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As an individual and on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN JOAQUIN**

SOMALIA GOODWIN, as an individual
on behalf of herself and on behalf of all
others similarly situated,

Plaintiff,

v.

SAVE MART SUPERMARKETS, LLC, a
California Limited Liability Company; and
DOES 1-100, inclusive,

Defendants.

Case No.: STK-CV-UOE-2023-2062

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. **Recovery of Unpaid Minimum Wages and Liquidated Damages**
2. **Recovery of Unpaid Overtime Wages**
3. **Failure to Provide Meal Periods or Compensation in Lieu Thereof**
4. **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
5. **Failure to Furnish Accurate Itemized Wage Statements**
6. **Failure to Timely Pay All Wages Due Upon Separation of Employment**
7. **Failure to Reimburse Business Expenses**
8. **Unfair Competition and**
9. **Violation of the Private Attorneys General Act of 2004**

DEMAND FOR JURY TRIAL

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1 Plaintiff, SOMALIA GOODWIN (“PLAINTIFF”), an individual on behalf of PLAINTIFF
2 and all other similarly situated Class Members (as defined below) and Aggrieved Employees
3 (defined below), hereby files this First Amended Complaint against Defendants SAVE MART
4 SUPERMARKETS LLC, a California Limited Liability Company; and DOES 1-100, inclusive,
5 (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed and believes and
6 thereon alleges as follows:

7 **JURISDICTION AND VENUE**

8 1. This court possesses original subject matter jurisdiction over this matter. Venue is
9 proper in the County of San Joaquin pursuant to California Code of Civil Procedure section 395.5
10 because DEFENDANTS transact business within this judicial district, DEFENDANTS employed
11 PLAINTIFF to work in this judicial district and some of the acts, omissions, and conduct alleged by
12 PLAINTIFF herein occurred in this this judicial district. *See also Crestwood Behavioral Health,*
13 *Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue in a PAGA action is proper in any county
14 where the defendants committed Labor Code violations against some of its employees).

15 **THE PARTIES**

16 2. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
17 California and a citizen of the State of California. PLAINTIFF was employed by DEFENDANTS
18 in the State of California as a non-exempt employee from in or around end of 2021 to approximately
19 April 15, 2022.

20 3. PLAINTIFF worked for DEFENDANTS as a deli clerk. As a deli clerk, PLAINTIFF
21 was tasked with customer service duties. PLAINTIFF was paid approximately \$15.25 per hour.

22 4. DEFENDANT SAVE MART SUPERMARKETS LLC is a California limited
23 liability company and California corporation and, at all relevant times, were authorized to do
24 business within the State of California and are doing business in the State of California.

25 5. DEFENDANTS own, operate, or otherwise manage grocery stores throughout
26 Northern California.

27 6. The true names and capacities of the DOE Defendants sued herein as DOES 1
28 through 100, inclusive, are currently unknown₂ to PLAINTIFF, who therefore sues each such

1 Defendant by said fictitious names. Each of the Defendants designated herein as a DOE is legally
2 responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to amend this
3 Complaint to reflect the true names and capacities of the Doe Defendants when such identities
4 become known.

5 7. PLAINTIFF is further informed and believes that, at all relevant times, each
6 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
7 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
8 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
9 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
10 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
11 complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant
12 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
13 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
14 controlled, aided and abetted the conduct of all other Defendants.

15 **CLASS ALLEGATIONS**

16 8. PLAINTIFF brings this action on behalf of PLAINTIFF, and all others similarly
17 situated as a class action pursuant to Code of Civil Procedure section 382. The class PLAINTIFF
18 seeks to represent are defined as follows and referred to as the “Class” or “Class Members”:

19 All current and former non-exempt employees that worked either
20 directly or via a staffing agency for DEFENDANTS at any location
21 in California at any time within the four years prior to the filing of the
22 initial Complaint (“Class Period”).

23 a. Numerosity. While the exact number of Class Members is unknown to
24 PLAINTIFF at this time, the Class is so numerous that the individual joinder of
25 all members is impractical under the circumstances of this case. PLAINTIFF is
26 informed and believes the Class consists of at least 100 individuals.

27 b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment
28 because common questions of law and fact predominate over individual issues.

Common questions include, but are not limited to, the following: (1) whether DEFENDANTS understated hours worked and failed to pay all amounts due to PLAINTIFF and the Class Members for wages earned, including minimum and overtime wages, under California law; (2) whether DEFENDANTS provided PLAINTIFF and the Class Members with all meal periods or premium payments in lieu thereof in compliance with California law; (3) whether DEFENDANTS provided PLAINTIFF and the Class Members with all rest periods or premium payments in lieu thereof, in compliance with California law; (4) whether DEFENDANTS provided PLAINTIFF and Class Members with accurate, itemized wage statements in compliance with California law, displaying, including but not limited to, the total hours worked during the pay period; (5) whether DEFENDANTS timely paid PLAINTIFF and the Class Members all wages due upon separation of employment; (6) whether DEFENDANTS failed to reimburse PLAINTIFF and the Class Members for all business expenses; and (7) whether DEFENDANTS violated California Business and Professions Code sections 17200, *et seq.*

c. Ascertainable Class. The proposed Class is ascertainable as members can be identified and located using information in DEFENDANTS' business, payroll and personnel records.

d. Typicality. PLAINTIFF's claims are typical of the claims of the Class Members. PLAINTIFF suffered a similar injury as members of the Class as a result of DEFENDANTS' common practices regarding, *inter-alia*, failure to calculate and pay all owed minimum and overtime wages, failure to provide proper meal periods and rest periods or premium compensation in lieu thereof, failure to provide accurate wage statements, failure to reimburse business expenses, and failure to timely pay all wages due upon separation of employment.

e. Adequacy. PLAINTIFF will fairly and adequately protect the interests of the Class Members. PLAINTIFF has no interests adverse to the interests of the other

1 Class Members. Counsel who represent PLAINTIFF are competent and
2 experienced in litigating similar class action cases and are California lawyers in
3 good standing. Counsel for PLAINTIFF have the experience and resources to
4 vigorously prosecute this case.

- 5 f. Superiority. A class action is superior to other available means for the fair and
6 efficient adjudication of this controversy since individual joinder of all members
7 of the class is impractical. Class action treatment will permit a large number of
8 similarly situated persons to prosecute their common claims in a single forum
9 simultaneously, efficiently, and without the unnecessary duplication of effort
10 and expense that numerous individual actions would engender. Furthermore, as
11 the damages suffered by each individual member of the Class may be relatively
12 small, the expenses and burden of individual litigation would make it difficult
13 or impossible for individual members of the Class to redress the wrongs done to
14 them, while an important public interest will be served by addressing the matter
15 as a class action. The cost to the court system of adjudication of such
16 individualized litigation would be substantial. Individualized litigation would
17 also present the potential for inconsistent or contradictory judgments. Finally,
18 the alternative of filing a claim with the California Labor Commissioner is not
19 superior, given the lack of discovery in such proceedings, the fact that there are
20 fewer available remedies, and the losing party has the right to a trial de novo in
21 the Superior Court.

22 **FACTUAL AND LEGAL ALLEGATIONS**

23 9. During the relevant period, PLAINTIFF, and each of the Class Members and
24 Aggrieved Employees worked for DEFENDANTS in the State of California. At all times referenced
25 herein, DEFENDANTS exercised control over PLAINTIFF and Class Members and Aggrieved
26 Employees and suffered and/or permitted them to work.

27 10. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee.
28 PLAINTIFF worked for DEFENDANTS as a deli clerk at, including but not limited to,

1 DEFENDANTS' Stockton, California location from around 2021 through April 15, 2022.
2 PLAINTIFF regularly worked at least nine (9) hours per day, at least five (5) days per week.

3 11. At all relevant times, PLAINTIFF was a non-exempt employee that was paid on an
4 hourly basis for time counted by DEFENDANTS as hours worked.

5 12. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
6 PLAINTIFF and Class Members and Aggrieved Employees for all hours worked, resulting in the
7 underpayment of minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF
8 and Class Members and Aggrieved Employees for all hours worked by virtue of, DEFENDANTS'
9 and failure to relieve employees of all duties/employer control during unpaid meal periods or
10 otherwise unlawful practices for missed or improper meal periods, as explained below.

11 13. Based on information and belief, Class Members and Aggrieved Employees were
12 not paid for all hours worked due to DEFENDANTS' policy and/or practice of mandated off-the
13 clock work policies and/or practices. For example, at times, DEFENDANTS required PLAINTIFF
14 to clock out for the end of her shift but to continue completing work duties she had not completed
15 within the course of her scheduled shift, such as, but not limited to, stocking items and/or completing
16 other work tasks, resulting in the underpayment of wages owed to PLAINTIFF. Based on
17 information and belief, DEFENDANTS required other Class Members and Aggrieved Employees
18 to assist customers and/or complete other work tasks after clocking out for a shift. This work time
19 was completed off-the-clock/outside of the scheduled shift and was uncompensated resulting in
20 unpaid minimum and overtime wages owed to Class Members and Aggrieved Employees.

21 14. Based on information and belief, DEFENDANTS did not compensate Class
22 Members and Aggrieved Employees for time spent donning and doffing personal protective
23 equipment and/or uniforms/work clothing (e.g., rubber gloves, hairnets, aprons, hats, and/or face
24 masks) during meal periods, rest periods, before the start of a scheduled shift, and after completing
25 a scheduled shift.

26 15. Based on information and belief, at times, DEFENDANTS' electronic time-keeping
27 system / computer terminal malfunctioned such that Class Members and Aggrieved Employees were
28 required to either reinitiate and/or otherwise troubleshoot the system and/or wait for the system to

1 boot prior to being able to clock in and/or were unable to clock in at all for the start of their shifts
2 and/or clock back in from meal periods, resulting in off-the-clock work and the underpayment of
3 wages owed to Class Members and Aggrieved Employees. Based on information and belief, Class
4 Members and Aggrieved Employees experienced the same issues when clocking out for shifts and/or
5 back in for meal periods. This time spent under DEFENDANTS' control was not recorded and not
6 compensated and resulted in unpaid minimum wages owed to Class Members and Aggrieved
7 Employees.

8 16. Based on information and belief, DEFENDANTS required Class Members and
9 Aggrieved Employees to undergo security checks prior to clocking in for the start of their shifts,
10 before clocking back in from meal periods and/or after clocking out for their shifts, resulting in
11 uncompensated work time, and the underpayment of minimum and overtime wages owed to Class
12 Members and Aggrieved Employees.

13 17. Based on information and belief, PLAINTIFF and other Class Members and
14 Aggrieved Employees were required to complete other off-the-clock work tasks before clocking in
15 for the start of their shifts, after clocking out for the end of their shifts and/or during uncompensated
16 meal periods, resulting in significant off-the-clock work and the underpayment of minimum and
17 overtime wages owed to PLAINTIFF and other Class Members and Aggrieved Employees.

18 18. Based on information and belief, DEFENDANTS failed to pay Class Members and
19 Aggrieved Employees for time they were required to spend completing orientation, policy
20 questionnaires, and/or time spent completing the onboarding process including but not limited to
21 reviewing various documents and policies provided by DEFENDANTS, as well as pre- and post-
22 shift duties that DEFENDANTS required PLAINTIFF and Class Members and Aggrieved
23 Employees to conduct while off-the-clock. Based on information and belief, this work time was
24 completed off-the-clock and was not compensated.

25 19. DEFENDANTS' failure to pay for all time worked by virtue of its failure to provide
26 lawful meal periods, and/or other off-the-clock work practices and policies, resulted in the
27 underpayment of minimum wages owed to PLAINTIFF and Class Members and Aggrieved
28 Employees as well as unpaid overtime wages for those Class Members and Aggrieved Employees

1 who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

2 20. Based on information and belief, DEFENDANTS had actual and/or constructive
3 knowledge that its failure to provide lawful meal periods (as described below) and/or other off-the-
4 clock work resulted in the underpayment of minimum wages owed to PLAINTIFF and other Class
5 Members and Aggrieved Employees, in violation of California's minimum and overtime wage laws.

6 21. Based on information and belief, DEFENDANTS failed and continue to fail to pay
7 Class Members and Aggrieved Employees two times their regular rate of pay for time worked
8 beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh
9 consecutive day of work in a work week, in violation of California's overtime laws.

10 22.

11 23. **Meal Period Violations.** PLAINTIFF and other Class Members and Aggrieved
12 Employees consistently worked shifts of at least five and one-half hours or more, entitling them to
13 at least one meal period. However, PLAINTIFF and other Class Members and Aggrieved
14 Employees would not receive legally compliant thirty (30) minute first and second meal periods.
15 Based on information and belief, Class Members and Aggrieved Employees were consistently
16 unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take
17 late meal periods, interrupted meal periods, and/or work through part or all their meal periods due
18 to understaffing, the nature and constraints of their job duties and/or commentary from supervisors
19 pressuring them to take non-compliant meal periods or skip meal periods completely.

20 24. Based on information and belief, other Class Members and Aggrieved Employees
21 were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had
22 their meal periods interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise
23 on duty due to commentary from supervisors, understaffing, the nature and constraints of their job
24 duties, and/or the need to meet DEFENDANTS' goals and expectations. For example, at times,
25 PLAINTIFF's meal periods were interrupted and/or late at least once per week due to the need to
26 assist customers, prepare food and/or complete other work tasks. Notably, wage statements issued
27 by DEFENDANTS to PLAINTIFF do not reflect the payment of a single meal period premium to
28 PLAINTIFF during her employment. Based on information and belief, other Class Members and

1 Aggrieved Employees were from time to time required to clock out but to continue working during
2 unpaid meal periods and/or were required to take their meal periods late (i.e. after working more
3 than five (5) hours) due to the need to assist customers and/or complete other work tasks but were
4 not paid any and/or all owed meal period premiums at the proper rates.

5 25. Based on information and belief, DEFENDANTS implemented policies and/or
6 practices that failed to relieve Class Members and Aggrieved Employees of all duties and
7 DEFENDANTS' control during unpaid meal periods.

8 26. Based on information and belief, DEFENDANTS required Class Members and
9 Aggrieved Employees to complete off-the-clock work prior to their scheduled shift time which
10 DEFENDANTS failed to take into account when scheduling meal periods for Class Members and
11 Aggrieved Employees. Based on information and belief, meal periods were late, in part due to
12 unaccounted pre-shift off-the-clock work.

13 27. Moreover, per DEFENDANTS' uniform policy and practice, Class Members and
14 Aggrieved Employees who worked shifts of more than ten hours did not receive a second legally
15 compliant thirty (30) minute second meal period.

16 28. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
17 other Class Members and Aggrieved Employees as to the timing and duty-free nature of meal
18 periods. Based on further information and belief, DEFENDANTS did not have a compliant written
19 meal period policy, nor did DEFENDANTS have any sort of compliant policy in practice.

20 29. Based on information and belief, DEFENDANTS had actual and/or constructive
21 knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which
22 were free of DEFENDANTS' control owed to PLAINTIFF and other Class Members and Aggrieved
23 Employees, in violation of California's meal period laws.

24 30. DEFENDANTS failed to pay PLAINTIFF and other Class Members and Aggrieved
25 Employees, an additional hour of wages at their respective regular rates of compensation for each
26 workday a lawful meal period was not provided. DEFENDANTS either failed to pay a meal period
27 premium at all for each workday a lawful meal period was not provided and/or failed to pay the
28 proper meal period premium for failure to incorporate all non-discretionary remuneration, including

1 but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into
2 the regular rate or compensation for purposes of calculating the owed meal period premium.

3 31. **Rest Period Violations.** DEFENDANTS did not properly authorize and provide
4 PLAINTIFF and other Class Members and Aggrieved Employees with legally compliant rest
5 periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable,
6 are provided in the middle of the work period, as required by law.

7 32. PLAINTIFF and other Class Members and Aggrieved Employees were not
8 adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest
9 periods per California law. Based on information and belief, DEFENDANTS had no policy in place
10 nor instruction as to the taking of duty-free rest periods.

11 33. Based on information and belief, DEFENDANTS did not have a have a compliant
12 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
13 practice. For example, PLAINTIFF often had to work through her rest periods due to lack of
14 coverage, the need to assist customers and/or complete other work tasks. During many shifts, the
15 store was simply too busy for PLAINTIFF to be able to take a full ten-minute rest period.

16 34. Moreover, on information and belief, DEFENDANTS failed to authorize and permit
17 rest periods that were a “net” ten minutes in a suitable rest area and instead, to the extent rest periods
18 were provided at all, limited Class Members and Aggrieved Employees to only ten-minute rest
19 periods, requiring them to be back at their workstations within ten minutes of leaving, in violation
20 of California rest period law. DEFENDANTS’ failure to communicate that the rest period is a net
21 ten minutes deprived Class Members and Aggrieved Employees of their rights to a full rest period,
22 as such as policy only relieves Class Members and Aggrieved Employees from their workstation
23 for ten minutes to travel to and from a rest area and be back at the workstation by the end of that ten
24 minutes.

25 35. Based on information and belief, Class Members and Aggrieved Employees’ rest
26 periods were interrupted, cut short, on duty, restricted to work premises and/or late due to
27 understaffing, the nature and constraints of their job duties, and/or due to commentary from
28 supervisors/managers pressuring them to skip rest periods completely or otherwise take non-

1 compliant rest periods.

2 36. Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
3 lasting longer than ten hours.

4 37. Based on information and belief, DEFENDANTS implemented policies and/or
5 practices that failed to relieve PLAINTIFF and other Class Members and Aggrieved Employees of
6 all duties and DEFENDANTS' control during rest periods.

7 38. Based on information and belief, Class Members and Aggrieved Employees were
8 pressured to complete their work duties according to a designated schedule such that rest periods
9 were only taken once tasks were completed, and/or as time permitted.

10 39. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
11 which PLAINTIFF and Class Members and Aggrieved Employees experienced a missed/unlawful
12 rest period in violation of California law. DEFENDANTS either failed to pay a rest period premium
13 at all for each workday a proper rest period was not provided and/or failed to pay the proper rest
14 period premium for failure to incorporate all non-discretionary remuneration, including but not
15 limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the
16 regular rate of compensation for purposes of calculating the owed rest period premium.

17 40. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
18 provide PLAINTIFF and other Class Members and Aggrieved Employees with accurate wage
19 statements that complied with Labor Code section 226. As DEFENDANTS failed to provide
20 PLAINTIFF and Class Members and Aggrieved Employees with meal and rest periods that
21 complied with Labor section 226.7, the wage statements DEFENDANTS issued to PLAINTIFF and
22 Class Members and Aggrieved Employees failed and continue to fail to correctly set forth the gross
23 wages earned, the total hours worked, the net wages earned, and all applicable hourly rates in effect
24 during the pay period and the corresponding number of hours worked at each hourly rate by the
25 employee.

26 41. DEFENDANTS issued wage statements to PLAINTIFF and Class Members and
27 Aggrieved Employees that also failed to indicate the earned gross and net wages earned during the
28 pay period, correct applicable rates of pay for all hours worked, and accurate total hours worked by

1 PLAINTIFF and Class Members and Aggrieved Employees (by virtue of an inaccurate accounting
2 of overtime hours worked, failure to relieve Class Members and Aggrieved Employees of all duties
3 and employer control during unpaid meal periods, and/or other off-the-clock work policies and
4 practices) which results in a violation of Labor Code section 226(a).

5 42. Based on information and belief, wage statements issued by DEFENDANTS failed
6 to list the inclusive dates of the pay period for which the Class Members and Aggrieved Employees
7 is being paid. For example, DEFENDANTS' wage statements provided to PLAINTIFF list a
8 category for "Retro Pay" and/or "Retro-Regular" and/or "Retro-Overtime" without including the
9 inclusive dates of the accurate pay period for that "Retro Pay" and/or "Retro-Regular" and/or "Retro-
10 Overtime" further failing to list the total hours worked for the pay period, including but not limited
11 to, the total hours worked for the pay period the retroactive pay corresponds with. As a result,
12 DEFENDANTS' wage statements provided to Class Members and Aggrieved Employees were not
13 accurate and do not include all of the statutorily required information, such as, but not limited to,
14 the inclusive dates of the period for which the employee is paid.

15 43. As a result, DEFENDANTS issued wage statements to PLAINTIFF and Class
16 Members and Aggrieved Employees that were not accurate and did not include all of the statutorily
17 required information. As such, DEFENDANTS violated Labor Code section 226.

18 44. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
19 information and belief, DEFENDANTS failed to timely pay Class Members and Aggrieved
20 Employees all wages that were due and owing upon termination or resignation. Based on
21 information and belief, DEFENDANTS untimely provide final wages to Class Members and
22 Aggrieved Employees without regard to the timing requirements of Labor Code sections 201-202.
23 Specifically, PLAINTIFF was terminated on April 15, 2022, but did not receive her final check until
24 April 20, 2022 and was required to make a 50-mile round trip drive to a FedEx facility to pick up
25 the check.

26 45. Upon separation of employment, Class Members and Aggrieved Employees' final
27 paychecks were not timely provided and/or were not timely provided with all owed vacation pay
28 and/or paid time off. Moreover, PLAINTIFF's and Class Members and Aggrieved Employees' final

1 paychecks, once provided, did not include all wages owed as they were devoid of, including but not
2 limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed
3 sick leave and/or paid time off wages at the properly accrued rates.

4 46. Moreover, DEFENDANTS failed to timely provide all owed wages immediately
5 upon discharge of employment. For example, based on information and belief, at times, PLAINTIFF
6 and other Class Members and Aggrieved Employees experienced breaks in their employment caused
7 by DEFENDANTS whereby PLAINTIFF and other Class Members and Aggrieved Employees
8 would not be called in for work for longer than a single pay period due to including but not limited
9 to DEFENDANTS' lack of work or lack of assignments. Such instances qualify as a discharge of
10 employment. Yet, DEFENDANTS failed to timely pay all owed wages at the end of such periods
11 of employment, in violation of including but not limited to Labor Code section 201-202.

12 47. These violations subject DEFENDANTS to civil penalties under Labor Code section
13 203, 210, and/or 256.

14 48. **Unreimbursed Business Expenses.** Based on information and belief,
15 DEFENDANTS required PLAINTIFF and Class Members and Aggrieved Employees to incur
16 business expenses as a direct consequence of the performance of their job duties without providing
17 reimbursement, in violation of Labor Code section 2802. Based on information and belief,
18 PLAINTIFF and Class Members and Aggrieved Employees were improperly required to provide
19 and maintain work tools that are supposed to be the responsibility of the employer.

20 49. Based on information and belief, DEFENDANTS shifted the costs of doing business
21 onto Class Members and Aggrieved Employees by requiring them to pay for business expenses,
22 including but not limited to, the cost of purchasing and maintaining uniforms. Based on information
23 and belief, Class Members and Aggrieved Employees were not reimbursed for the cost of using their
24 personal phone for work related purposes and/or the cost of purchasing and/or maintaining work
25 uniforms.

26 50. Based on information and belief, Class Members and Aggrieved Employees were/are
27 at times required to use their personal vehicles for work purposes without receiving any
28 reimbursement from DEFENDANTS and/or full reimbursement from DEFENDANTS, including

1 but not limited to, reimbursement at the applicable legally mandated Internal Revenue Service (IRS)
2 per mile compensation rate. For example, based on information and belief, at times Class Members
3 and Aggrieved Employees were required to drive between DEFENDANTS' various stores, facilities
4 and/or offices and/or use their personal vehicles for other work purposes without receiving any
5 and/or full reimbursement from DEFENDANTS for the vehicle-related expenses incurred in
6 connection therewith.

7 51. Based on information and belief, DEFENDANTS regularly failed to reimburse and
8 indemnify Class Members and Aggrieved Employees for business expenses. Pursuant to California
9 Labor Code section 2802, PLAINTIFF and Class Members and Aggrieved Employees were entitled
10 to be reimbursed for all reasonable expenses associated with carrying out DEFENDANTS' orders
11 and/or carrying out the duties assigned by DEFENDANTS.

12 52. DEFENDANTS' failure to provide Class Members and Aggrieved Employees with
13 full reimbursement for all reasonable expenses associated with carrying out their duties required
14 that Class Members and Aggrieved Employees subsidize and/or carry the burden of business
15 expenses in violation of Labor Code section 2802.

16 53. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
17 engaged in these same herein described unlawful practices and that DEFENDANTS applied these
18 same herein described unlawful practices to all of its employees that it applied to PLAINTIFF.

19 **FIRST CAUSE OF ACTION**

20 **Recovery of Unpaid Minimum Wages and Liquidated Damages**

21 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

22 54. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

23 55. It is fundamental that an employer must pay its employees for all time worked.
24 California Labor Code sections 218 and 218.5 provide a right of action for nonpayment of wages.
25 Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section 224 only
26 permits deductions from wages when the employer is required or empowered to do so by state or
27 federal law or when the deduction is expressly authorized in writing by the employee for specified
28 purposes that do not have the effect of reducing the agreed upon wage. Labor Code section 223

1 prohibits the pay of less than a statutory or contractual wage scale.

2 56. Pursuant to California Labor Code sections 1194 and 1197, and the Industrial Wage
3 Commission (“IWC”) Wage Orders, an employer must pay its employees for all hours worked, up
4 to 40 hours per week or 8 hours per day, at a regular rate no less than the mandated minimum wage.
5 Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll
6 period is unlawful.

7 57. DEFENDANTS violated California’s minimum wage laws by failing to compensate
8 PLAINTIFF and the Class Members for all hours worked by virtue of, among other things,
9 DEFENDANTS’ off-the-clock/unpaid work completed during meal periods, other pre-shift, post-
10 shift and/or otherwise off-the-clock work, which resulted in the failure to account for all hours
11 worked and thus the denial of minimum wages.

12 58. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
13 Class Members for all hours worked.

14 59. Based on information and belief, DEFENDANTS had actual or constructive
15 knowledge that its policies and practices for meal periods, failure to relieve employees of all duties
16 and employer control during unpaid meal periods, and/or other mandated off-the-clock work
17 resulted in the underpayment of minimum wages owed to PLAINTIFF and other Class Members.

18 60. Pursuant to Labor Code sections 1194 and 1194.2, PLAINTIFF and the Class
19 Members are entitled to recover all unpaid minimum wages and liquidated damages thereon, plus
20 attorney's fees and costs, in an amount to be proved at trial.

21 **SECOND CAUSE OF ACTION**

22 **Recovery of Unpaid Overtime Wages**

23 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

24 61. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

25 62. Employees in California must be paid overtime, equal to one and one-half times the
26 employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including
27 12 hours in any workday, and for the first eight (8) hours worked on the seventh consecutive day of
28 work in a workweek, and they must be paid double the regular rate of pay for all hours worked in

1 excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh
2 consecutive day of work in a workweek, unless they are exempt.

3 63. PLAINTIFF and the Class Members worked overtime hours for which they were not
4 compensated by DEFENDANTS by virtue of, among other things, off-the-clock/unpaid work
5 completed during meal periods, other pre-shift, post-shift and/or otherwise off-the-clock work
6 (described above), which resulted in the failure to account for all hours worked and thus the denial
7 of all owed overtime wages.

8 64. Based on information and belief, DEFENDANTS failed to pay twice Class
9 Members' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for
10 time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in
11 violation of California's overtime laws.

12 65. DEFENDANTS' conduct described above is in violation of California Labor Code
13 sections 510 and 1194 and all applicable Wage Orders.

14 66. PLAINTIFF and the Class Members are entitled to recover all unpaid overtime
15 wages, plus attorney's fees and costs, in an amount to be proved.

16 **THIRD CAUSE OF ACTION**

17 **Failure to Provide Meal Periods or Compensation in Lieu Thereof**

18 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

19 67. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

20 68. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders,
21 DEFENDANTS were required to provide PLAINTIFF and the Class Members with one 30-minute
22 meal break free from all duties and employer control for all shifts longer than 5 hours, and a second
23 30-minute meal break free from all duties for all shifts longer than 10 hours. Meal periods can be
24 waived, but only under the following circumstances: (1) if an employee's total work period in a day
25 is over five (5) hours but no more than six (6) hours, the required meal period may be waived by
26 mutual consent of the employer and employee, and (2) if an employee's total work period in a day
27 is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be
28 waived by mutual consent of the employer and employee, but only if the first meal period was not

1 waived. Employers covered by the Wage Orders have an obligation to both (1) relieve their
2 employees for at least one meal period for shifts over five hours (see above), and (2) to record having
3 done so.

4 69. Employers must pay employees an additional hour of wages at the employees'
5 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
6 meal period, first meal period provided after five (5) hours, second meal period provided after 10
7 hours). Lab. Code § 226.7.

8 70. As explained above, PLAINTIFF and other Class Members were consistently unable
9 to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often being
10 forced to take late meal periods, interrupted meal periods, and/or work through part or all of their
11 meal periods due to understaffing, the nature and constraints of their job duties, and/or commentary
12 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
13 completely.

14 71. Moreover, based on information and belief, Class Members did not receive a timely,
15 uninterrupted second meal period when working shifts over ten (10) hours in a workday.

16 72. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had
17 actual and/or constructive knowledge that its unlawful policies and practices resulted in the denial
18 of compliant meal periods in violation of California's meal period laws.

19 73. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal
20 periods in violation of California law and/or failed to pay the proper meal period premium for failure
21 to incorporate all non-discretionary remuneration including but not limited to, bonuses, shift
22 differential pay and/or other non-discretionary compensation into the regular rate or compensation
23 for purposes of calculating the owed meal period premium.

24 74. As a result, under Labor Code section 226.7, PLAINTIFF and the Class Members
25 are entitled to one additional hour's pay at the employee's regular rate of compensation for each day
26 a meal period was missed, late, interrupted, or otherwise unlawful, plus attorneys' fees and costs,
27 all in an amount to be proved at trial.

1 **FOURTH CAUSE OF ACTION**

2 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**

3 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

4 75. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

5 76. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
6 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
7 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
8 “insofar as practicable.” In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the
9 California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts
10 from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to 10
11 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029).
12 The rest period requirement obligates employers to permit and authorize employees to take off-duty
13 rest periods, meaning employers must relieve employees of all duties and relinquish control over
14 how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257.

15 77. If the employer fails to provide any required rest period, the employer must pay the
16 employee one hour of pay at the employee’s regular rate of compensation for each workday the
17 employer did not provide at least one legally required rest period, pursuant to Labor Code section
18 226.7.

19 78. PLAINTIFF and the Class Members did not receive legally compliant, timely 10-
20 minute rest periods for every four (4) hours worked or major fraction thereof. As explained above,
21 any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject to
22 DEFENDANTS’ control due to the nature and constraints of Class Members’ job duties,
23 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Class Members to
24 skip rest periods completely or otherwise take non-compliant rest periods.

25 79. Based on information and belief, DEFENDANTS implemented policies and/or
26 practices that failed to relieve PLAINTIFF and other Class Members of all duties and employer
27 control during rest periods. Based on further information and belief, Class Members were pressured
28 to complete their work duties according to a designated schedule such that rest periods were only

1 taken once tasks were completed, and/or as time permitted.

2 80. As a result, PLAINTIFF and Class Members did not receive legally compliant first,
3 second, or third rest periods as required by California law.

4 81. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
5 period premium to PLAINTIFF and other Class Members for each workday in which there was a
6 missed or otherwise unlawful rest period. Based on further information and belief, when a rest
7 premium was paid, DEFENDANTS failed to include non-discretionary compensation including but
8 not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the
9 regular rate of compensation for purposes of determining the owed rest period premium.

10 82. DEFENDANTS are therefore liable to PLAINTIFF and the Class Members for one
11 hour of additional pay at the regular rate of compensation for each workday that a required rest
12 period was not provided, pursuant to California Labor Code section 226.7 and the applicable Wage
13 Order, plus pre-judgment interest, plus attorneys' fees and costs, all in an amount to be proved at
14 trial.

15 **FIFTH CAUSE OF ACTION**

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

17 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

18 83. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

19 84. Pursuant to California Labor Code § 226, subdivision (a), PLAINTIFF and the Class
20 Members were entitled to receive, semimonthly or at the time of each payment of wages, an itemized
21 wage statement accurately stating the following:

22 (1) gross wages earned, (2) total hours worked by the employee,
23 except for any employee whose compensation is solely based on a
24 salary and who is exempt from payment of overtime under
25 subdivision (a) of Section 515 or any applicable order of the Industrial
26 Welfare Commission, (3) the number of piece-rate units earned and
27 any applicable piece rate if the employee is paid on a piece-rate basis,
28 (4) all deductions, provided that all deductions made on written orders
of the employee may be aggregated and shown as one item, (5) net
wages earned, (6) the inclusive dates of the period for which the
employee is paid, (7) the name of the employee and his or her social
security number, except that by January 1, 2008, only the last four
digits of his or her social security number or an employee
identification number other than a social security number may be

1 shown on the itemized statement, (8) the name and address of the
2 legal entity that is the employer, and (9) all applicable hourly rates in
effect during the pay period and the corresponding number of hours
worked at each hourly rate by the employee.

3 85. As DEFENDANTS failed to provide PLAINTIFF and other Class Members with
4 meal and rest periods that complied with Labor Code section 226.7, the wage statements
5 DEFENDANTS issued to PLAINTIFF and other Class Members failed and continue to fail to
6 correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the
7 total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages
8 earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect
9 during the pay period and the corresponding number of hours worked at each hourly rate by the
10 employee, in violation of Labor Code section 226(a)(9).

11 86. Moreover, due to violations detailed above, including but not limited to,
12 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to provide
13 meal and rest break premiums, and failure to pay all sick leave wages at the proper rates,
14 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish
15 PLAINTIFF and other Class Members with accurate, itemized wage statements that listed the gross
16 and net wages earned and the correct applicable rates of pay for all hours worked. Based on
17 information and belief, DEFENDANTS failed to incorporate all forms of non-discretionary
18 compensation earned during the pay period into the regular rate of pay for purposes of calculating
19 the owed overtime rate, and as such, failed to display the proper overtime rate(s) for each hour of
20 overtime worked by PLAINTIFF and other Class Members.

21 87. As explained above, wage statements issued by DEFENDANTS failed to list the
22 "total hours worked" by PLAINTIFF and Class Members (by virtue of an inaccurate accounting of
23 overtime hours worked and failure to relieve Class Members of all duties and employer control
24 during unpaid meal periods, and/or other off-the-clock work policies and practices all described in
25 greater detail *supra*), which results in a violation of Labor Code section 226(a). Failure to list all
26 hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section
27 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

28 88.

1 89. Based on information and belief, wage statements issued by DEFENDANTS failed
2 to list the inclusive dates of the pay period for which the Class Member is being paid.

3 90. DEFENDANTS' failure to accurately list all hours worked on all wage statements
4 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Class
5 Members over whether they received all wages owed to them.

6 91. As a result, PLAINTIFF and other Class Members have suffered injury as they could
7 not easily determine whether they received all wages owed to them and whether they were paid for
8 all hours worked.

9 92. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
10 Class Members with accurate, itemized wage statements.

11 93. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Class Members
12 have suffered injury. The absence of accurate information on their wage statements has prevented
13 earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
14 mathematical computations to determine the amount of wages owed, and will cause difficulty and
15 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
16 submission of inaccurate information about wages and amounts deducted from wages to state and
17 federal government agencies. As a result, PLAINTIFF and Class Members are required to
18 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
19 and pay records than if DEFENDANT had complied with its legal obligations.

20 94. Pursuant to California Labor Code section 226(e), PLAINTIFF and Class Members
21 are entitled to recover fifty dollars per employee for the initial pay period in which a Section 226
22 violation occurred and one hundred dollars per employee per violation for each subsequent pay
23 period, not to exceed an aggregate penalty of four thousand dollars per employee.

24 95. Pursuant to California Labor Code § 226(h), PLAINTIFF and Class Members are
25 entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with
26 California Labor Code § 226(a). Injunctive relief is warranted because DEFENDANTS continue to
27 provide currently employed Class Members with inaccurate wage statements in violation of
28 California Labor Code § 226(a). Currently employed Class Members have no adequate legal remedy

1 for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing unlawful
2 conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS' compliance
3 with California Labor Code § 226(a).

4 96. Pursuant to California Labor Code §§ 226(e) and 226(h), PLAINTIFF and Class
5 Members are entitled to recover the full amount of penalties due under Section 226(e), reasonable
6 attorneys' fees, and costs of suit.

7 **SIXTH CAUSE OF ACTION**

8 **Failure to Timely Pay All Wages Due Upon Separation of Employment**

9 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

10 97. PLAINTIFF incorporates all preceding paragraphs as if fully set forth herein.

11 98. California Labor Code section 201(a) provides, in relevant part, that "[i]f an
12 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
13 payable immediately."

14 99. California Labor Code section 202(a) provides, in relevant part, that "[i]f an
15 employee not having a written contract for a definite period quits his or her employment, his or her
16 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
17 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
18 to his or her wages at the time of quitting."

19 100. Based on information and belief, DEFENDANTS failed and continue to fail to timely
20 pay final wages to PLAINTIFF and Class Members upon separation of employment in violation of
21 Labor Code section 201-202. Moreover, final paychecks once provided to PLAINTIFF and Class
22 Members do not include all wages owed as they are devoid of, including but not limited to, all owed
23 minimum wages, overtime wages, premium wages, vacation pay, and all owed sick leave and/or
24 paid time off wages at the properly accrued rates.

25 101. Under Labor Code section 203, PLAINTIFF and the Class Members who are no
26 longer employed by DEFENDANTS are entitled to recover waiting time penalties of up to 30 days'
27 pay, plus attorney's fees and costs, in an amount to be proved at trial.

1 **SEVENTH CAUSE OF ACTION**

2 **Failure to Reimburse Business Expenses**

3 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

4 102. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

5 103. California law requires employers to indemnify their employees for all necessary
6 expenditures incurred by the employee in direct consequence of the discharge of their duties or of
7 their obedience to the directions of the employer. *See* Cal. Lab. Code s. 2802 and all applicable
8 Wage Orders section 9(b). Furthermore, “for purposes of [section 2802], the term ‘necessary
9 expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees
10 incurred by the employee enforcing the rights granted by this section.”

11 104. Among other things, under California law, when employees must use their personal
12 cellphones for work-related purposes, the employer must reimburse them for a reasonable
13 percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228
14 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was
15 required to use their personal cellphone for work-related purposes and not reimbursed for the use.
16 *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile
17 expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear
18 and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

19 105. As described above, PLAINTIFF and the Class Members were improperly required
20 to pay for business expenses that are legally the responsibility of the employer.

21 106. DEFENDANTS’ failure to provide PLAINTIFF and the Class Members with full
22 reimbursement for all reasonable expenses associated with carrying out their duties required that
23 PLAINTIFF and the Class Members subsidize and/or carry the burden of business expenses in
24 violation of Labor Code section 2802.

25 107. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and the Class
26 Members have suffered injury in that they were not completely reimbursed as mandated by
27 California law.

28 108. Pursuant to California Labor Code section 2802, PLAINTIFF and the Class Members

1 are entitled to recover the full amount of reimbursable expenses due, in addition to reasonable
2 attorneys' fees, and costs of suit.

3 **EIGHTH CAUSE OF ACTION**

4 **Unfair Competition**

5 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

6 109. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

7 110. DEFENDANTS' unlawful conduct alleged herein constitutes unfair competition
8 within the meaning of California Business and Professions Code section 17200 *et seq.* This unfair
9 conduct includes all unlawful conduct alleged herein, including but not limited to: DEFENDANTS'
10 failure to pay minimum and overtime wages by virtue of its illegal policies and practices;
11 DEFENDANTS' failure to authorize or permit, or provide, all required meal and rest periods or pay
12 proper premiums in lieu thereof; DEFENDANTS' failure to furnish complete and accurate itemized
13 wage statements; DEFENDANTS' failure to reimburse business expenses; DEFENDANTS' failure
14 to timely pay all wages owed upon separation of employment; and DEFENDANTS' failure to
15 provide paid sick leave (or paid time off in lieu thereof) at the properly accrued rates (due to,
16 including but not limited to, DEFENDANTS' failure to incorporate all non-discretionary
17 compensation into the sick pay calculation and failure to base the accrued sick leave on the correct
18 number of hours worked as a result of DEFENDANTS' off-the-clock work policies and practices).

19 111. Due to DEFENDANTS' unfair and unlawful business practices in violation of the
20 California Labor Code, DEFENDANTS have gained a competitive advantage over other
21 comparable companies doing business in the State of California that comply with their obligations
22 to authorize or permit rest periods and meal periods or pay proper meal and rest period premiums
23 in lieu thereof, to properly accrue and pay sick time benefits, to provide complete and accurate
24 itemized wage statements, to reimburse employees for all business expenses, to pay all owed
25 minimum and overtime wages and to pay all wages due upon separation of employment of their
26 employees.

27 112. As a result of DEFENDANTS' unfair competition as alleged herein, PLAINTIFF
28 and Class Members have suffered injury in fact and lost money or property, as described in more

1 detail above. Pursuant to California Business and Professions Code section 17200, *et seq.*,
2 PLAINTIFF and Class Members are entitled to restitution of all wages and other monies rightfully
3 belonging to them that DEFENDANTS failed to pay and wrongfully retained by means of their
4 unlawful and unfair business practices.

5 113. PLAINTIFF also seeks an injunction against DEFENDANTS on behalf of the Class
6 Members, enjoining DEFENDANTS and any and all persons acting in concert with them from
7 engaging in each of the unlawful practices and policies set forth herein.

8 114. PLAINTIFF also seeks an award of attorney's fees pursuant to Code Civ. Proc
9 Section 1021.5 and as permitted by law, and an award for costs reasonably incurred, as permitted
10 by law.

11 **NINTH CAUSE OF ACTION**

12 **Violation of the Private Attorneys General Act of 2004**

13 **(By PLAINTIFF and the Aggrieved Employees Against All DEFENDANTS)**

14 115. PLAINTIFF incorporates all preceding paragraphs as if full alleged herein.

15 116. PLAINTIFF brings this action under the Private Attorneys General Act of 2004,
16 Labor Code sections 2698, *et seq.*, ("PAGA"), as a representative action on behalf of PLAINTIFF,
17 the State of California and Aggrieved Employees, regarding violations of the California Labor Code
18 as set forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

19 All current and former non-exempt employees that worked either
20 directly or via a staffing agency for any of the DEFENDANTS at any
location in California at any time from one year plus 65 days from the
filing of the initial Complaint through the present ("PAGA Period").

21 117. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
22 section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory
23 limitations period and suffered one or more of the Labor Code violations set forth herein.
24 Accordingly, PLAINTIFF seeks to recover on behalf of the State of California and all Aggrieved
25 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
26 PLAINTIFF has standing to bring a PAGA cause of action on behalf of PLAINTIFF, the State of
27 California, and all Aggrieved Employees, as PLAINTIFF was jointly employed by DEFENDANTS
28 and is thereby affected by one or more of the alleged violations. See *Huff v. Securitas Security*

1 *Services USA, Inc.* (2018) 23 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties
2 for all known violations committed by the employer - regardless of whether Plaintiff experienced
3 all violations personally. *Id.* at 760-761.

4 **COMPLIANCE WITH PAGA’S NOTIFICATION REQUIREMENTS**

5 118. PLAINTIFF, on March 3, 2023, through counsel, gave written notice by online filing
6 with the California Labor and Workforce Development Agency (“LWDA”) informing it that
7 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
8 in this Complaint (“PAGA Notice”).

9 119. The PAGA Notice outlined PLAINTIFF’s claims for violations of the California
10 Labor Code and the applicable wage orders on behalf of the State of California and all Aggrieved
11 Employees.

12 120. PLAINTIFF seeks to recover the PAGA civil penalties through a representative
13 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46
14 Cal.4th 969. Therefore, class certification of the PAGA claims is not required.

15 121. From one year prior to PLAINTIFF’s filing of the required PAGA notice with the
16 LWDA, and continuing through the present, as alleged herein, DEFENDANTS violated California
17 Labor Code sections, 201-203, 204, 216, 221-223, 226, 226.7, 245-248.5, 432, 432.5, 432.7, 510,
18 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all
19 applicable Wage Orders.

20 122. As set forth above, DEFENDANTS have committed numerous violations of the
21 California Labor Code due to including but not limited to their failure to pay all owed minimum
22 wages and all owed overtime wages, failure to provide lawful meal and rest periods or compensation
23 in lieu thereof, failure to provide accurate wage statements, failure to reimburse business expenses,
24 and failure to pay all wages owed upon separation of employment as alleged above. PAGA penalties
25 are in addition to any other relief available under the Labor Code.

26 123. Additionally, DEFENDANTS have violated the following Labor Code sections and
27 provisions of the applicable Wage Order as to the PLAINTIFF and other Aggrieved Employees.
28

1 **Failure to Keep Accurate Records**

2 124. California Labor Code § 1174 requires employers to keep “accurate and complete”
3 payroll records showing, among other things, the hours worked daily by all non-exempt employees.
4 All applicable Wage Orders § 7 similarly requires employers to keep time records reflecting the
5 times during which all owed meal periods were provided each day.

6 125. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate
7 and complete records as required by law, including but not limited to the following records: total
8 daily hours worked, applicable rates of pay, time records showing when PLAINTIFF and other
9 Aggrieved Employees began and ended each work period, time records of meal periods, and
10 accurate itemized wage statements.

11 126. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
12 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
13 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
14 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
15 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
16 period during which the referenced statutes and Wage Order provisions were violated.¹

17 **Failure to Produce Records in Violation of Labor Code §§ 226(b)-(c), 1198.5, and 432**

18 127. Time and Pay Records: Labor Code section 226 and all applicable IWC Wage
19 Orders, section 7 require that employers keep the following information on file for each employee
20 for a minimum of three years: The employee’s dates of employment; the employee’s hourly rates
21 and the corresponding number of hours worked by the employee at each hourly rate, when the
22 employee begins and ends each work period (including meal periods) and split intervals; total hours
23 worked by the employee; all deductions; gross wages earned; and net wages earned.

24 128. Section (b) of Labor Code section 226 further requires employers to “afford current

25 ¹ Labor Code § 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Labor
26 Code § 558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the
27 employee was underpaid”); All applicable wage orders, § 20 (establishing that “[i]n addition to any other civil
28 penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes
to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each
pay period during which the employee was underpaid”) (emphasis added).

1 and former employees the right to inspect or receive a copy of records pertaining to their
2 employment upon reasonable request to the employer.” Section (c) of Labor Code section 226
3 provides that, “an employer who receives a written or oral request to inspect or receive a copy of
4 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with
5 the request as soon as practicable, but no later than 21 calendar days from the date of the request. A
6 violation of this subdivision is an infraction.” An employer’s failure to comply within this timeframe
7 entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from
8 the employer. Lab. Code section 226(f).

9 129. Personnel Records. In addition to their right to time and pay records, employees, and
10 their representatives, have the right to inspect and receive a copy of their personnel files pursuant to
11 Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code
12 section 432 further specifies that employers must furnish copies of all employment records bearing
13 the employee’s signature. Labor Code section 1198.5 also requires that the file be made available
14 for inspection or receipt within a “reasonable” amount of time, but “not later than 30 calendar days
15 from the date the employer receives a written request.” An employer’s failure to comply within this
16 timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar
17 (\$750) penalty from the employer. Lab. Code section 1198.5(k).

18 130. Based on information and belief, DEFENDANTS fail to timely produce or make
19 available Aggrieved Employees’ personnel records and/or payroll records when requested pursuant
20 to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. These violations subject
21 DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699.

22 **Statutory Wage Violations**

23 131. California Labor Code section 223 makes it unlawful for an employer to secretly pay
24 wages lower than required by statute while purporting to pay legal wages. As described above,
25 DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all
26 earned minimum and overtime compensation for all hours worked which resulted in the payment of
27 less than statutorily required wages. DEFENDANTS acted with the intent to deprive them of
28 statutory wages, including, but not limited to, minimum and overtime wages, to which they were

1 entitled to under California law. Thus, DEFENDANTS paid PLAINTIFF and other Aggrieved
2 Employees lower wages than those they were entitled to while purporting that PLAINTIFF and
3 other Aggrieved Employees were properly paid. As a result, PLAINTIFF and other Aggrieved
4 Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to
5 Labor Code § 2699(f)-(g).

6 **Refusal to Make Payment**

7 132. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
8 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
9 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
10 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each
11 meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries,*
12 *Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil
13 penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for
14 each Aggrieved Employee, for each pay period during which the statute provisions were violated.²

15 **Standard Conditions of Labor Violations**

16 133. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
17 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
18 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
19 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
20 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
21 minimum/overtime wages and other violations described herein result in separate violations of
22 sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections
23 1197.1 and 2699.

24 **Unlawful Deductions**

25 134. Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from
26

27 ² Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

1 an employee any part of wages theretofore paid by said employer to said employee.” Based on
2 information and belief DEFENDANTS made unlawful deductions from Aggrieved Employees
3 paychecks during the relevant period, including but not limited to deducting costs of uniforms and/or
4 other business costs and/or deducting wages for purported overpayments from previous pay periods
5 and/or unlawfully deducting wages for negligently damaged property and/or deducting costs
6 advanced by DEFENDANTS from Aggrieved Employees’ final paychecks. Such a practice is in
7 violation of including but not limited to, Labor Code Sections 221-222 which subjects
8 DEFENDANTS to civil penalties under Labor Code Section 2699.

9 135. Each violation results in a separate civil penalty, for each Aggrieved Employee, for
10 each pay period during which the statute provisions were violated. *See* Lab. Code §225.5
11 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty
12 provided in this article, every person who unlawfully withholds wages due any employee in
13 violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure
14 to pay each employee”).

15 **Sick Leave Violations**

16 136. DEFENDANTS violated California’s paid sick leave laws including, Labor Code
17 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to
18 PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick leave due to
19 DEFENDANTS’ failure to account for actual hours worked (as explained above), and/or failure to
20 incorporate multiple rates of pay and/or all forms of non-discretionary remuneration including but
21 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary
22 compensation into the sick leave pay rate calculation.

23 137. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
24 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
25 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
26 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
27 Aggrieved Employees’ intelligent exercise of their paid sick leave.

28 138. But for this failure, PLAINTIFF and other Aggrieved Employees would have used

1 their paid sick leave at least prior to their respective separations, for as on several occasions
2 thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate
3 compensation.

4 139. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
5 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
6 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
7 were entitled to the maximum number of hours accruable.

8 140. Upon information and belief, DEFENDANTS failed and continue to fail to comply
9 with Labor Code section 246, by failing to provide PLAINTIFF and all Aggrieved Employees with
10 a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick
11 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
12 wages.

13 141. These practices violated California's sick leave laws, Labor Code section 245, *et seq.*

14 142. On information and belief, PLAINTIFF alleges that all of these practices were
15 experienced and continue to be experienced by other Aggrieved Employees.

16 143. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, the
17 aforementioned code provisions including but not limited to Labor Code section 233 and 234, and
18 seeks injunctive relief, attorney's fees, declaratory relief, and penalties as permitted by law.

19 **Failure to Pay Vested Vacation/Paid Time Off**

20 144. California Labor Code section 227.3 provides that when an employer policy provides
21 for paid vacations and/or paid time off, and an employee is terminated without having taken off his,
22 her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the
23 employee's final rate in accordance with such contract of employment or employer policy respecting
24 eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time
25 off upon termination.

26 145. Based on information and belief, DEFENDANTS had and continue to have a
27 uniform policy and practice of failing to allow Aggrieved Employees to use their earned
28 vacation/paid time off during their employment and failing to pay all vested, accrued paid time off

1 to Aggrieved Employees upon separation of employment, in violation of California law, including
2 but not limited to, Labor Code section 227.3.

3 146. Under the provisions of PAGA and the above mentioned Labor Code sections,
4 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
5 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198,
6 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as all
7 interpretations of these laws by California Courts and administrative bodies, as well as any other
8 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

- 9 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
10 relevant California Labor Code provisions listed herein only if permitted by the
11 PAGA statute, pursuant to Labor Code section 2699(a); and
12 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
13 violations without a civil penalty recoverable under the PAGA, all in the default
14 amounts provided by Labor Code section 2699(f).
15 c. The proper measure of penalties under PAGA is the number of violations,
16 whether those violations were committed as against PLAINTIFF or any
17 Aggrieved Employee, whether a party to this action or not.

18 147. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
19 PLAINTIFF is entitled to recover civil penalties, costs, and attorney's fees.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, PLAINTIFF prays for relief and judgment, on behalf of PLAINTIFF and
22 Class Members and Aggrieved Employees as follows:

- 23 1. For an order that the action be certified as a class action;
24 2. For an order that PLAINTIFF be appointed as class representative;
25 3. For an order that counsel for PLAINTIFF be appointed as class counsel;
26 4. For compensatory damages according to proof;
27 5. For liquidated damages according to proof;
28 6. For penalties according to proof;

- 1 7. For an order requiring DEFENDANTS to make restitution of all amounts wrongfully
2 withheld from PLAINTIFF and the Class Members;
3 8. For an order finding DEFENDANTS have engaged in unfair competition in violation of
4 section 17200, *et seq.*, of the California Business and Professions Code;
5 9. For an order enjoining DEFENDANTS from further acts of unfair competition;
6 10. For pre-judgment interest as permitted by law;
7 11. For attorney's fees and costs reasonably incurred;
8 12. For civil penalties under Labor Code Section 2699 (75% payable to the LWDA and 25%
9 payable to Aggrieved Employees); and
10 13. For such other and further relief that the Court deems just and proper.
11

12 Dated: August 3, 2023

CROSNER LEGAL, PC

13
14 By: Samantha Smith
15 Zachary M. Crosner
16 Samantha Smith
17 Attorneys for Plaintiff,
SOMALIA GOODWIN

18
19 **DEMAND FOR JURY TRIAL**

20 PLAINTIFF demands a trial by jury on all claims so triable.
21

22 Dated: August 3, 2023

CROSNER LEGAL, PC

23
24 By: Samantha Smith
25 Zachary M. Crosner
26 Samantha Smith
27 Attorneys for Plaintiff,
SOMALIA GOODWIN
28

PROOF OF SERVICE
SOMALIA GOODWIN VS. SAVE MART SUPERMARKETS, LLC ET AL
San Joaquin Superior Court Case No STK-CV-UOE-2023-2062

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 9440 Santa Monica Blvd., Ste. 301, Beverly Hills, CA 90210.

On August 3, 2023, I served true copies of the following document(s) described as

FIRST AMENDED CLASS ACTION COMPLAINT

on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

☒ BY ELECTRONIC TRANSMISSION. I transmitted copies of the above-referenced document(s) on the interested parties in this action by electronic transmission. Said electronic transmission was reported as complete and without error.

☐ BY FACSIMILE TRANSMISSION. I transmitted copies of the above-referenced document(s) on the interested parties in this action by facsimile transmission from (310) 510-6429. A transmission report was properly issued by the transmitting facsimile machine and the transmission was reported as complete and without error.

☐ BY UNITED STATES POSTAL SERVICE. I enclosed the documents in electronic pdf format and submitted them electronically into the mail provider, Letterstream, Inc.'s, online mail portal (letterstream.com) to be mailed addressed to the entities and/or persons listed in the Service List as set forth herein. I caused an envelope containing the documents to be placed for collection and mailing and to be mailed by First Class Mail, following our law firm and Letterstream, Inc.'s ordinary business practices. I am readily familiar with our business practices and the business practices of Letterstream, Inc. for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. Pursuant to that practice, the above-referenced document(s) were sealed in an envelope, with postage paid, and deposited with a post office, mail box, sub-post office, substation, mail chute, or other facility or postal pick up/drop off regularly maintained by the United States Postal Service or an affiliate thereof, at or near Phoenix, Arizona.

☐ BY OVERNIGHT MAIL SERVICE. I enclosed the documents in electronic pdf format and submitted them electronically into the mail provider, Letterstream, Inc.'s, online mail portal (letterstream.com) addressed to the entities and/or persons listed in the Service List as set forth herein. I caused an envelope containing the documents to be placed for collection and mailing and to be mailed by Overnight Mail via Federal Express, following our law firm and Letterstream, Inc.'s ordinary business practices. I am readily familiar with our business practices and the business practices of Letterstream, Inc. for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with Federal Express, an express carrier, in Phoenix, Arizona, or delivered with any and all delivery fees to an authorized courier or driver authorized by the express service carrier to receive documents.

I declare under penalty of perjury under the laws of the United States of America that the

PLAINTIFF'S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
FOR JURY TRIAL

1 foregoing is true and correct and that I am employed in the office of a member of the bar of this
2 Court at whose direction the service was made.

3 Executed on August 3, 2023, at Los Angeles, California.

4 
5 _____
6 Jessica Ball

SERVICE LIST

SOMALIA GOODWIN VS. SAVE MART SUPERMARKETS, LLC ET AL
San Joaquin Superior Court Case No STK-CV-UOE-2023-2062

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