they were not reimbursed for the
4 herein-described losses and/or expenditures.

5 103. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
6 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
7 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys' fees and
8 costs of suit.

9 **NINTH CAUSE OF ACTION**

10 **(Violation of Labor Code § 404 – Against All Defendants)**

11 104. Plaintiff reallege and incorporate by reference all of the allegations contained in the
12 preceding paragraphs as though fully set forth herein.

13 105. At all relevant times, Plaintiff and Class Members were employees or former
14 employees of Defendants covered by Labor Code sections 400 through 410.

15 106. Pursuant to Labor Code section 404, Defendants were required to immediately return
16 amounts deposited for uniforms with accrued interest when Plaintiff and Class Members returned
17 the required uniforms to Defendants.

18 107. Plaintiff is informed and believes, and based thereon allege that for three (3) years
19 prior to the filing of this Action through the present, due to policies and practices adopted by
20 Defendants, Defendants violated Labor Code section 404 by failing to, at times, immediately return
21 accrued interest on deposits made by Plaintiff and Class Members upon their returning their
22 uniforms to Defendants.

23 108. As a result of Defendants' conduct, Plaintiff and Class Members have suffered
24 damages in an amount subject to proof, to the extent they were not compensated for accrued interest
25 on amounts deposited for mandatory uniforms upon returning their uniforms to Defendants.

26 109. Pursuant to Labor Code sections 218, 218.5, and 404, Plaintiff and Class Members
27 are entitled to recover their unpaid accrued interest on uniform deposits, reasonable attorney's fees
28 and costs of suit.

1 **TENTH CAUSE OF ACTION**

2 **(Violation of Labor Code § 227.3 – Against All Defendants)**

3 110. Plaintiff re-alleges and incorporates by reference all of the allegations contained in
4 the preceding paragraphs of this Complaint as though fully set forth hereon.

5 111. According to Labor Code section 227.3, whenever a contract of employment or
6 employer policy provides for paid vacations, and an employee is terminated without having taken
7 off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in
8 accordance with such contract of employment or employer policy respecting eligibility or time
9 served.

10 112. Plaintiff is informed and believes, and based thereon alleges that, at all times relevant
11 hereto, Defendants promulgated and maintained a uniform policy providing for paid vacations, and
12 that Plaintiff's employment contract with Defendants included paid vacations.

13 113. For at least four (4) years prior to the filing of this action and continuing to the
14 present, Defendants have had a consistent policy of failing to provide Plaintiff and similarly situated
15 employees or former employees within the State of California with compensation at their final rate
16 of pay for unused vested paid vacation days pursuant to Labor Code section 227.3.

17 114. As a proximate result of Defendants' failure to pay vested vacation at the final rate
18 of Plaintiff and Class Members upon their resignation or termination, Defendants violated Labor
19 Code section 227.3, entitling Plaintiff and Class Members to all vested and unused vacation pay at
20 their final rate of pay, as set out in Defendants' policy or the contract of employment between
21 Plaintiff and Class Members, on the one hand, and Defendants, on the other hand.

22 115. As a further proximate result of Defendants' above-described acts and/or omissions,
23 Plaintiff and Class Members are entitled to recover reasonable attorneys' fees, costs of suit and
24 prejudgment interest.

25 **ELEVENTH CAUSE OF ACTION**

26 **(Unfair Competition – Against All Defendants)**

27 116. Plaintiff realleges and incorporates by reference all of the allegations contained in
28 the preceding paragraphs as though fully set forth hereat.

1 117. Plaintiff is informed and believes, and based thereon alleges that the unlawful
2 conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business
3 and Professions Code section 17200. Due to their unlawful business practices in violation of the
4 Labor Code, Defendants have gained a competitive advantage over other comparable companies
5 doing business in the State of California that comply with their obligations to compensate employees
6 in accordance with the Labor Code.

7 118. As a result of Defendants' unfair competition as alleged herein, Plaintiff and Class
8 Members have suffered injury in fact and lost money or property.

9 119. Pursuant to Business and Professions Code section 17203, Plaintiff and Class
10 Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor
11 Code and requiring the establishment of appropriate and effective means to prevent further
12 violations, as well as restitution of all wages and other monies owed to them under the Labor Code,
13 including interest thereon, in which they had a property interest and which Defendants nevertheless
14 failed to pay them and instead withheld and retained for themselves. Restitution of the money owed
15 to Plaintiff and Class Members is necessary to prevent Defendants from becoming unjustly enriched
16 by their failure to comply with the Labor Code.

17 120. Plaintiff and Class Members are entitled to costs of suit under Code of Civil
18 Procedure section 1032 and interest under Civil Code section 3287.

19 **TWELFTH CAUSE OF ACTION**

20 **(Civil Penalties under the Private Attorneys General Act (2004) – Against All Defendants)**

21 121. Plaintiff realleges and incorporates by reference all of the allegations contained in
22 the preceding paragraphs as though fully set forth hereat.

23 **Civil Penalties Under Labor Code § 210**

24 122. At all relevant times herein, Labor Code section 204, requires and required that:
25 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
26 between the 16th and 26th day of the month during which the labor was performed, and labor
27 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
28 between the 1st and 10th day of the following month.”

123. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

124. At all relevant times herein, Defendants have had a consistent policy or practice of failing to pay Plaintiff and/or Aggrieved Employees during their employment on a timely basis as per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiffs and other Aggrieved Employees are entitled to recover civil penalties for Defendants' violations of Labor Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee for each subsequent violation in connection with each payment that was made in violation of Labor Code section 204.

Civil Penalties Under Labor Code § 226.3

125. Defendants had and have a policy or practice of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees with itemized wage statements that accurately reflect: gross wages earned; total hours worked; net wages earned; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; and other such information as required by Labor Code section 226, subdivision (a).

126. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

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1 127. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in
2 this section are in addition to any other penalty provided by law.”

3 128. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
4 and have a policy or practice of failing to furnish non-exempt employees, including, without
5 limitation, Plaintiff, itemized wage statements that accurately reflect: gross wages earned; total
6 hours worked; net wages earned; all applicable hourly rates in effect during the pay period and the
7 corresponding number of hours worked at each hourly rate; and other such information as required
8 by Labor Code section 226, subdivision (a).

9 129. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are
10 entitled to recover civil penalties for Defendants’ violation of Labor Code section 226, subdivision
11 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period
12 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay
13 period for each subsequent violation.

14 Violation of Labor Code § 558

15 130. Pursuant to Labor Code section 558, subdivision (a): “Any employer or other person
16 acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating
17 hours and days of work in any of the Industrial Welfare Commission” shall be subject to a civil
18 penalty as follows:

- 19 A. For any initial violation, fifty dollars (\$50) for each underpaid employee and for each
20 pay period for which the employee was underpaid in addition to an amount sufficient
21 to recover underpaid wages;
22 B. For each subsequent violation, one hundred dollars (\$100) for each underpaid
23 employee for each pay period for which the employee was underpaid in addition to
24 an amount sufficient to recover underpaid wages;
25 C. Wages recovered pursuant to this section shall be paid to the affected employee.

26 131. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
27 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
28 causing Plaintiff and other Aggrieved Employees not to be paid: with the rates of pay and overtime

1 rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the
2 regular payday designated by the employer, the name of the employer, including any “doing
3 business as” names used, the name, address and telephone number of the workers’ compensation
4 insurance carrier, information regarding paid sick leave, and other pertinent information.

5 132. As a direct and proximate result of the herein-described Labor Code violations,
6 pursuant to Labor Code section 558, Plaintiff and other Aggrieved Employees are entitled to recover
7 civil penalties for Defendants’ herein-described Labor Code violations in the amount fifty dollars
8 (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred dollars
9 (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

10 Violation of Labor Code § 1174.5

11 133. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required
12 every person employing labor in California to “[a]llow any member of the commission or the
13 employees of the Division of Labor Standards Enforcement free access to the place of business or
14 employment of the person to secure any information or make any investigation that they are
15 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,
16 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
17 or papers of the person.”

18 134. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required
19 every person employing labor in California to “[k]eep a record showing the names and addresses of
20 all employees employed and the ages of all minors.”

21 135. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required
22 every person employing labor in California to “[k]eep, at a central location in the state or at the
23 plants or establishments at which employees are employed, payroll records showing the hours
24 worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable
25 piece rate paid to, employees employed at the respective plants or establishments. These records
26 shall be kept in accordance with rules established for this purpose by the commission, but in any
27 case, shall be kept on file for not less than three years. An employer shall not prohibit an employee
28

1 from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units
2 earned.”

3 136. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully
4 fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate
5 and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any
6 member of the commission or employees of the division to inspect records pursuant to subdivision
7 (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

8 137. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
9 willfully failed keep adequate or accurate time records including wage statements and similar
10 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
11 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
12 under Labor Code section 1174.

13 138. As a direct and proximate result of the herein-described Labor Code violations,
14 pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to
15 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount of five
16 hundred dollars (\$500) per violation per Aggrieved Employee.

17 Violation of Labor Code § 1197.1

18 139. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other
19 person acting either individually or as an officer, agent, or employee of another person, who pays
20 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
21 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
22 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
23 Section 203 as follows:

- 24 A. For any initial violation that is intentionally committed, one hundred dollars (\$100)
25 for each underpaid employee for each pay period for which the employee is
26 underpaid. This amount shall be in addition to an amount sufficient to recover
27 underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable
28 penalties imposed pursuant to Section 203.

1 B. For each subsequent violation for the same specific offense, two hundred fifty dollars
2 (\$250) for each underpaid employee for each pay period for which the employee is
3 underpaid regardless of whether the initial violation is intentionally committed. This
4 amount shall be in addition to an amount sufficient to recover underpaid wages,
5 liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed
6 pursuant to Section 203.

7 C. Wages, liquidated damages, and any applicable penalties imposed pursuant to
8 Section 203, recovered pursuant to this section shall be paid to the affected
9 employee.”

10 140. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
11 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without
12 limitation, routinely failing to pay Plaintiff or other Aggrieved Employees minimum wages for all
13 hours worked, entitling Employee and other aggrieved employees to actual and liquidated damages.

14 141. As a direct and proximate result of the herein-described Labor Code violations,
15 pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to
16 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount one
17 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
18 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
19 subsequent violation.

20 Civil Penalties Under Labor Code § 2699

21 142. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
22 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
23 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
24 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
25 action brought by an aggrieved employee on behalf of himself or herself and other current or former
26 employees pursuant to the procedures specified in Labor Code section 2699.3.

27 143. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor
28 Code except those for which a civil penalty is specifically provided, the established civil penalty for

1 a violation of those provisions is as follows: if, at the time of the alleged violation, the person
2 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
3 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
4 employee per pay period for each subsequent violation.

5 144. Plaintiff is informed and believes, and based thereon alleges that Defendants, and
6 each of them, violated the Labor Code sections described herein, including, without limitation, for:
7 the failure to pay the rates of pay and overtime rates of pay applicable to their employment,
8 allowances claimed as part of the minimum wage, the regular payday designated by Defendants, the
9 failure to disclose the name of the employer, including any “doing business as” names used, the
10 name, address and telephone number of the workers’ compensation insurance carrier, information
11 regarding paid sick leave, and other pertinent information required to be disclosed by Employer
12 under Labor Code section 2810.5, failing to provide Plaintiff and other aggrieved employees with
13 the amount of paid sick leave required to be provided pursuant to California and local laws.

14 145. Moreover, Plaintiff and other Aggrieved Employees within the State of California
15 whom she seeks to represent are entitled to an award of reasonable attorneys’ fees and costs in
16 connection with their herein-described claims for civil penalties.

17 **DEMAND FOR JURY TRIAL**

18 146. Plaintiff demands a trial by jury on all causes of action contained herein.

19 **PRAYER**

20 WHEREFORE, on behalf of Plaintiff and Class Members, Plaintiff prays for judgment
21 against Defendants as follows:

- 22 A. An order certifying this case as a Class Action;
23 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff’s
24 counsel as class counsel;
25 C. Damages for all wages earned and owed, including minimum and overtime wages
26 and unpaid wages for vested vacation time, under Labor Code sections 510, 558.1,
27 1194, 1197 and 1199 and 227.3;
28 D. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;

- 1 E. Damages for unpaid premium wages from missed meal and rest periods under,
2 among other Labor Code sections, 512, 558.1 and 226.7;
- 3 F. Penalties for inaccurate wage statements under Labor Code sections 226,
4 subdivision (e) and 558.1;
- 5 G. Waiting time penalties under Labor Code sections 203 and 558.1;
- 6 H. Penalties to timely pay wages under Labor Code section 210;
- 7 I. Damages under Labor Code sections 2802 and 558.1;
- 8 J. Damages under Labor Code section 404;
- 9 K. Preliminary and permanent injunctions prohibiting Defendants from further
10 violating the California Labor Code and requiring the establishment of appropriate
11 and effective means to prevent future violations;
- 12 L. Restitution of wages and benefits due which were acquired by means of any unfair
13 business practice, according to proof;
- 14 M. Prejudgment and post-judgment interest at the maximum rate allowed by law;
- 15 N. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
16 1174.5, 1197.1, and 2699;
- 17 O. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
18 210, 226.3, 558, 1174.5, 1197.1, and 2699;
- 19 P. For attorneys' fees in prosecuting this action;
- 20 Q. For costs of suit incurred herein; and
- 21 R. For such other and further relief as the Court deems just and proper.

22
23 Dated: April 24, 2025

BIBIYAN LAW GROUP, P.C.

24
25 BY: 

26 DAVID D. BIBIYAN

VEDANG J. PATEL

27 BRANDON M. CHANG

28 Attorneys for Plaintiff RICARDO NOVELLA on
behalf of himself and all others similarly situated

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1460 Westwood Boulevard, Los Angeles, CA 90024

On April 25, 2025, I caused a true and correct copy of the foregoing document(s) described as **SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** to be served by electronic transmission to the below referenced electronic e-mail addresses as follows:

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Attorneys for Defendants, RJM VALLEJO MINI MARKET, INC., MJM VALLEJO MINI-MARKET INC., and MARTIN VALLEJO

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct

Executed on April 25, 2025, at Los Angeles, California.

/s/ Araceli Marquez
Araceli Marquez