



ARIAS SANGUINETTI
WANG & TORRIJOS, LLP
— TRIAL LAWYERS —

Craig S. Momita, Esq.
Sr. Counsel
craig@aswtlawyers.com

October 9, 2023

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
Via Electronic Submission: <https://dir.tfaforms.net/308>

Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, CA 95814
Via Certified Mailing No.: 9407136105440474212882

Sprouts Farmers Market, LLC
5455 E. High Street, Suite 111
Phoenix, AZ 85054
Via Certified Mailing No.: 9407136105440474223215

SF Markets, LLC
c/o Agent for Service of Process
CSC - Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833
Via Certified Mailing No.: 9407136105440474234129

*Re: Isaac Diaz v. Sprouts Farmers Market, Inc., et. al.
California Labor Code § 2699 Penalties
Contra Costa County Superior Court Case No. C23-00779*

Dear Sir or Madam:

Please take notice that this office represents Isaac Diaz in the pending action entitled *Isaac Diaz v. Sprouts Farmers Market, Inc., et. al.*, Contra Costa County Superior Court Case No. C23-00779, filed on April 4, 2023.

Pursuant to the procedures specified in the CALIFORNIA LABOR CODE PRIVATE ATTORNEY GENERAL ACT OF 2004 §§ 2698-2699.5, Isaac Diaz (hereinafter referred to as “Plaintiff” or “EMPLOYEE”) on behalf of himself and all other current and former and all other individuals employed by SPROUTS FARMERS MARKETS, LLC and/or SF MARKETS, LLC (hereinafter collectively “EMPLOYER”) as Store Manager, Assistant Store Manager, Service Manager, Perishable Manager, Non-Perishable Manager or Key Holder in California (hereinafter collectively referred to as “EMPLOYEES,” inclusive of Plaintiff), hereby claims that

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EMPLOYER committed the Labor Code violations set forth herein against EMPLOYEES, all of whom are aggrieved EMPLOYEES. This notice is also based on the draft Second Amended Complaint included with this letter and incorporated by reference.

Plaintiff, as an aggrieved EMPLOYEE, intends to avail himself of the protections granted by the CALIFORNIA LABOR CODE PRIVATE ATTORNEY GENERAL ACT OF 2004 (“the Act”) (CAL. LABOR CODE § 2698 *et seq.*).

Please take further notice that, pursuant to the procedures specified in CALIFORNIA LABOR CODE § 2699.3, Plaintiff, on behalf of himself and other current and former employees in the position of Store Manager, Assistant Store Manager, Service Manager, Perishable Manager, Non-Perishable Manager or Key Holder, claims that EMPLOYER, a defendant in the above-entitled action, violated the following sections of the CALIFORNIA LABOR CODE: §§ 200, 201, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 558 (a), 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198, and 1199.

Sec. 201: EMPLOYER failed to promptly pay EMPLOYEE’S and other current and former EMPLOYEES’ earned and unpaid wages due and payable immediately upon discharge.

Sec. 226: EMPLOYER failed to furnish, at the time of each payment of wages, to each of its EMPLOYEES, an accurate itemized wage statement reflecting the total hours EMPLOYEES worked.

Sec. 226.3: EMPLOYER violated subdivision (a) of section 226 by failing to furnish, at the time of each payment of wages, to each of its EMPLOYEES, an accurate itemized wage statement for all EMPLOYEES’ hours worked. Although EMPLOYER provided an itemized wage statement, it did not state the total hours that EMPLOYEE and other current and former EMPLOYEES worked or EMPLOYEE’S and other current and former EMPLOYEES’ hourly rate. Thus, EMPLOYER is subject to a civil penalty as set forth under this section.

Sec. 226.7: EMPLOYER required EMPLOYEE and other current and former EMPLOYEES to work during meal and/or rest periods mandated by an applicable order of the Industrial Welfare Commission.

Sec. 510: EMPLOYER failed to pay EMPLOYEE and other current and former EMPLOYEES at the rate of no less than one and one-half times the regular rate of pay for any hours worked in excess of eight hours in one workday; any work in excess of 40 hours in anyone workweek; the first eight hours worked on the seventh day of work in anyone workweek; and at the rate of no less than twice the regular rate of pay of any employee for any work in excess of 12 hours in one day and any work in excess of eight hours on any seventh day of a workweek.

Sec. 512: EMPLOYER employed EMPLOYEE and other current and former EMPLOYEES for a period of more than five (5) hours without a meal period of not less than thirty (30) minutes despite a work period of more than six (6) hours a day. Said meal period was not waived by mutual consent of EMPLOYER and EMPLOYEE and other current and former EMPLOYEES. Similarly, EMPLOYER failed to provide EMPLOYEE and other current and former EMPLOYEES with the required ten (10) minute rest period per four (4) hours or major fraction thereof. Said rest period was not waived by mutual consent of EMPLOYER and EMPLOYEE or other current and former EMPLOYEES.

Sec. 558: EMPLOYER or other person acting on behalf of EMPLOYER violated, or caused to be violated, LABOR CODE §§ 500-558 or any provision regulating hours and days of work in any order of the Industrial Welfare Commission. EMPLOYER violated LABOR CODE sections 510 by failing to pay EMPLOYEE and other current and former EMPLOYEES at the rate of no less than one and one-half times the regular rate of pay for any hours worked in excess of eight hours in one workday and any work in excess of 40 hours in anyone workweek. EMPLOYER further violated LABOR CODE § 512 by employing EMPLOYEE and other current and former EMPLOYEES for a period of more than five hours without a meal period of not less than 30 minutes. EMPLOYER is thus subject to a civil penalty set forth under this section.

Sec. 1174: EMPLOYER failed to keep, at a central location in the state or at the plants or establishments at which EMPLOYEE and other current and former EMPLOYEES are/were employed, payroll records showing the hours worked daily by and the wages paid to EMPLOYEE and other current and former EMPLOYEES employed at the respective plants or establishments.

Sec. 1174.5: EMPLOYER violated Labor Code § 1174 by failing to maintain required records and is, therefore, subject to a civil penalty.

Sec. 1194: Within four (4) years last past, EMPLOYER failed to compensate EMPLOYEE and other current and former EMPLOYEES at the minimum wage for all hours worked as EMPLOYER failed to compensate EMPLOYEE and other current and former EMPLOYEES for all hours worked in the first instance. Rather than making the required payments under the applicable wage orders, EMPLOYER only paid EMPLOYEE and other current and former employees a flat salary rate that did not take into consideration the number of hours worked or the number of overtime hours worked. Because EMPLOYEE and other current and former EMPLOYEES were not paid for all hours worked, EMPLOYEE and other current and former EMPLOYEES thereby worked certain hours without being paid the legal minimum wage.

Sec. 1197: EMPLOYER failed to pay EMPLOYEE and other current and former EMPLOYEES the minimum wage for employees fixed by the Industrial Welfare Commission.

EMPLOYER failed to compensate EMPLOYEE and other current and former EMPLOYEES the minimum wage for all hours worked by paying EMPLOYEE and other current and former employees a flat salary rate that did not take into consideration the number of hours worked or the number of overtime hours worked. The payment of a less wage than the minimum so fixed is unlawful.

Sec. 1197.1: EMPLOYER or other person acting either individually or as an officer, agent, or employee of another person, paid or cause to be paid EMPLOYEE and other current and former EMPLOYEES a wage less than the minimum fixed by an order of the commission and is thus subject to a civil penalty as set forth under this section.

Sec. 1198: EMPLOYER employed EMPLOYEE and other current and former EMPLOYEES for longer hours than those fixed by the order or under conditions of labor prohibited by order of the Industrial Welfare Commission. EMPLOYEE and other current and former EMPLOYEES worked more than eight hours in a day and/or more than 40 hours in a workweek. EMPLOYER failed to pay the appropriate overtime compensation.

Sec. 1199: EMPLOYER employed EMPLOYEE and other current and former EMPLOYEES for longer hours than those fixed by order of the Industrial Welfare Commission or under conditions of labor prohibited by the order of the Industrial Welfare Commission. EMPLOYEE and other current and former EMPLOYEES worked more than eight hours a day and/or more than 40 hours in a workweek. EMPLOYER failed to pay the appropriate overtime compensation.

Sec. 2802: EMPLOYER or other person acting on behalf of EMPLOYER violated, or caused to be violated, LABOR CODE § 2802 by requiring EMPLOYEES to personally incur and pay for cell phone (or similar device) usage and other business expenses incurred as a condition of and in the performance of their job duties in violation of California Labor Code section 2802, for which EMPLOYEE seeks on behalf of the State of California, himself, and all other aggrieved EMPLOYEES, the recovery of civil penalties under Labor Code section 2699(f), plus an award of attorney fees as authorized by Labor Code section 2699(g), and all other applicable penalties.

Sprouts Farmers Market is a supermarket chain with approximately 134 grocery store locations in California. EMPLOYEE and certain other current and former employees were employed as Store Managers or Assistant Store Managers in these grocery stores. Throughout the employment of EMPLOYEE and other current and former employees employed as Store Manager or Assistant Store Manager, EMPLOYER treated them as exempt under California law but required them to perform an extensive array of non-managerial duties. Such duties (hereinafter referred to as the “Non-Managerial Duties”) were not intellectual, managerial, or creative and did not require the exercise of discretion or independent judgment – they included running the cash

registers, bagging groceries, unloading trucks, stocking inventory onto shelves, transferring merchandise between stores, performing price changes, cleaning the stores, and performing countless other duties that were not intellectual, managerial, or creative and that did not require the exercise of discretion or independent judgment in matters of significance to operate the stores.

In addition to, and as a part of, requiring EMPLOYEE and other current and former “exempt” employees to perform the Non-Managerial Duties, EMPLOYER subjected them to an extremely demanding work schedule and workload, expecting them to work a minimum of 10 hours a day – often longer – six to seven days a week. EMPLOYEE and other current and former “exempt” employees spent more than 50 percent of their time performing duties that were not intellectual, managerial, or creative, that did not require the exercise of discretion or independent judgment, and that did not constitute “exempt work” under any exemption recognized under California law.

As a result of being misclassified as exempt, and subjected to an extremely demanding work schedule and workload, EMPLOYEE and other current and former “exempt” employees were also unable to avail themselves of their statutorily mandated meal breaks and were prevented from doing so in that, at no time during the workday, were they relieved of all duty and permitted to leave the premises to properly take a meal break on their own time.

As a result of being misclassified as “exempt” and subjected to an extremely demanding work schedule and workload, EMPLOYEE and other current and former employees were also unable to avail themselves of their statutorily mandated rest breaks and were prevented from doing so in that, at no time during the workday, were they relieved of all duty and authorized and permitted to properly take a rest break.

EMPLOYEE alleges that he and all other persons employed by EMPLOYER as Store Manager, Assistant Store Manager, Service Manager, Perishable Manager, Non-Perishable Manager or Key Holder in California at any time on or after June 2, 2022 are “aggrieved employees,” as defined by the Act. Accordingly, EMPLOYEE seeks to amend the action entitled *Isaac Diaz v. Sprouts Farmers Market, Inc., et. al., Contra Costa County Superior Court Case No. C23-00779, filed on April 4, 2023*, to by filing a Second Amended Complaint and adding a cause of action pursuant to the Act and to seek all applicable penalties, attorney’s fees, and costs on behalf of himself and the other aggrieved employees.

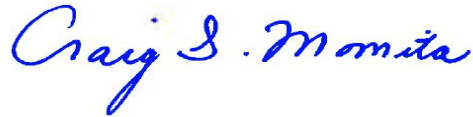
Senate Bill 1809 was approved as emergency legislation by the Governor and Chaptered by the Secretary of State. Senate Bill 1809 amended certain provisions of the Act. Specifically, CAL. LABOR CODE § 2699(a) now imposes a procedural “notice” requirement on any aggrieved employee intending to initiate an action under the Act. This notice provision is codified in CAL. LABOR CODE § 2699.3 and requires that the aggrieved employee or representative give written

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notice to the Labor and Workforce Development Agency, and to the employer, of the CAL. LABOR CODE violations. By sending this letter, including carbon copy via certified mail to EMPLOYER'S attorney of record in the above-entitled action, EMPLOYEE is complying with the statutory notice requirement.

Very truly yours,

**ARIAS, SANGUINETTI, WANG
& TORRIJOS, LLP**



Craig S. Momita, Esq.

cc: Amy S. Williams, Esq. (*Via Electronic Mail*)
CDF Labor Law LLP
18300 Von Karman Avenue, Suite 800
Irvine, California 92612

Mike Arias (CSB #115385)
 Craig S. Momita (CSB #163347)
 M. Anthony Jenkins (CSB #171958)
**ARIAS SANGUINETTI WANG
 & TORRIJOS LLP**
 6701 Center Drive West, Suite 1400
 Los Angeles, CA 90045
 Telephone: (310) 844-9696
 Facsimile: (310) 861-0168
 mike@aswtlawyers.com
 craig@aswtlawyers.com
 anthony@aswtlawyers.com

Attorneys for Plaintiff ISAAC DIAZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF CONTRA COSTA**

ISAAC DIAZ, an individual, on behalf
 of himself and all others similarly
 situated;

Plaintiffs,

vs.

SPROUTS FARMERS MARKET, LLC,
 a California Limited Liability Company;
 and DOES 1 through 100, inclusive,

Defendants.

Case No. C23-00779

CLASS ACTION

Judge: Hon. Charles S. Treat

SECOND AMENDED COMPLAINT

- 1. FAILURE TO REIMBURSE
 EMPLOYEE EXPENSES [LAB. CODE §
 2802]**
- 2. FAILURE TO PAY OVERTIME
 COMPENSATION [LAB. CODE §§
 510, 1194, 1198]**
- 3. FAILURE TO COMPENSATE FOR
 ALL HOURS WORKED
 INCLUDING STRAIGHT TIME
 AND MINIMUM WAGES [LAB.
 CODE 200, 204, 226, 500, 510, 558 (a),
 558.1, 1194, 1197, 1198; IWC Wage
 Order 4; Cal. Code Regs., tit. 8, §
 11040]**
- 4. FAILURE TO PROVIDE MEAL
 PERIODS [LAB. CODE §§ 226.7, 512,
 AND 8 CAL. CODE REGS. § 11070(11)]**
- 5. FAILURE TO PROVIDE REST
 PERIODS [LAB. CODE § 226.7 AND 8**

CAL. CODE REGS. § 11070(12)]

6. **FAILURE TO PAY WAGES UPON DISCHARGE** [LAB. CODE §§ 201, 203]
7. **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS** [LAB. CODE § 226]
8. **UNFAIR COMPETITION** [BUS. & PROF. CODE §§ 17200, *et seq.*]
9. **PENALTIES PURSUANT TO LABOR CODE PRIVATE ATTORNEYS GENERAL ACT (“PAGA”)** (LAB. CODE §§ 2698, *et seq.*)

NOTICE TO DEFENDANTS OF DUTIES TO RETAIN EVIDENCE:

TO ALL DEFENDANTS: Note and adhere to your duties to retain, and not delete or destroy, all documents, emails, databases, electronic records, electronically stored information, and all other evidence that may be pertinent to this lawsuit, and to cease any destruction or deletion of such evidence that might otherwise take place in the ordinary course of your business or affairs.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to Code of Civ. Proc. § 410.10 because Plaintiff ISAAC DIAZ was a resident of the State of California while working for Defendant SPROUTS FARMERS MARKET, LLC, a California Limited Liability Company and DOES 1 through 100 (collectively “Defendants”), and Defendants are qualified to do business in California and regularly conduct business in California.

2. Venue is proper in this judicial district pursuant to Code of Civ. Proc. §§ 395 and 395.5 because Plaintiff, and other persons similarly situated, performed work for Defendant in the County of Contra Costa, Defendant maintains offices and facilities and transact business in the County of Contra Costa, and because Defendant’s unlawful policies

and practices that are the subject of this action were applied, at least in part, to Plaintiff, and other persons similarly situated, in the County of Contra Costa.

PLAINTIFFS

3. The Class that Plaintiff seeks to represent (the “Class”) is defined as: *Each individual employed by SPROUTS FARMERS MARKET, LLC as Store Manager, Assistant Store Manager, Service Manager, Perishable Manager, Non-Perishable Manager or Key Holder in California at any time during the period beginning four years prior to the commencement of this action to present.*

4. More than two thirds of the members of the Class are citizens of California.

5. At all relevant times herein mentioned, Plaintiff ISAAC DIAZ:

a. Was an individual residing in the County of Contra Costa, State of California;

b. Was employed by Defendant as a Store Manager;

c. Worked more than eight (8) hours a day and more than forty (40) hours a week without receiving overtime compensation;

d. Was denied wages, meal periods, rest periods, and accurate itemized wage statements; and

e. Was a member of the Class identified in paragraph 3, above.

CLASS ALLEGATIONS

6. The persons who comprise the Class are so numerous that joinder with all such persons is impracticable and the disposition of his claims will benefit the parties and the Court. The claims of Plaintiff are typical of the claims of the Class. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff does not have any interests that are antagonistic to the Class. Counsel for Plaintiff are experienced, qualified, and generally able to conduct complex class action litigation.

7. This Court should permit this action to be maintained as a class action pursuant to Code of Civ. Proc. § 382 for the following reasons:

a. The questions of law and fact common to the Class predominate over

any question affecting only individual members;

b. A class action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the Class;

c. The members of the Class are so numerous that it is impractical to bring all members of the Class before the Court;

d. Plaintiff and the other members of the Class will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;

e. There is a community of interest in obtaining appropriate legal and equitable relief for the common law and statutory violations and other improprieties alleged herein, as well as in obtaining adequate compensation for the damages and injuries for which Defendants are responsible in an amount sufficient to adequately compensate the members of the Class for the injuries sustained;

f. Without class certification, the prosecution of separate actions by individual members of the Class would create a substantial risk of the following:

i. Inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for Defendants, and/or

ii. Adjudications with respect to the individual members that would, as a practical matter, be dispositive of the interests of other members not parties to the adjudications, or would substantially impair or impede their ability to protect their interests, including but not limited to the potential for exhausting the funds available from those parties who are, or may be, responsible Defendants; and

g. Defendants have acted, or refused to act, on grounds that are generally applicable to the Class, thereby making final injunctive relief appropriate with respect to the Class as a whole.

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DEFENDANTS

8. Plaintiff is informed and believes, and based on that information and belief alleges, that Defendant SPROUTS FARMERS MARKET, LLC is, and at all relevant times herein mentioned:

- a. Was a duly organized California Limited Liability Company;
- b. Was duly qualified to conduct business, and was conducting business, in the State of California, including the County of Contra Costa; and
- c. Had its principal place of business in California.

9. The true names and capacities, whether individual, corporate, partnership, associate, or otherwise, of Defendants Does 1 through 100, inclusive ("Doe Defendants"), are unknown to Plaintiff who therefore sue these Doe Defendants by such fictitious names pursuant to Code of Civ. Proc. § 474. Plaintiff will seek leave to amend this complaint to allege their true names and capacities when they are ascertained.

10. Plaintiff is informed and believes, and based on that information and belief alleges, that the Defendant named in this complaint, including each of the Doe Defendants, is responsible in some manner for one or more of the events and happenings, and proximately caused the injuries and damages, hereinafter alleged.

11. Plaintiff is informed and believes, and based on that information and belief allege, that the Defendant named in this complaint, including each of the Doe Defendants, is, and at all relevant times herein mentioned was, the agent, servant, and/or employee of the Defendant, and that Defendant was acting within the course and scope of his, her, or its authority as the agent, servant, and/or employee of Defendant. Consequently, Defendant is jointly and severally liable to Plaintiff and the other members of the Class for the damages sustained as a proximate result of their conduct.

BACKGROUND ALLEGATIONS

12. Defendants are a supermarket chain that owns and operates approximately 134 grocery stores in California.

13. During the class period, Plaintiff and the other members of the Class were

employed by Defendants as a Store Manager, Assistant Store Manager, Service Manager, Perishable Manager, Non-Perishable Manager or Key Holder in these grocery stores.

14. During the Class Period, Defendants treated Class Plaintiff and certain other members of the Class, i.e., Store Managers and Assistant Managers, as exempt under California law but required them to perform an extensive array of non-managerial duties. Such duties (hereinafter referred to as the “Non-Managerial Duties”) were not intellectual, managerial, or creative and did not require the exercise of discretion or independent judgment – they included running the cash registers, bagging groceries, unloading trucks, stocking inventory onto shelves, transferring merchandise between stores, performing price changes, cleaning the stores, and performing countless other duties that were not intellectual, managerial, or creative and that did not require the exercise of discretion or independent judgment.

15. In addition to, and as a part of, requiring Plaintiff and certain other members of the Class to perform the Non-Managerial Duties, Defendants subjected them to an extremely demanding work schedule and workload, expecting them to work a minimum of 10 hours a day – often longer – six to seven days a week. Plaintiff and the other members of the Class spent more than 50 percent of their time performing duties that were not intellectual, managerial, or creative and that did not require the exercise of discretion or independent judgment.

16. As a result of being misclassified as exempt, and subjected to an extremely demanding work schedule and workload, Plaintiff and the other members of the Class were unable to avail themselves of their statutorily mandated meal breaks and were prevented from doing so in that, at no time during the workday, were they relieved of all duty and permitted to leave the premises to properly take a meal break on their own time.

17. As a result of being misclassified as exempt and subjected to an extremely demanding work schedule and workload, Plaintiff and the other members of the Class were unable to avail themselves of their statutorily mandated rest breaks and were prevented from doing so in that, at no time during the workday, were they relieved of all duty and authorized

and permitted to properly take a rest break.

FIRST CAUSE OF ACTION

FAILURE TO REIMBURSE EMPLOYEE EXPENSES

[Labor Code § 2802]

(By Plaintiff Against All Defendants)

18. Plaintiff refers to and incorporate all of the paragraphs of the complaint as though fully set forth herein.

19. Pursuant to California Labor Code section 2802, Defendant is required to reimburse Plaintiff and the other members of the Class for expenses incurred by them in the performance of their job duties (which may include but are not limited to the following expenses: cell phone usage).

20. At all times relevant herein mentioned, Defendants had a policy and procedure whereby Plaintiff and the other members of the Class were required personally to incur and pay for said expenses during the performance of their employment duties, all without reimbursement from Defendants. Accordingly, Defendant failed to reimburse Plaintiff and the other members of the Class for business expenses incurred as a condition of and in the performance of their job duties, as described above.

21. As a proximate result of the aforementioned violations, Plaintiff and the other members of the Class have suffered damages in amounts presently unknown to them but which exceed the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

22. Pursuant to Labor Code section 2802, Plaintiff and the other members of the Class are further entitled to recover from Defendant, in addition to the full amount of the expenses they incurred in the course of their job duties, interest thereon and reasonable attorney's fees and costs.

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SECOND CAUSE OF ACTION
FOR FAILURE TO PAY OVERTIME COMPENSATION

[Labor Code §§ 510, 1194, 1198]
(By Plaintiff Against All Defendants)

23. Plaintiff refers to and incorporates all of the paragraphs of the complaint as though fully set forth herein.

24. Labor Code §§ 510 and 1198 provide that employees in California shall not be employed more than eight hours in any work day, and/or more than 40 hours in any workweek, unless they receive additional compensation beyond their regular wages in amounts specified by law.

25. Labor Code § 1194 provides that an employee who has not been paid overtime compensation as required by §§ 510 and 1198 may recover the unpaid balance of the full amount of such overtime compensation, together with costs of suit, as well as liquidated damages in an amount equal to the overtime compensation unlawfully withheld, and interest thereon, in a civil action. The action may be maintained directly against the employer in his/her name without first filing a claim with the California Department of Industrial Relations, Division of Labor Standards Enforcement.

26. At all times relevant hereto, Class Plaintiff and the other members of the Class worked more than eight hours in any given workday and/or more than 40 hours in any given workweek as employees of Defendants.

27. At no time relevant hereto was Class Plaintiff, or any other member of the Class, exempt from any wage and hour provision under California law, including without limitation any statute, rule, or regulation governing the payment of overtime compensation.

28. At all times relevant hereto, Defendants misclassified Class Plaintiff and the other members of the Class as exempt from overtime compensation and failed to pay to them overtime compensation for the hours they worked in excess of eight hours in a workday and/or 40 hours in a workweek, in violation of Labor Code §§ 200, 202, 203, 226, 500, 510, 558, 1194, and 1198.

29. As a direct and proximate result of Defendants' unlawful failure to pay additional compensation to Class Plaintiff and the other members of the Class for their overtime hours, Class Plaintiff and the other members of the Class have suffered, and will continue to suffer, damages in amounts which are presently unknown to Class Plaintiff but which exceed the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

THIRD CAUSE OF ACTION

**FAILURE TO COMPENSATE FOR ALL HOURS WORKED INCLUDING
STRAIGHT TIME AND MINIMUM WAGES**

[CAL. LAB. CODE §§ Labor Code §§ 200, 204, 226, 500, 510, 558 (a), 558.1, 1194, 1197, 1198; IWC Wage Order 4]

(By Plaintiff Against All Defendants)

30. Plaintiff refers to and incorporates all of the paragraphs of the complaint as though fully set forth herein.

31. This cause of action is also brought against the Individual Defendants under Labor Code section 558.1, each as the owner, director, officer, managing agent and/or person acting on behalf of Defendants who violated or caused to be violated, or approved the business model which led to violations of, the provisions regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission and/or Labor Code sections 203, 226, 226.7, 1193.6, 1194 and/or 2802 as alleged herein.

32. At all times relevant herein, Defendants were required to compensate its non-exempt employees for all hours worked, including straight time and minimum wages pursuant to Industrial Welfare Commission Orders 5-98, and 5-01, Title 8 of California Code of Regulations § 11040, and Labor Code §§ 200, 204, 226, 500, 510, 1194, 1197, and 1198.

33. Within four (4) years of the filing of the instant complaint, until the present, Plaintiff was employed by Defendants in a non-administrative, executive or professional capacity as defined by Title 8 California Code of Regulations § 11040, though said job title was that of Registered Nurse or similar title.

34. Within four (4) years of the filing of the instant complaint, until the present, Defendants failed to compensate Plaintiff for all hours worked by not compensating Plaintiff for actual work performed. Defendants established policies, inter alia, where non-exempt employees would work overtime hours as improperly classified exempt employees such that the employees were not paid for hours worked over 40, and were not paid straight time, minimum wages and premium overtime for said hours as required by California law. As a pattern and practice, in violation of the aforementioned labor laws and wage orders, Defendants did not maintain any records pertaining to the time Plaintiff began and ended each work period, meal period, the total daily hours worked, and the total hours worked per day and applicable rates of pay in violation of California Labor Code § 1174.

35. Labor Code §204 establishes the fundamental right of all employees in the State of California to be paid wages in a timely fashion for their work.

36. Pursuant to the IWC Wage Order(s), Defendants are required to pay Plaintiff for all hours worked, meaning the time during which an employee is subject to the control of an employer and/or suffered or permitted to work, whether or not required to do so.

37. Labor Code §1197, entitled “Pay of Less Than Minimum Wage” states:

The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.

38. Labor Code §558 (a) provides:

Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty.... [Emphasis added.]

39. Labor Code §558.1 provides:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code. [Emphasis added.]

40. Labor Code §1197.1 (a) provides:

Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission, shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties.... [Emphasis added.]

41. As held by the Court in *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809:

With regard to violations of the state's minimum wage laws, “[a]ny ... person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee” less than the minimum wage “shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203” as set forth elsewhere in the statute. (§ 1197.1, subd. (a), italics added.) Thus, . . . whereas for violations of minimum wage laws, there is no requirement that the “other person” liable for the civil penalties have any relationship to the employer, so long as that person pays or causes to be paid less than the prescribed minimum wage (§ 1197.1(a)). [Emphasis added.] (*Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809.)

42. California Effective January 1, 2020, the applicable minimum wage fixed by the commission for Plaintiff (IWC Wage Order 5) was set at not less than thirteen dollars (\$13.00) per hour. (Labor Code 1182.12, IWC Wage Order No. 5-2001, § 4.) Effective January 1, 2021, the minimum wage for employers was set at \$14.00 per hour. (Labor Code 1182.12, IWC Wage Order No. 5-2001, § 4.)

43. The minimum wage is an obligation of the employer and cannot be waived by any agreement, including collective bargaining agreements. Any remedial legislation written for the protection of employees may not be violated by agreement between the employer and employee. (Civil Code §§ 1668 and 3513.)

1 44. Under the aforementioned wage orders, statutes, and regulations, Plaintiff is
2 entitled to recover compensation for all hours worked, but not paid, during the relevant
3 liability period, plus reasonable attorney's fees and costs, pursuant to Labor Code §§ 200,
4 204, 226, 500, 510, 558 (a), 558.1, 1194, 1197, 1198; and, penalties pursuant to Labor Code
5 §§ 203, 226, and 558.

6 45. In violation of California law, Defendants have knowingly and willfully
7 refused to perform its obligation to compensate Plaintiff for all wages earned and all hours
8 worked. As a direct result, Plaintiff has suffered, and continues to suffer, substantial losses
9 related to the use and enjoyment of such wages, lost interest on such wages, and expenses
10 and attorney's fees in seeking to compel Defendants to fully perform its obligation under
11 California law. Plaintiff is entitled to recover nominal, actual, and compensatory damages.
12 Said amount will be determined according to proof at trial, but said amount is in excess of
13 the Court's jurisdiction requirement. In *Reynolds v. Bement*, the court held: "In addition to
14 the foregoing avenues for the recovery of wages, ... the employee may seek certain civil
15 penalties when the employee is not paid statutorily guaranteed wages. (See, e.g., §§... 558
16 [penalty for violating chapter or IWC order].)..." *Reynolds v. Bement*, (2005) 36 Cal 4th
17 1075.

18 46. Labor Code § 558 mandates a penalty for violation of Labor Code § 510, among
19 other things. Labor Code § 558 mandates a penalty be assessed against any employer who
20 violates, or causes to be violated, a section of the chapter starting with Labor Code §§ 500,
21 et seq. or any provision regulating hours and days of work in any order of the Industrial
22 Welfare Commission in the amount of \$50 for the first pay period in which the employee is
23 underpaid, in addition to an amount sufficient to recover underpaid wages; and, for each
24 subsequent violation the amount of \$100 for each pay period in which the employee is
25 underpaid, in addition to an amount sufficient to recover underpaid wages. The civil
26 penalties so provided in this section are in addition to any other civil penalties provided by
27 law.
28

47. As alleged above, Defendants failed to comply with Labor Code § 510 by failing to pay the overtime premium rate to Plaintiff. Plaintiff is therefore entitled to penalties under Labor Code § 558 for each and every pay period that Defendants violated Labor Code § 510. These penalties in an amount according to proof at trial are owed.

48. As Defendants' conduct alleged herein violates Labor Code §§ 200, 204, 226, 500, 510, 558 (a), 558.1, 1194, 1197, 1198, Plaintiff is entitled to recover the unpaid balance of overtime compensation, plus interest, penalties, attorney's fees, expenses, and costs of suit pursuant to Labor Code §§ 200, 204, 226, 500, 510, 558 (a), 558.1, 1194, 1197, 1198.

FOURTH CAUSE OF ACTION

FOR FAILURE TO PROVIDE MEAL PERIODS

[CAL. LAB. CODE §§ 226.7, 512 and 8 CAL. CODE REGS. § 11070(11)]

(By Plaintiff Against All Defendants)

49. Plaintiff refers to and incorporates all of the paragraphs of the complaint as though fully set forth herein.

50. CAL. LAB. CODE § 226.7 provides as follows:

a. No employer shall require any employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission.

b. If an employer fails to provide an employee a meal period... in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

51. In addition, CAL. LAB. CODE § 512 provides that no employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes.

52. Industrial Wage Order No. 7, which is codified under 8 CAL. CODE REGS. § 11070, *et seq.*, also requires that for every work-shift longer than 5 hours, an employer is to provide its employees an uninterrupted meal break of no less than 30 minutes. 8 CAL. CODE REGS. § 11070(11)(A). For every work-shift longer than 10 hours, an employer is required to provide

employees a second uninterrupted meal break of no less than 30 minutes. 8 CAL. CODE REGS. § 11070(11)(B). Wage Order No. 7 also states that an employer must relieve the employee of *all* work related duties during meal breaks; otherwise, the employee will be considered to be “on duty” which constitutes compensable time. 8 CAL. CODE REGS. § 11070(11)(C).

53. At all times relevant hereto, Class Plaintiff and the other members of the Class have worked more than five hours in a workday; however, at all times relevant hereto, Defendants have failed to provide meal periods as required by CAL. LAB. CODE §§ 226.7, 512 and 8 CAL. CODE REGS. § 11070(11).

54. By virtue of requiring Class Plaintiff and other members of the Class to work through meal periods free from work duties, Defendants have intentionally and improperly denied meal periods to Class Plaintiff and the other members of the Class in violation of CAL. LAB. CODE §§ 226.7, 512 and 8 CAL. CODE REGS. § 11070(11). Class Plaintiff and the other members of the Class have suffered, and will continue to suffer, damages in amounts which are presently unknown to them but which exceed the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

FIFTH CAUSE OF ACTION

FOR FAILURE TO PROVIDE REST PERIODS

[CAL. LAB. CODE § 226.7; 8 CAL. CODE REGS. § 11070(12)]

(By Plaintiff Against All Defendants)

55. Plaintiff refers to and incorporates all of the paragraphs of the complaint as though fully set forth herein.

56. CAL. LAB. CODE § 226.7 provides as follows in pertinent part:

a. No employer shall require any employee to work during any...rest period mandated by an applicable order of the Industrial Welfare Commission.

b. If an employer fails to provide an employee a... rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

57. Industrial Wage Order No. 7, which is codified under 8 CAL. CODE REGS. § 11070, *et. seq.*, requires employers to provide rest breaks which shall be counted as hours worked for which there shall be no deduction of wages. 8 CAL. CODE REGS. § 11070(12)(A).

58. Subdivision 12(A) of 8 CAL. CODE REGS. § 11070 also requires that an employer provide its employees with a 10-minute rest break for every four-hour increment, or major fraction thereof, of time worked. “Employees are entitled to 10 minutes rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on.” *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1029.

59. CAL. LAB. CODE § 226.7 and 8 CAL. CODE REGS. § 11070, Subdiv. 12(B), further require that for every workday in which it fails to provide a rest period during any four-hour increment, or major fraction thereof, the employer must reimburse the employee at a rate of an hour's pay at the employee's regular rate of pay.

60. Plaintiff and the other members of the Class, regularly worked four-hour increments and were prevented from taking statutorily mandated rest breaks during their shifts. They were unable to avail themselves of such breaks for various reasons, including but not limited to, the pressures from their workloads.

61. By virtue of Defendants’ unlawful failure to authorize, permit, and provide rest periods as required by law, Class Plaintiff and the other members of the Class have suffered, and will continue to suffer, damages in amounts which are presently unknown to them but which exceed the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

SIXTH CAUSE OF ACTION

FAILURE TO PAY WAGES UPON DISCHARGE

(Labor Code §§ 201, 203)

62. Plaintiff refers to and incorporates all of the paragraphs of this complaint as though fully set forth herein.

1 63. This cause of action is also brought against the Individual Defendants under Labor
2 Code section 558.1, each as the owner, director, officer, managing agent and/or person acting on
3 behalf of Defendants who violated or caused to be violated, or approved the business model
4 which led to violations of, the provisions regulating minimum wages or hours and days of work
5 in any order of the Industrial Welfare Commission and/or Labor Code sections 203, 226, 226.7,
6 1193.6, 1194 and/or 2802 as alleged herein.

7 64. Pursuant to Labor Code §§ 201 and 202, for Plaintiff who is a former employee
8 of Defendants, upon his respective termination date, Defendants were required to pay former
9 employee Plaintiff all earned wages. At the time of all former employee Plaintiff's respective
10 termination date, former employee Plaintiff had unpaid wages. In violation of Labor Code §
11 201, Defendants failed to pay former employee Plaintiff any of the amount of wages due and
12 owing, in amounts to be established at the time of trial, but which are in excess of the Court's
13 jurisdictional requirements.

14 65. Labor Code § 203 provides a penalty for the willful failure to pay all wages due
15 to an employee who is discharged or quits. This penalty consists of an amount equal to the
16 sum of the employee's wages at the employee's prior rate of pay, until the unpaid wages are
17 paid, in an amount not to exceed thirty (30) days.

18 66. Defendants' failure to pay former employee Plaintiff the respective wages due
19 and owing was willful.

20 67. Courts have held that the term willful means "[t]he employer 'intentionally
21 failed or refused to perform an act which was required to be done.'... It does not mean that
22 the employer's refusal to pay wages must necessarily be based on a deliberate evil purpose
23 to defraud workers for wages which the employer knows to be due." (*Road Sprinkler Fitters
24 Local Union No. 669 v G & G Fire Sprinklers, Inc.* (2002) 102 Cal. App. 4th 765, 781.)

25 68. Defendants, in violation of Labor Code §§ 201 et seq. had a consistent and
26 uniform policy, practice and procedure of willfully failing to pay the earned and unpaid
27 wages of individuals similarly situated as Plaintiff, including, but not limited to, straight
28 time, minimum wages, overtime, vacation time, and other wages earned and remaining

uncompensated according to amendment, or proof. Plaintiff did not secret or absent himself from Defendants nor refuse to accept the earned and unpaid wages from Defendants. Defendants' willful failure to pay former employee Plaintiff the wages due and owing him constitutes violations of Labor Code §§ 201 and 203, which provides that an employee's wages will continue as a penalty up to thirty (30) days from the time the wages were due. Therefore, Plaintiff is each entitled to penalties pursuant to Labor Code § 203.

69. Pursuant to Labor Code § 1194, Plaintiff is entitled to an award of reasonable attorneys' fees, expenses, and costs.

70. In addition to the concerted and joint activities alleged elsewhere herein, Plaintiff is informed and believe, and based thereon allege, that each of the Defendants has engaged in the same practices and have adopted the same policies with regard to its wrongful acts against Plaintiff as alleged herein.

71. Plaintiff has incurred, and during the pendency of this action will continue to incur, expenses for attorney's fees and costs herein. Such attorney fees and costs are necessary for the prosecution of this action. Plaintiff requests that the court award attorney's fees in an amount according to proof pursuant to Labor Code §1194.

SEVENTH CAUSE OF ACTION

FOR FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

[Labor Code § 226]

(By Plaintiff Against All Defendants)

72. Plaintiff refers to and incorporates all of the paragraphs of the complaint as though fully set forth herein.

73. Labor Code § 226 provides that an employer shall provide its employees with accurate wage statements including the wages earned and the hours worked:

(a) Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee[.]

74. By causing Class Plaintiff and the other members of the Class to work without compensation, Defendants have violated the requirement that the total hours worked and all wages earned be included in the wage statement that must be provided to Class Plaintiff and the other members of the Class.

75. By virtue of Defendants' knowing, willful, and unlawful failure to provide accurate wage statements within the applicable statute of limitations, Class Plaintiff and the other members of the Class have suffered, and will continue to suffer, damages in amounts which will be ascertained according to proof at trial.

EIGHTH CAUSE OF ACTION
FOR UNFAIR COMPETITION
[Business & Professions Code §§ 17200, *et seq.*]
(By Plaintiff Against All Defendants)

76. Plaintiff refers to and incorporates all of the paragraphs of the complaint as though fully set forth herein.

77. Defendants fall within the definition of "person" under *Business & Professions Code* § 17021.

78. By and through the conduct described herein, Defendants engaged in unfair, unlawful, and fraudulent practices, in violation of *Business & Professions Code* §§ 17200, *et seq.*, and thereby deprived Class Plaintiff and the other members of the Class of fundamental rights and privileges guaranteed to all California employees under the *Labor Code*.

79. By and through their unfair, unlawful, and fraudulent business practices described herein, Defendants obtained valuable property, money, and services from Class Plaintiff and the other members of the Class and thereby deprived them of valuable rights and benefits guaranteed by law, all to their detriment.

80. All of the acts described herein as violations of, among other things, the Labor Code and Industrial Welfare Commission Wage Orders, are unlawful and in violation of public policy. Said acts are in addition immoral, unethical, oppressive, and unscrupulous,

1 constituting unfair, unlawful, and fraudulent business practices in violation of *Business &*
 2 *Professions Code* §§ 17200, *et seq.*

3 81. Class Plaintiff and the other members of the Class are entitled to, and do seek,
 4 such relief as may be necessary to restore to them the money and property that Defendants
 5 have unfairly, unlawfully, and fraudulently acquired from them by means of the above-
 6 described business practices.

7 82. Class Plaintiff and the other members of the Class are further entitled to, and
 8 do, seek a declaration that the above-described business practices are unfair, unlawful, and
 9 fraudulent and that injunctive relief should issue restraining Defendants from engaging in
 10 any of the above-described unfair, unlawful, or fraudulent business practices in the future.

11 83. Class Plaintiff and the other members of the Class have no plain, speedy, or
 12 otherwise adequate remedy at law to redress the injuries which they have suffered as a
 13 consequence of the unfair, unlawful, and fraudulent business practices of Defendants. As a
 14 result of the unfair, unlawful, and fraudulent business practices described herein, Class
 15 Plaintiff and the other members of the Class have suffered and will continue to suffer
 16 irreparable harm unless Defendants are restrained from continuing to engage in these unfair,
 17 unlawful, and fraudulent business practices. In addition, Defendants should be required to
 18 pay restitution of the unpaid wages to Class Plaintiff and the other members of the Class.

19 **NINTH CAUSE OF ACTION**

20 **FOR PENALTIES PURSUANT TO**

21 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT (“PAGA”)**

22 **[CAL. LAB. CODE §§ 2698, *et seq.*]**

23 **(By Plaintiff Against All Defendants)**

24 84. Plaintiff refers to and incorporates all of the paragraphs of the complaint as
 25 though fully set forth herein.

26 85. This is an enforcement action under the Labor Code Private Attorneys General
 27 Act of 2004, California Labor Code §§ 2698, *et seq.* (hereinafter “PAGA” or “the Act”),
 28 which expressly establishes that any provision of the California Labor Code that provides for

a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”), or any of its departments, divisions, commissions, boards agencies or employees for a violation of the Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

86. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

87. Plaintiff Isaac Diaz and all other individuals employed by Defendant as a Store Manager, Assistant Store Manager, Service Manager, Perishable Manager, Non-Perishable Manager or Key Holder in California at any time during the period commencing 14 months prior to the commencement of this action to present, are “Aggrieved Employees,” as defined by Labor Code § 2699, in that one or more of the violations alleged herein was committed against them, and each of them.

88. At all times relevant herein mentioned, Defendant had a policy and procedure whereby Plaintiff Isaac Diaz and the Aggrieved Employees were required to personally incur and pay for (cell phone (or similar device) usage) business expenses incurred as a condition of and in the performance of their job duties, as described above in violation of California Labor Code section 2802, for which Plaintiff seeks on behalf of the State of California, himself and all other aggrieved employees, the recovery of civil penalties under Labor Code section 2699(f), plus an award of attorney fees as authorized by Labor Code section 2699(g), and all other applicable penalties.

89. Sprouts Farmers Market is a supermarket chain with approximately 134 grocery store locations in California. Plaintiff and the other aggrieved employees were employed as Store Managers and Assistant Store Managers in these grocery stores. Throughout the employment of Plaintiff and the other aggrieved employees as Store Managers and Assistant Store Managers, Defendant treated them as exempt under California law but required them to perform an extensive array of non-managerial duties. Such duties

(hereinafter referred to as the “Non-Managerial Duties”) were not intellectual, managerial, or creative and did not require the exercise of discretion or independent judgment – they included running the cash registers, bagging groceries, unloading trucks, stocking inventory onto shelves, transferring merchandise between stores, performing price changes, cleaning the stores, and performing countless other duties that were not intellectual, managerial, or creative and that did not require the exercise of discretion or independent judgment.

90. In addition to, and as a part of, requiring Plaintiff and the other aggrieved employees to perform the Non-Managerial Duties, Defendant subjected them to an extremely demanding work schedule and workload, expecting them to work a minimum of 10 hours a day – often longer – six to seven days a week. Plaintiff and the other aggrieved employees spent more than 50 percent of their time performing duties that were not intellectual, managerial, or creative, that did not require the exercise of discretion or independent judgment, and that did not constitute “exempt work” under any exemption recognized under California law.

91. As a result of being misclassified as exempt, and subjected to an extremely demanding work schedule and workload, Plaintiff and the other aggrieved employees were also unable to avail themselves of their statutorily mandated meal breaks and were prevented from doing so in that, at no time during the workday, were they relieved of all duty and permitted to leave the premises to properly take a meal break on their own time.

92. As a result of being misclassified as exempt and subjected to an extremely demanding work schedule and workload, Plaintiff and the other aggrieved employees were also unable to avail themselves of their statutorily mandated rest breaks and were prevented from doing so in that, at no time during the workday, were they relieved of all duty and authorized and permitted to properly take a rest break.

93. By unlawfully treating Plaintiff and the other aggrieved employees as exempt as described herein, Defendant violated CAL. LABOR CODE §§ 200, 201, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 558 (a), 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1199 and 2802 and the applicable IWC WAGE ORDERS and deprived them of proper overtime and minimum

wage compensation, statutory meal and rest periods, and accurate itemized wage statements and failed to keep accurate records. Accordingly, in his capacity as Private Attorney General, on behalf of himself and all other aggrieved employees, Plaintiff seeks all applicable penalties, attorney's fees, and costs available under the Act on behalf of himself and the other aggrieved employees based on these violations.

94. On April 7, 2023, Plaintiff sent a letter via certified mail to the LWDA and to Defendant as prescribed by the CAL. LABOR CODE. (A true and correct copy of Plaintiff's letter is attached hereto as **Exhibit 1.**) The LWDA responded by transmitting a Department of Industrial Relations Customer Receipt / Purchase Confirmation dated April 7, 2023. (A true and correct copy of the LWDA's Customer Receipt / Purchase Confirmation is attached hereto as **Exhibit 2.**) On October 9, 2023, Plaintiff sent a letter via certified mail to the LWDA and to Defendant as prescribed by the CAL. LABOR CODE. (A true and correct copy of Plaintiff's letter is attached hereto as **Exhibit 3.**) The LWDA responded by transmitting a Department of Industrial Relations Customer Receipt / Purchase Confirmation dated October 9, 2023. (A true and correct copy of the LWDA's Customer Receipt / Purchase Confirmation is attached hereto as **Exhibit 4.**)

95. Plaintiff is therefore entitled, as of right, pursuant to CAL. LAB. CODE § 2699.3(a)(2)(A) and (C), to amend the operative complaint to include a claim for penalties pursuant to CAL. LAB. CODE § 2699.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

FIRST CAUSE OF ACTION

1. For damages;
2. For reimbursement of expenses; and,
3. For all applicable penalties

SECOND CAUSE OF ACTION

4. That Defendants be ordered to pay Plaintiff all unpaid overtime compensation pursuant to Labor Code §§ 1194 and 510 as alleged herein according to proof,

plus penalties and interest;

5. For penalties set forth in Labor Code § 558 for violations of § 510 in an amount according to proof;

6. For interest pursuant to Labor Code § 218.6; and

7. For reasonable attorney's fees as provided by Code of Civil Procedure §1021.5 and attorney's fees, interest, and costs of suit pursuant to Labor Code § 1194.

THIRD CAUSE OF ACTION

8. That Defendants be ordered to pay Plaintiff for all hours worked, including straight time and minimum wages, but for which Plaintiff was unpaid, according to proof; plus penalties and interest;

9. For interest pursuant to Labor Code § 218.6; and

10. For reasonable attorney's fees as provided by Code of Civil Procedure §1021.5 and attorney's fees, interest, and costs of suit pursuant to Labor Code § 1194.

FOURTH CAUSE OF ACTION

11. For unpaid wages;

12. For all statutory and civil penalties according to proof, including but not limited to all penalties authorized by the California Labor Code §§ 226(e) and 2698-2699.5; and,

13. For injunctive relief.

FIFTH CAUSE OF ACTION

14. For all statutory and civil penalties according to proof, including but not limited to all penalties authorized by the California Labor Code §§ 226(e) and 2698-2699.5; and,

15. For injunctive relief.

SIXTH CAUSE OF ACTION

16. For statutory waiting time penalties under Labor Code § 203, according to proof for Plaintiffs, plus interest thereon at the maximum legal rate accruing from the 31st day following the separation each such Plaintiffs' employment from

Defendants;

17. For interest pursuant to Labor Code § 218.6;

18. For reasonable attorney's fee, penalties, and costs pursuant to Labor Code §203, and 226; and

19. For reasonable attorney's fees and costs as provided by Labor Code § 2699(g).

SEVENTH CAUSE OF ACTION

20. For general damages, including interest, according to proof;

21. For all statutory and civil penalties according to proof, including but not limited to all penalties authorized by the California Labor Code §§ 226(e) and 2698-2699.5;

22. For statutory damages as set forth in the applicable Labor Code sections;

23. For all appropriate declaratory and equitable relief; and,

24. For all such other relief as is just and necessary under the circumstances.

EIGHTH CAUSE OF ACTION

25. For injunctive relief ordering Defendants to discontinue the unfair and unlawful practices as alleged herein;

26. For reasonable attorney's fees as provided by Code of Civil Procedure §1021.5;

27. That Defendants be ordered to restore to Plaintiff all funds Defendants retained by means of the unfair and unlawful business acts and practices alleged herein;

28. For appointment of a receiver to receive, manage and distribute any and all funds disgorged from the Defendants determined to have been wrongfully acquired by Defendant as a result of violations of Business and Professions Code §§17200 et seq.;

29. That Defendants disgorge all profits in an amount according to proof at the time of trial.

30. For enforcement of the civil penalties imposed by the Labor Code pursuant to Business & Professions Code § 17202;

31. For interest pursuant to Business & Professions Code § 17203; *Ballard v. Equifax*

Check Servs., Inc. (ED CA 2001) 158 F. Supp. 2d 1163, 1176-1177; and *Irwin v. Mascott* (ND CA 2000) 112 F. Supp. 2d 937, 956;

32. For interest pursuant to Labor Code § 218.6; and

33. For reasonable attorney's fees and costs as provided by Labor Code § 1194.

NINTH CAUSE OF ACTION

34. For all applicable penalties.

ON ALL CAUSE OF ACTION

35. For compensatory damages in an amount to be ascertained at trial;

36. For penalties and interest as allowed by law;

37. For costs of suit herein alleged; and,

38. For such other and further relief as the court deems just and proper.

b. For an award reasonable attorney's fees, costs, and expenses; and

c. For such other and further relief as this Court deems just and proper.

Dated: October 9, 2023

**ARIAS SANGUINETTI WANG
& TORRIJOS LLP**

By: _____
MIKE ARIAS
CRAIG S. MOMITA
M. ANTHONY JENKINS

Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff and the other members of the Class hereby demand a trial by jury on all claims so triable.

Dated: October 9, 2023

**ARIAS SANGUINETTI WANG
& TORRIJOS LLP**

By: _____
MIKE ARIAS
CRAIG S. MOMITA
M. ANTHONY JENKINS

Attorneys for Plaintiff