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

12 RAMON TREJO, as an aggrieved
13 employee pursuant to the Private
14 Attorneys General Act ("PAGA"), on
15 behalf of the State of California and
16 other non-party Aggrieved
17 Employees,

18 Plaintiff,

19 vs.

20 TONY'S FINE FOODS, a California
21 corporation; UNITED NATURAL FOODS,
22 INC., a Delaware corporation; UNITED
23 NATURAL FOODS WEST, INC., a
24 California corporation; UNFI GROCERS
25 DISTRIBUTION, INC., a California
26 corporation; NOR-CAL PRODUCE, INC.,
27 a California corporation; and DOES 1
28 through 10, inclusive,

Defendants.

Case No.:

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

(1) Claim for Civil Penalties for Violations of
California Labor Code, Pursuant to PAGA,
§§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiff Ramon Trejo, as an aggrieved employee and on behalf of the State of California
2 and all other non-party Aggrieved Employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations of
9 any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage Order
11 were committed, as set forth in this complaint, at any time between one year prior to the filing
12 of the pre-filing written notice to the Labor and Workforce Development Agency (“LWDA”) in this case on May 26, 2023, until judgment (“non-party Aggrieved Employees”). Plaintiff’s
13 share of civil penalties sought in this action does not exceed \$75,000.
14

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

18 3. This Court has jurisdiction over all Defendants because, on information and
19 belief, Defendants are either citizens of California, have sufficient minimum contacts in
20 California, or otherwise intentionally avail themselves of the California market so as to render
21 the exercise of jurisdiction over them by the California courts consistent with traditional notions
22 of fair play and substantial justice. There is no basis for federal diversity jurisdiction in this
23 action given that the State of California, as the real party in interest in this action, is not a
24 “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726
25 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be aggregated
26 to satisfy the amount in controversy requirement for federal diversity jurisdiction in this action,
27 and that diversity jurisdiction cannot be established when Plaintiff’s share of the civil penalties
28 attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

4. Venue is proper in this Court because Defendants employ persons in this county, and employed Plaintiff in this county, and thus a substantial portion of the transactions and occurrences related to this action occurred in this county.

5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private attorneys general their current or former employers for various civil penalties for violations of various provisions in the California Labor Code.

THE PARTIES

6. Plaintiff Ramon Trejo is a resident of Sacramento, in Sacramento County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately September 2022 to February 2023. Plaintiff worked as a Forklift Operator for Defendants at their facility in Sacramento, California. Plaintiff typically worked eight (8) hours or more per day, and five (5) days per week. At the time Plaintiff's employment with Defendants ended, he was compensated approximately \$22.25 per hour. Plaintiff's job duties included, without limitation, operating a forklift to prepare and move pallets of frozen food products to different areas in the warehouse for storing and shipping.

7. On information and belief, Defendants required some employees, including Plaintiff, to execute an arbitration agreement at the time of their hire or during their employment. On further information and belief, Defendants' arbitration agreement was and is both procedurally and substantively unconscionable. Specifically, Defendants presented employees with a "UNFI Mutual Arbitration Agreement" ("Arbitration Agreement") which had to be reviewed and acknowledged immediately. Specifically, the Arbitration Agreement was one of several documents presented to employees for signature during the orientation process, including an Attendance Policy Acknowledgement; Drug and Alcohol-Free Workplace Acknowledgement; Notice of Applicable Workplace Expectations Acknowledgment; and Voluntary Meal Break Waiver Form. Also, employees did not have a meaningful opportunity to negotiate the terms of the Arbitration Agreement. Rather, it was provided to Defendants' employees for them to sign on a take-it or leave-it basis, along with other onboarding

documents. Further, Defendants did not set forth in the agreement or otherwise provide employees with the rules which will govern the arbitration, instead forcing employees to seek this information out on their own (“The AAA Rules can be obtained at the AAA website (www.adr.org), by calling AAA at 1-800-778-7879, or from Human Resources.”)

8. TONY’S FINE FOODS was and is, upon information and belief, a California corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California.

9. UNITED NATURAL FOODS, INC was and is, upon information and belief, a Delaware corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California.

10. UNITED NATURAL FOODS WEST, INC. was and is, upon information and belief, a California corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California.

11. UNFI GROCERS DISTRIBUTION, INC. was and is, upon information and belief, a California corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California.

12. NOR-CAL PRODUCE, INC. was and is, upon information and belief, a California corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California.

13. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the complaint and serve such fictitiously named Defendants once their names and capacities become known.

14. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 were the partners, agents, owners, or managers of TONY’S FINE FOODS; UNITED NATURAL FOODS, INC; UNITED NATURAL FOODS WEST, INC.; UNFI GROCERS DISTRIBUTION, INC.; and NOR-CAL PRODUCE, INC., at all relevant times.

15. Plaintiff is informed and believes, and thereon alleges, that each and all of the

1 acts and omissions alleged herein was performed by, or is attributable to, TONY'S FINE
2 FOODS; UNITED NATURAL FOODS, INC; UNITED NATURAL FOODS WEST, INC.;
3 UNFI GROCERS DISTRIBUTION, INC.; NOR-CAL PRODUCE, INC. and/or DOES 1
4 through 10 (collectively, "Defendants" or "TONYS"), each acting as the agent, employee, alter
5 ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and
6 was acting within the course and scope of such agency, employment, joint venture, or concerted
7 activity with legal authority to act on the others' behalf. The acts of any and all Defendants
8 were in accordance with, and represent, the official policy of Defendants.

9 16. At all relevant times, Defendants, and each of them, ratified each and every act
10 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
11 and abetted the acts and omissions of each and all the other Defendants in proximately causing
12 the damages herein alleged.

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

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

27 19. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
28 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and other

1 non-party Aggrieved Employees because Defendants have:

- 2 (a) jointly exercised meaningful control over the work performed by Plaintiff
- 3 and other non-party Aggrieved Employees;
- 4 (b) jointly exercised meaningful control over Plaintiff's and other non-party
- 5 Aggrieved Employees' wages, hours, and working conditions, including
- 6 the quantity, quality standards, speed, scheduling, and operative details
- 7 of the tasks performed by Plaintiff and other non-party Aggrieved
- 8 Employees;
- 9 (c) jointly required that Plaintiff and other non-party Aggrieved Employees
- 10 perform work which is an integral part of Defendants' businesses; and
- 11 (d) jointly exercised control over Plaintiff and other non-party Aggrieved
- 12 Employees as a matter of economic reality in that Plaintiff and other non-
- 13 party Aggrieved Employees were dependent on Defendants, who shared
- 14 the power to set the wages of Plaintiff and other non-party Aggrieved
- 15 Employees and determined their working conditions, and who jointly
- 16 reaped the benefits from the underpayment of their wages and
- 17 noncompliance with other statutory provisions governing their
- 18 employment.

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

22 21. TONY'S FINE FOODS; UNITED NATURAL FOODS, INC; UNITED
23 NATURAL FOODS WEST, INC.; UNFI GROCERS DISTRIBUTION, INC.; NOR-CAL
24 PRODUCE, INC. and/or DOES 1 through 10 are therefore alter egos of each other.

25 22. Adherence to the fiction of the separate existence of Defendants would permit an
26 abuse of the corporate privilege, and would promote injustice by protecting Defendants from
27 liability for the wrongful acts committed by them under the name TONY'S.

28 23. Plaintiff further alleges, upon information and belief, that the Defendants

1 TONY’S FINE FOODS; UNITED NATURAL FOODS, INC; UNITED NATURAL FOODS
2 WEST, INC.; UNFI GROCERS DISTRIBUTION, INC.; and NOR-CAL PRODUCE, INC. are
3 alter egos of each other for the following reasons:

4 (a) According to UNITED NATURAL FOODS, INC’s SEC Form 10-K
5 filing for 2022¹, TONY’S FINE FOODS; UNITED NATURAL FOODS
6 WEST, INC.; UNFI GROCERS DISTRIBUTION, INC.; and NOR-CAL
7 PRODUCE, INC. are subsidiaries of UNITED NATURAL FOODS, INC;

8 (b) On the California Secretary of State’s website
9 (<https://bizfileonline.sos.ca.gov/>), TONY’S FINE FOODS; UNITED
10 NATURAL FOODS, INC; UNITED NATURAL FOODS WEST, INC.;
11 and NOR-CAL PRODUCE, INC, have the same principal address and
12 mailing address, “313 IRON HORSE WAY, PROVIDENCE, RI 02908”;

13 (c) According to their most recent “Statement of Information” forms filed
14 with the California Secretary of State, TONY’S FINE FOODS; UNITED
15 NATURAL FOODS, INC; UNITED NATURAL FOODS WEST, INC.;
16 UNFI GROCERS DISTRIBUTION, INC.; and NOR-CAL PRODUCE,
17 INC. share the same officers and/or directors, including but not limited
18 to:

19 (i) John W. Howard, who serves as Chief Financial Officer of
20 TONY’S FINE FOODS; UNITED NATURAL FOODS,
21 INC; UNITED NATURAL FOODS WEST, INC.; UNFI
22 GROCERS DISTRIBUTION, INC.; and NOR-CAL
23 PRODUCE, INC.; and

24 (ii) Mahrukh Hussain, who serves as Secretary of TONY’S
25 FINE FOODS; UNITED NATURAL FOODS, INC;
26 UNITED NATURAL FOODS WEST, INC.; UNFI
27

28 ¹ 10-K Annual Report 09/07/2022, “United Natural Foods, Inc. – Financials – SEC Filings” <https://ir.unfi.com/financials/sec-filings/> (last accessed July 24, 2023).

GROCERS DISTRIBUTION, INC.; and NOR-CAL PRODUCE, INC. and Chief Executive Officer of UNITED NATURAL FOODS WEST, INC.; UNFI GROCERS DISTRIBUTION, INC.;

(d) According to the California Secretary of State's website, TONY'S FINE FOODS; UNITED NATURAL FOODS, INC; UNITED NATURAL FOODS WEST, INC.; UNFI GROCERS DISTRIBUTION, INC.; and NOR-CAL PRODUCE, INC. share the same agent for process, CT CORPORATION SYSTEM; and

(e) On information and belief, TONY'S FINE FOODS; UNITED NATURAL FOODS, INC; UNITED NATURAL FOODS WEST, INC.; UNFI GROCERS DISTRIBUTION, INC.; and NOR-CAL PRODUCE, INC. utilize the same standardized employment forms and the same employment policies.

PAGA REPRESENTATIVE ALLEGATIONS

24. Defendants are wholesale distributors of grocery and non-food products, and support services to retailers in United States and Canada, and operate approximately 11 distribution centers in California. Upon information and belief, Defendants maintain a single, centralized Human Resources (HR) department at their corporate headquarters in Providence, Rhode Island, for all non-exempt, hourly paid employees working for Defendants in California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants' company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

25. In particular, Plaintiff and other non-party Aggrieved Employees, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees' assigned locations or

positions. Upon information and belief, Defendants set forth uniform policies and procedures in several documents provided at an employee's time of hire.

26. Upon information and belief, Defendants maintain a centralized Payroll department at their corporate headquarters in Providence, Rhode Island, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations in California, including Plaintiff and other non-party Aggrieved Employees. Based upon information and belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid employees in California, irrespective of their work locations. Upon information and belief, Defendants process payroll for departing employees in the same manner throughout the State of California, regardless of the manner in which each employee's employment ends.

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

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

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

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

31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to be paid at a regular rate of pay, and corresponding rates of pay for overtime wages and/or meal and rest period premiums, that included as eligible income all remuneration required by law,

1 including but not limited to, all income derived from shift differential pay, incentive pay,
2 nondiscretionary bonuses, commissions, and/or other forms of compensation, but failed to
3 include all forms of remuneration in calculating the regular rate of pay for Plaintiff and other
4 non-party Aggrieved Employees.

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

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

19 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to rest
21 periods in accordance with the California Labor Code and applicable IWC Wage Order or
22 payment of one (1) additional hour of pay at their regular rates of pay when they were not
23 authorized and permitted to take a compliant rest period and that Plaintiff and other non-party
24 Aggrieved Employees were not authorized and permitted to take compliant rest periods or
25 provided with payment of one (1) additional hour of pay at their regular rates of pay when they
26 were not authorized and permitted to take a compliant rest period.

27 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to

1 receive complete and accurate wage statements in accordance with California law. In violation
2 of the California Labor Code, Plaintiff and other non-party Aggrieved Employees were not
3 provided complete and accurate wage statements.

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

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

14 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
16 timely payment of all wages earned upon termination of employment. In violation of the
17 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
18 payment of all wages due, including, but not limited to, overtime wages, minimum wages, meal
19 and rest period premiums, and/or sick leave pay, within permissible time periods.

20 39. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
22 receive sick leave benefits to be paid at a regular rate of pay, that included, as eligible income,
23 all income derived from shift differential pay, incentive pay, nondiscretionary bonuses,
24 commissions, and/or other forms of compensation, but failed to include all forms of
25 remuneration in calculating the regular rate of pay for sick leave pay.

26 40. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
28 receive reimbursement for all business-related expenses and costs they incurred during the

1 course and scope of their employment and that they did not receive reimbursement of applicable
2 business-related expenses and costs incurred.

3 41. Plaintiff is informed and believes, and thereon alleges, that at all times herein
4 mentioned, Defendants knew or should have known that they had a duty to provide Plaintiff and
5 other non-party Aggrieved Employees with safety devices and safeguards to protect their life,
6 safety, and health in the workplace, but failed to do so.

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

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

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

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

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

28 (a) The aggrieved employee shall give written notice by online filing

(hereinafter “Employee’s Notice”) to the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

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

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

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

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

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

(c) The employer may cure the alleged violation within thirty-three (33)

1 calendar days of the postmark date of the notice. The employer shall give
2 written notice by certified mail within that period of time to the aggrieved
3 employee or representative and the agency if the alleged violation is
4 cured, including a description of actions taken, and no civil action
5 pursuant to Section 2699 may commence. If the alleged violation is not
6 cured within the 33-day period, the employee may commence a civil
7 action pursuant to Section 2699.

8 48. On May 26, 2023, Plaintiff provided written notice by online filing to the LWDA
9 and by certified mail to Defendants of the specific provisions of the California Labor Code
10 alleged to have been violated, including facts and theories to support the alleged violations, in
11 accordance with California Labor Code section 2699.3. Plaintiff's written notice was
12 accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA
13 Administrator has confirmed receipt of Plaintiff's written notice and assigned Plaintiff PAGA
14 Case Number LWDA-CM-957863-23. On May 30, 2023, Plaintiff filed an amended written
15 notice by online filing to the LWDA and by certified mail to Defendants of the specific
16 provisions of the California Labor Code alleged to have been violated, supplementing and/or
17 clarifying the facts and theories to support the alleged violations set forth in his original LWDA
18 notice, in accordance with California Labor Code section 2699.3. True and correct copies of
19 Plaintiff's written notices to the LWDA and Defendants are attached hereto as "Exhibit 1."

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

23 50. Thus, Plaintiff has satisfied the administrative prerequisites under California
24 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
25 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 248.6, 510,
26 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, 6401, and 6403.

27 51. Labor Code section 558(a) provides "[a]ny employer or other person acting on
28 behalf of an employer who violates, or causes to be violated, a section of this chapter or any

1 provision regulating hours and days of work in any order of the Industrial Welfare Commission
2 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
3 each underpaid employee for each pay period for which the employee was underpaid. . . . (2)
4 For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
5 each pay period for which the employee was underpaid. . . .” Labor Code section 558(c)
6 provides “[t]he civil penalties provided for in this section are in addition to any other civil or
7 criminal penalty provided by law.” Plaintiff, acting in the public interest as a private attorney
8 general, seeks assessment and collection of civil penalties under Labor Code section 558 for
9 himself, all other non-party Aggrieved Employees, and the State of California against
10 Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the applicable
11 IWC Wage Order. Plaintiff, acting in the public interest as a private attorney general, does not
12 seek the recovery of unpaid wages under Labor Code section 558 from Defendants for violations
13 of Labor Code sections 510, 512(a), 516, 1198, and the applicable IWC Wage Order.

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

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

20 54. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
21 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a private
22 attorney general, seeks assessment and collection of civil penalties for himself, all other non-
23 party Aggrieved Employees, and the State of California against Defendants for violations of
24 California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 248.6, 510, 512(a), 516,
25 1174(d), 1182.12, 1194, 1197, 1198, 2802, 6401, and 6403.

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1 **FIRST CAUSE OF ACTION**

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

3 **(Against all Defendants)**

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

6 56. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
7 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
8 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7, 510,
9 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved
10 employees, including Plaintiff, to recover civil penalties for violations of those Labor Code
11 sections not found in section 2699.5, including sections 246, 248.6, 516, 1182.12, 6401, and
12 6403.

13 57. Defendants’ conduct, as alleged herein, violates numerous sections of the
14 California Labor Code, including, but not limited to, the following:

- 15 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
16 Wage Order for Defendants’ failure to compensate Plaintiff and other
17 non-party Aggrieved Employees with all required overtime pay, as set
18 forth below;
- 19 (b) Violation of Labor Code sections 226.7, 510, and 1198, and the applicable
20 IWC Wage Order for Defendants’ failure to include all forms of
21 remuneration in the regular rate of pay as required by law for purposes of
22 paying overtime wages and/or meal and rest period premiums to Plaintiff
23 and other non-party Aggrieved Employees, as set forth below;
- 24 (c) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and the
25 applicable IWC Wage Order for Defendants’ failure to compensate
26 Plaintiff and other non-party Aggrieved Employees with at least
27 minimum wages for all hours worked, as set forth below;
- 28 (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the

1 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
2 and other non-party Aggrieved Employees with meal periods, as set forth
3 below;

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

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

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

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

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

19 (j) Violation of Labor Code sections 246 and 248.6 for failure to properly
20 calculate the sick leave paid to Plaintiff and other non-party Aggrieved
21 Employees, as set forth below;

22 (k) Violation of Labor Code sections 2802 for failure to reimburse Plaintiff
23 and other non-party Aggrieved Employees for all business expenses
24 necessarily incurred, as set forth below; and;

25 (l) Violation of Labor Code sections 6401 and 6403 for failure to provide
26 Plaintiff and other non-party Aggrieved Employees with safety devices
27 and safeguards for the workplace, as set forth below.

28 ///

1 **FAILURE TO PAY OVERTIME**

2 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

3 58. Labor Code section 1198 makes it illegal to employ an employee under
4 conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor
5 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
6 shall be the . . . standard conditions of labor for employees. The employment of any employee
7 . . . under conditions of labor prohibited by the order is unlawful.”

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

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

17 61. The applicable IWC Wage Order further provides that Defendants are and were
18 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
19 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
20 An employee’s regular rate of pay includes all remuneration for employment paid to, or on
21 behalf of, the employee, including shift differential pay, nondiscretionary bonuses,
22 commissions, and incentive pay.

23 62. California Labor Code section 510 codifies the right to overtime compensation
24 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
25 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
26 (7th) day of work, and to overtime compensation at twice the employee’s regular rate of pay for
27 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
28 the seventh (7th) day of work.

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

7 64. First, during the relevant period, Defendants had, and continue to have, a
8 company-wide policy and/or practice of understaffing their facilities while assigning heavy
9 workloads, including pressuring employees to meet shipping metrics and deadlines, resulting in
10 a failure to provide Plaintiff and other non-party Aggrieved Employees with adequate meal
11 period coverage (*see infra*). As a result of Defendants' policy of understaffing, Plaintiff and
12 other non-party Aggrieved Employees were not always afforded uninterrupted 30-minute meal
13 periods during shifts when they were entitled to receive a meal period. Additionally,
14 Defendants, on a company-wide basis, had a practice of failing to adhere to a schedule for meal
15 periods which, in conjunction with the assignment of heavy workloads, further caused Plaintiff
16 and other non-party Aggrieved Employees to not be relieved of their duties for compliant meal
17 periods. For example, Plaintiff's meal periods were interrupted approximately twice per week
18 by Defendants' management requiring that he discuss work assignments and provide them with
19 the status of meeting shipping deadlines. Thus, Plaintiff and other non-party Aggrieved
20 Employees worked through their meal periods and/or had them interrupted to complete their
21 assigned workloads, and Defendants did not pay Plaintiff and other non-party Aggrieved
22 Employees for the time they continued to perform tasks during meal periods.

23 65. Additionally, on information and belief, because Defendants frowned upon
24 employees accruing meal period penalties, Defendants' management pressured Plaintiff and
25 other non-party Aggrieved Employees to clock out for meal periods and/or adjusted Plaintiff
26 and other non-party Aggrieved Employees time records to reflect compliant meal periods,
27 regardless of whether they had received a compliant meal period or not, in order to strictly limit
28 the meal penalties that would need to be paid by Defendants.

1 66. Second, during the relevant period, on information and belief, Defendants had a
2 policy and/or practice of discouraging and impeding other non-party Aggrieved Employees
3 from recording hours worked that were outside of their scheduled shifts, in order to limit the
4 amount of overtime employees could accrue. This policy of limiting overtime, coupled with
5 Defendants' practices of understaffing and assigning heavy workloads, led other non-party
6 Aggrieved Employees to work off-the-clock before and after their scheduled shift times. For
7 example, other non-party Aggrieved Employees were required to clean the loading dock after
8 clocking out because Defendants' management pressured employees to clock out at their
9 scheduled shift-end times and continue performing work related duties to prevent overtime
10 accrual. Thus, Defendants failed to track all of the time that employees spent performing work-
11 related tasks outside of their shifts, and other non-party Aggrieved Employees received no
12 compensation for this time.

13 67. Moreover, Defendants failed to provide other non-party Aggrieved Employees
14 with a sufficient number of timeclock machines to use, which caused other non-party Aggrieved
15 Employees to wait in line off-the-clock and under Defendants' control, time for which they were
16 not paid. For example, because Defendants provided employees with only two (2) access points
17 to their timekeeping system at their warehouse location in Gilroy, other non-party Aggrieved
18 Employees would often have to wait to clock in for the start of their shifts, because there would
19 be a line of employees clocking in. For instance, other non-party Aggrieved Employees were
20 required to wait in line under Defendants' control until employees in the front of the line clocked
21 in, time for which they were not paid. Furthermore, during the time when other non-party
22 Aggrieved Employees waited to clock in for the start of their shifts, Defendants' management
23 directed other non-party Aggrieved Employees to complete tasks such as off-loading trailers,
24 preparing pallets, and moving products to storage or shipping.

25 68. Defendants knew or should have known that, as a result of these company-wide
26 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
27 their assigned duties off-the-clock during meal periods and/or before and after their shifts, and
28 were suffered or permitted to perform work for which they were not paid. Because Plaintiff

1 and other non-party Aggrieved Employees worked shifts of eight (8) hours a day or more, or
2 forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium
3 pay. Therefore, Plaintiff and other non-party Aggrieved Employees were not paid overtime
4 wages for all of the overtime hours they actually worked.

5 69. Furthermore, Defendants did not pay Plaintiff and other non-party Aggrieved
6 Employees the correct overtime rate for the recorded overtime hours that they generated. In
7 addition to an hourly wage, Plaintiff and other non-party Aggrieved Employees shift differential
8 pay, incentive pay, nondiscretionary bonuses, commissions, and/or other forms of
9 remuneration. However, in violation of the California Labor Code, Defendants failed to
10 incorporate all compensation, including shift differential pay, incentive pay, nondiscretionary
11 bonuses, commissions, and/or other forms of remuneration, into the calculation of the regular
12 rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when
13 Plaintiff and other non-party Aggrieved Employees worked overtime and received these other
14 forms of pay, Defendants failed to pay all overtime wages by paying a lower overtime rate than
15 required.

16 70. For example, Defendants paid Plaintiff and other non-party Aggrieved
17 Employees shift differential pay, incentive pay, nondiscretionary bonuses, and/or commissions
18 for working in the freezer areas or meeting distribution goals, which were listed on Plaintiff's
19 and other non-party Aggrieved Employees' wage statements as "Premium" and "DC Success
20 Sharing Plan." During pay periods that Plaintiff and other non-party Aggrieved Employees
21 were paid overtime and double-time wages, Defendants did not incorporate the shift differential
22 pay, incentive pay, nondiscretionary bonuses, and/or commissions into Plaintiff's and other
23 non-party Aggrieved Employees' regular rate of pay and, as a result, paid them at incorrect and
24 lower rates of pay for overtime hours worked. Specifically, Defendants paid Plaintiff and other
25 non-party Aggrieved Employees 1.5 times their hourly rate of pay instead of 1.5 times their
26 regular rate of pay for overtime wages, and during pay periods that Plaintiff and other non-party
27 Aggrieved Employees worked more than twelve (12) hours in a day, Defendants paid Plaintiff
28 and other non-party Aggrieved Employees two (2) times their hourly rate of pay instead of two

(2) times their regular rate of pay for double-time wages. For example, for the pay period from September 25, 2022 to October 1, 2022, Defendants paid Plaintiff shift differential pay, but only paid him 2.0 times his hourly rate ($\$20.25 \times 2.0 = \40.50) for overtime wages. Defendant's failure to properly calculate the overtime and double-time rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Plaintiff and other non-party Aggrieved Employees on a company-wide basis.

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

FAILURE TO PAY MINIMUM WAGES

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

72. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 9-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11090(2)(H) (defining "Hours Worked").

73. As stated, due to Defendants' policies and/or practices of understaffing their facilities while assigning heavy workloads including meeting shipping metrics and deadlines, and failing to adhere to a schedule for meal periods, Plaintiff and other non-party Aggrieved Employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. Moreover, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, Defendants' management pressured Plaintiff and other non-party

1 Aggrieved Employees to clock out for meal periods and/or adjusted Plaintiff's and other non-
2 party Aggrieved Employees' time records to reflect compliant meal periods, even when meal
3 periods were missed, short, and/or interrupted.

4 74. As also stated above, due to Defendants' policy of limiting the amount of
5 overtime employees could accrue, combined with understaffing and assignment of heavy
6 workloads, on information and belief, Defendants required other non-party Aggrieved
7 Employees perform work off-the-clock before and after their scheduled shifts, such as off-
8 loading trailers, preparing pallets, moving products to storage or shipping, cleaning the loading
9 dock, and waiting in line to clock-in at an inadequate number of timekeeping machines prior to
10 the start of their schedule shifts. However, Defendants failed to track all of this time other non-
11 party Aggrieved Employees spent working off-the-clock, and thus, other non-party Aggrieved
12 Employees received no compensation for this time.

13 75. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
14 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did not
15 qualify for overtime premium payment, Defendants did not pay at least minimum wages for
16 those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194,
17 1197, and 1198.

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

22 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**

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

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

27 78. At all relevant times herein set forth, California Labor Code section 512(a)
28 provides that an employer may not require, cause, or permit an employee to work for a period

1 of more than five (5) hours per day without providing the employee with a meal period of not
2 less than thirty (30) minutes, except that if the total work period per day of the employee is not
3 more than six (6) hours, the meal period may be waived by mutual consent of both the employer
4 and the employee. Under California law, first meal periods must start after no more than five
5 hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

6 79. At all relevant times herein set forth, California Labor Code sections 226.7,
7 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
8 meal period mandated by an applicable order of the IWC.

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

15 81. As set forth above, during the relevant time period, Defendants had, and continue
16 to have, company-wide policies and/or practices of understaffing their facilities and assigning
17 strict metrics and deadlines for shipping. Defendants enforced certain shipping goals or
18 "Productivity Expectations" (*see infra*), such as loading 120 pallets a day, which required the
19 preparation of 14 pallets an hour, but Defendants only assigned a limited number of employees
20 to perform loading duties, such as Plaintiff, to operate forklifts. Per Defendants' written policy
21 on Productivity Expectations, employees failing to meet 95% of Defendants' Productivity
22 Expectations, are subject to a 4-step disciplinary process up to and including termination. These
23 company-wide practices, combined with the failure to adhere to a schedule for meal periods,
24 led to a lack of meal period coverage and prevented Plaintiff and other non-party Aggrieved
25 Employees from taking all timely, uninterrupted meal periods which they were entitled.

26 82. As a result of Defendants' policies and/or practices, Plaintiff and other non-party
27 Aggrieved Employees were forced to work in excess of five (5) hours before taking a meal
28 period, had their meal periods interrupted, and/or had to forgo their meal periods altogether.

1 For example, in order to comply with Defendants' management's expectations, such as
2 immediately cleaning up spilled pallets, Plaintiff was required to take his meal periods after his
3 fifth hour of work. As a further example, on information and belief, other non-party Aggrieved
4 Employees experienced late meal periods in order to complete the loading assignments and meet
5 shipping departure timeframes.

6 83. Further, as stated, because Defendants frowned upon employees accruing meal
7 period penalties, Defendants' management pressured Plaintiff and other non-party Aggrieved
8 Employees to record that they took meal periods on their timesheets and/or adjusted Plaintiff's
9 and other non-party Aggrieved Employees' time records regardless of whether they had
10 received a compliant meal period or not, in order to strictly limit meal penalties that would need
11 to be paid by Defendants.

12 84. Defendants also did not provide Plaintiff and other non-party Aggrieved
13 Employees with second 30-minute meal periods on days that they worked in excess of ten (10)
14 hours in one day. For example, when Plaintiff would work in excess of ten (10) hours in a shift,
15 he was not provided his second meal period during these shifts. Plaintiff and other non-party
16 Aggrieved Employees did not sign valid meal period waivers on days that they were entitled to
17 meal periods and were not relieved of all duties.

18 85. Moreover, Defendants had a company-wide policy of requiring all newly hired
19 employees to sign blanket meal period waivers at or near their time of hire. Defendants took
20 the position that non-exempt, hourly paid employees had waived their rights to first and/or
21 second meal periods for the entirety of their employment and, on that basis, did not provide
22 them with all meal periods to which they were entitled. Further, Defendants' "Voluntary Meal
23 Break Waiver Form" requires employees to provide written notice should they wish to revoke
24 the waiver. Defendants' presumption that meal periods would not be provided for shifts in
25 excess of five (5) hours but less than six (6) hours and for shifts in excess of ten (10) hours but
26 less than twelve (12) hours, due to blanket meal period waivers signed at or near the time of
27 hire, and imposition on employees to revoke the waivers in writing, discouraged and impeded
28 Plaintiff and other non-party Aggrieved Employees from taking all meal periods to which they

1 were entitled.

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

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

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

18 87. At all times mentioned herein, Defendants knew or should have known that as a
19 result of their policies, Plaintiff and other non-party Aggrieved Employees were prevented from
20 being relieved of all duties and required to perform some of their assigned duties during meal
21 periods. Defendants further knew or should have known that they did not pay Plaintiff and other
22 non-party Aggrieved Employees meal period premiums when meal periods were late,
23 interrupted, shortened, and/or missed.

24 88. Furthermore, Defendants engaged in a company-wide practice and/or policy of
25 not paying all meal period premiums owed when compliant meal periods are not provided.
26 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees have
27 not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to
28 the extent that Defendants did pay Plaintiff and other non-party Aggrieved Employees premium
pay for missed, late, and interrupted meal periods, Defendants did not pay Plaintiff and other
non-party Aggrieved Employees the correct rate of pay for premiums because Defendant

1 systematically failed to include all forms of compensation such as shift differential pay,
2 incentive pay, nondiscretionary bonuses, commissions, and/or other forms of remuneration, in
3 the regular rate of pay.

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

8 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

9 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

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

13 91. At all relevant times, the applicable IWC Wage Order provides that "[e]very
14 employer shall authorize and permit all employees to take rest periods, which insofar as
15 practicable shall be in the middle of each work period" and that the "rest period time shall be
16 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
17 hours or major fraction thereof" unless the total daily work time is less than three and one-half
18 (3 ½) hours.

19 92. At all relevant times, California Labor Code section 226.7 provides that no
20 employer shall require an employee to work during any rest period mandated by an applicable
21 order of the California IWC. To comply with its obligation to authorize and permit rest periods
22 under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer
23 must "relinquish any control over how employees spend their break time, and relieve their
24 employees of all duties—including the obligation that an employee remain on call. A rest
25 period, in short, must be a period of rest." *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th
26 257, 273 (2016).

27 93. Pursuant to the applicable IWC Wage Order and California Labor Code section
28 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from

1 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
2 required rest period was not authorized and permitted.

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

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

19 96. As a result of Defendants' practices and policies, Plaintiff and other non-party
20 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess
21 of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were
22 entitled. For example, Plaintiff did not receive a third rest period at all when working shifts in
23 excess of 10 hours.

24 97. Defendants have also engaged in a systematic, company-wide practice and/or
25 policy of not paying rest period premiums owed when rest periods are not authorized and
26 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
27 Employees have not received premium pay for all missed rest periods. Alternatively, to the
28 extent that Defendants did pay Plaintiff and other non-party Aggrieved Employees one (1)

1 additional hour of premium pay for missed rest periods, Defendants did not pay Plaintiff and
2 other non-party Aggrieved Employees at the correct rate of pay for premiums because
3 Defendants failed to include all forms of compensation, such as shift differential pay, incentive
4 pay, nondiscretionary bonuses, commissions, and/or other forms of remuneration, in the regular
5 rate of pay. Accordingly, Defendants failed to authorize and permit all compliant rest periods
6 and failed to pay the full rest period premiums due.

7 98. Defendants' conduct violates the applicable IWC Wage Order and California
8 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved Employees
9 are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
10 2699(a), (f), and (g).

11 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
12 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

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

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

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

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

8 102. Furthermore, because Defendants did not calculate Plaintiff's and other non-
9 party Aggrieved Employees' regular rate of pay correctly for purposes of paying overtime
10 wages, meal and rest period premiums, and/or paid sick leave, Defendants did not list the correct
11 amount of gross wages in compliance with section 226(a)(1) and did not list the correct amount
12 of net wages in violation of section 226(a)(5). Defendants also failed to correctly list all
13 applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime
14 wages, meal and rest period premiums, and/or paid sick leave, in violation of section 226(a)(9).

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

23 104. California Labor Code section 1174(d) provides that "[e]very person employing
24 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
25 employed and the ages of all minors" and "[k]eep, at a central location in the state or at the
26 plants or establishments at which employees are employed, payroll records showing the hours
27 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
28 applicable piece rate paid to, employees employed at the respective plants or

1 establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500
2 civil penalty if they fail to maintain accurate and complete records as required by section
3 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
4 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-party
5 Aggrieved Employees showing the daily hours they worked and the wages paid thereto as a
6 result of failing to record the off-the-clock hours that they worked.

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

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

24 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

25 **VIOLATION OF LABOR CODE SECTION 204**

26 107. At all relevant times herein set forth, California Labor Code section 204 requires
27 that all wages earned by any person in any employment between the 1st and the 15th days,
28 inclusive, of any calendar month, other than those wages due upon termination of an employee,

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

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

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

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

FAILURE TO PAY WAGES UPON TERMINATION

VIOLATION OF LABOR CODE SECTIONS 201 AND 202

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

112. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved Employees who are no longer employed by Defendants the earned and unpaid wages set forth

1 above, including but not limited to, overtime wages, minimum wages, meal and rest period
2 premiums, and/or sick leave pay, either at the time of discharge, or within seventy-two (72)
3 hours of their leaving Defendants' employ.

4 113. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
5 who are no longer employed by Defendants their wages earned and unpaid at the time of
6 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor
7 Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are therefore
8 entitled to recover civil penalties pursuant to Labor Code sections 256 and/or 2699(a), (f), and
9 (g).

10 **FAILURE TO PROPERLY CALCULATE SICK LEAVE RATES OF PAY**

11 **VIOLATION OF LABOR CODE SECTIONS 246 AND 248.6**

12 114. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,
13 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more
14 days from the commencement of employment with paid sick days, to be accrued at least one
15 hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4),
16 employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent
17 paid leave or paid time off) in each year of the employee's employment. Labor Code section
18 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations:
19 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the
20 regular rate of pay for the workweek in which the employee uses paid sick time, whether or not
21 the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for
22 nonexempt employees shall be calculated by dividing the employee's total wages, not including
23 overtime premium pay, by the employee's total hours worked in the full pay periods of the prior
24 90 days of employment."

25 115. At all relevant times here, California Labor Code section 248.6 provides covered
26 employees with COVID-19 supplemental paid sick leave. Labor Code section 248.6(b)(3)(A),
27 provides each hour of COVID-19 supplemental paid sick leave shall be compensated at a rate
28 equal to the following: 1) "[c]alculated in the same manner as the regular rate of pay for the

workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]” or 2) “[c]alculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total nonovertime hours worked in the full pay periods occurring within the prior 90 days of employment; provided that, for nonexempt employees paid by piece rate, commission or other method that uses all hours to determine the regular rate of pay, total wages, not including overtime premium pay, shall be divided by all hours, to determine the correct amount of COVID-19 supplemental paid sick leave under this subdivision.”

116. During the relevant time period, Defendants did not pay Plaintiff and other non-party Aggrieved Employees the correct sick leave rates of pay. As stated, in addition to an hourly wage, Defendants paid Plaintiff and other non-party Aggrieved Employees shift differential pay, incentive pay, nondiscretionary bonuses, commissions, and/or other forms of remuneration. However, in violation of the California Labor Code, Defendants failed to incorporate all remunerations, including shift differential pay, incentive pay, nondiscretionary bonuses, and/or commissions into the calculation of the regular rate of pay for purposes of calculating the sick leave rate. Therefore, during times when Plaintiff and other non-party Aggrieved Employees took sick leave and received these other forms of pay, Defendants failed to pay all sick leave benefits by paying a lower sick leave rate than required. Specifically, Defendants paid Plaintiff and other non-party Aggrieved Employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

117. For example, during the pay period ending December 24, 2022, Plaintiff took 10 hours of sick leave and earned \$60.69 from the “DC Success Sharing Plan” in incentive pay or nondiscretionary bonuses during the same pay period. However, Defendants paid Plaintiffs’ sick leave rate based on his hourly rate of \$20.25 instead of his regular rate of pay.

118. Defendants’ failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to Plaintiff and other non-party Aggrieved Employees on a company-wide basis in violation of California Labor Code sections 246(l) and 248.6(b)(3)(A).

119. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 248.5 and/or 2699(a), (f), and (g).

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES

VIOLATION OF LABOR CODE SECTION 2802

120. At all times herein set forth, California Labor Code section 2802 provides that an employer must reimburse employees for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 9-2001 provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft." IWC Wage Order No. 9-2001 further provides that: "[w]hen uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer."

121. First, during the relevant time period, Defendants required Plaintiff and other non-party Aggrieved Employees to wear uniforms bearing the company logo. Due to the nature of his work, Plaintiffs' uniform items would become stained with grease, sweat, soiled, and/or acquire an unpleasant odor such that he was unable to mix these clothes in with other laundry. As a result, he had to wash his uniform items separately from his regular clothing, thus incurring additional laundry expenses for the upkeep of his uniforms. Thus, Defendants failed to maintain uniforms they required Plaintiff and other non-party Aggrieved Employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

122. Moreover, during the relevant time period, Defendants failed to provide Plaintiff and other non-party Aggrieved Employees with adequate uniform items for the tasks they were required to perform, and instead, forced Plaintiff and other non-party Aggrieved Employees to

1 pay out-of-pocket for some of their uniform components. For example, as Defendants are
2 wholesale food distributors, that must adhere to certain food safety temperature standards,
3 requiring Defendants' facility to remain at low temperatures, which in turn necessitates that
4 employees work in refrigerated environments for extended periods of time. Due to the low
5 temperatures in Defendants work areas, Plaintiff and other non-party Aggrieved Employees
6 were required to wear protective gear, i.e., long-sleeved shirts, sweaters, and/or jackets, to
7 protect them from the cold temperatures. However, Defendants did not provide these uniform
8 components to employees working in the refrigeration and freezer areas. Instead, Plaintiff and
9 other non-party Aggrieved Employees were required to purchase long-sleeved shirts, sweaters,
10 and/or jackets in order to perform their work duties, and were not reimbursed for this cost.

11 123. Second, during the relevant time period, Defendants, on a company-wide basis,
12 required other non-party Aggrieved Employees to purchase their own supplies and tools. For
13 example, other non-party Aggrieved Employees were required to purchase gloves and office
14 supplies in order to carry out their work-related duties. Although Defendants required other
15 non-party Aggrieved Employees to purchase their own supplies and tools for use on the job,
16 Defendants did not reimburse them for these expenses.

17 124. Third, during the relevant time period, other non-party Aggrieved Employees
18 were required to use their personal mobile devices, including, but not limited to, cellular phones,
19 and/or mobile data to carry out their job duties, but Defendants failed to reimburse them for the
20 costs of their work-related mobile device expenses. For example, other non-party Aggrieved
21 Employees were required to use their personal cellular phones to communicate with
22 Defendants' management about work-related matters, such as loading dock maintenance and
23 frozen food storage. Although Defendants required other non-party Aggrieved Employees to
24 utilize their personal mobile devices and/or mobile data to carry out their work-related
25 responsibilities, Defendants failed to reimburse them for these costs.

26 125. Defendants could have provided Plaintiff and other non-party Aggrieved with
27 access to laundering services and actual uniforms for use on the job, including long-sleeved
28 shirts, sweaters, and/or jackets, or reimbursed employees for their uniform/laundry expenses

1 or provided a uniform maintenance allowance. Additionally, Defendants could have provided
2 other non-party Aggrieved Employees with actual tools for use on the job, such as company
3 mobile devices and gloves and office supplies, or, Defendants could have reimbursed employees
4 for the costs of their mobile device usage and gloves and office supply expenses. Instead,
5 Defendants passed these operating costs off onto Plaintiff and other non-party Aggrieved
6 Employees. At all relevant times, Plaintiff did not earn at least two (2) times the minimum
7 wage.

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

13 **FAILURE TO PROVIDE SAFETY DEVICES AND SAFEGUARDS**

14 **VIOLATION OF LABOR CODE SECTIONS 6401 AND 6403**

15 127. At all relevant times herein, California Labor Code section 6401 provides that
16 employers must furnish and use safety devices and safeguards, and adopt and use practices,
17 means, methods, operations, and processes which are reasonably adequate to render the
18 employment and place of employment safe and healthy. California Labor Code Section 6401
19 further provides that an employer must do everything reasonably necessary to protect the life,
20 safety and health of its employees.

21 128. During the relevant period, Defendants failed to provide Plaintiff and other non-
22 party Aggrieved Employees with personal protective equipment, such as gloves, long-sleeved
23 shirts, sweaters, and/or jackets, to keep them safe in the workplace. As Defendants are
24 wholesale food distributors, they must adhere to certain food and safety temperature standards,
25 requiring certain zones of their facilities to remain at low temperatures, which in turn
26 necessitates that employees work in refrigerated or freezing environments for extended periods
27 of time. Despite the fact that Defendants required Plaintiff and other non-party Aggrieved
28 Employees to wear certain personal protective equipment, including gloves, long-sleeved shirts,

1 sweaters, and/or jackets, while engaged in their work-related duties, Defendants failed to
2 provide such reasonably necessary equipment to Plaintiff and other non-party Aggrieved
3 Employees to keep them warm and/or safe while working in refrigerated or freezing
4 temperatures for extended periods of time. For example, Plaintiff and other non-party
5 Aggrieved Employees were required to purchase long-sleeved shirts, sweaters, and/or jackets
6 to protect themselves from the cold temperatures.

7 129. Defendants' failure to provide Plaintiff and other non-party Aggrieved
8 Employees with safety devices and safeguards for the workplace violates Labor Code sections
9 6401 and 6403. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
10 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

11 **REQUEST FOR JURY TRIAL**

12 Plaintiff requests a trial by jury.

13 **PRAYER FOR RELIEF**

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

16 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
17 (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

18 **As to the First Cause of Action**

19 2. That the Court declare, adjudge and decree that Defendants violated the
20 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
21 Employees: 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198
22 (by failing to include all forms of remuneration in the regular rate of pay for purposes of paying
23 overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, and 1198 (by
24 failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by
25 failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all
26 rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and
27 maintain accurate payroll records); 204 (by failing to timely pay all earned wages during
28 employment); 201 and 202 (by failing to timely pay all earned wages upon termination); 246

1 and 248.6 (by failing to properly calculate sick leave pay); 2802 (by failing to reimburse
2 business expenses); and 6401 and 6403 (by failing to provide safety devices and safeguards);

3 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 248.5,
4 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201,
5 202, 204, 226(a), 226.7, 246, 248.6, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198,
6 2802, 6401 and 6403;

7 4. For attorneys' fees and costs pursuant to California Labor Code section
8 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
9 Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 248.6, 510, 512(a), 516, 1174(d),
10 1182.12, 1194, 1197, 1198, 2802, 6401 and 6403;

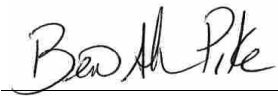
11 5. For pre-judgment and post-judgment interest as provided by law; and

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

14
15 Dated: July 31, 2023,

Respectfully submitted,

Capstone Law APC

17
18 By: 

Bevin Allen Pike
Daniel S. Jonathan
Trisha K. Monesi

Attorneys for Plaintiff Ramon Trejo

EXHIBIT “1”



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May 26, 2023

VIA ONLINE SUBMISSION

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

Subject: *Ramon Trejo v. Tony's Fine Foods, et al.*

Dear PAGA Administrator:

This office represents Ramon Trejo in connection with his claims under the California Labor Code. Mr. Trejo was an employee of TONY'S FINE FOODS; UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; UNFI GROCERS DISTRIBUTION, INC.; and/or NOR-CAL PRODUCE, INC. For the purpose of this letter, Mr. Trejo collectively refers to these entities as "TONYS."

The employers may be contacted directly at the addresses below:

TONY'S FINE FOODS
313 IRON HORSE WAY
PROVIDENCE, RI 02908

UNFI GROCERS DISTRIBUTION, INC.
11840 VALLEY VIEW RD
EDEN PRAIRIE, MN 55344

UNITED NATURAL FOODS, INC.
313 IRON HORSE WAY
PROVIDENCE, RI 02908

NOR-CAL PRODUCE, INC.
313 IRON HORSE WAY
PROVIDENCE, RI 02908

UNITED NATURAL FOODS WEST, INC.
313 IRON HORSE WAY
PROVIDENCE, RI 02908

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

TONYS employed Mr. Trejo as an hourly paid, non-exempt employee from approximately September 2022 to February 2023. Mr. Trejo worked for TONYs as a Forklift Operator at its facility in Sacramento, California. During his employment, Mr. Trejo typically worked eight (8) or more hours per day and five (5) days per week. By the end of his employment, Mr. Trejo was compensated approximately \$22.25 per hour. His job duties included, without limitation, operating a forklift to prepare and move pallets of frozen food products to different areas in the warehouse for storing and shipping.

TONYS committed one or more of the following Labor Code violations against Mr. Trejo, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

TONYS’s Company-Wide and Uniform Payroll and HR Practices

TONY’S FINE FOODS; UNITED NATURAL FOODS WEST, INC.; UNFI GROCERS DISTRIBUTION, INC.; and NOR-CAL PRODUCE, INC. are California corporations. UNITED NATURAL FOODS, INC. is a Delaware corporation. Together, they are wholesale distributors of grocery and non-food products and support services providers to retailers in United States and Canada and operate approximately 11 distribution centers in California. Upon information and belief, TONYs maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Providence, Rhode Island, for all non-exempt, hourly paid employees working for TONYs in California, including Mr. Trejo and other aggrieved employees. At all relevant times, TONYs issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Trejo and other aggrieved employees, regardless of their location or position.

Upon information and belief, TONYs maintains a centralized Payroll department at its corporate headquarters in Providence, Rhode Island, which processes payroll for all non-exempt, hourly paid employees working for TONYs in California, including Mr. Trejo and other aggrieved employees. Further, TONYs issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Trejo and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, TONYs utilized the same methods and formulas when calculating wages due to Mr. Trejo and other aggrieved employees in California.

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

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40)

¹ These facts, theories, and claims are based on Mr. Trejo’s experience and counsel’s review of those records currently available relating to Mr. Trejo’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Trejo reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

TONYS willfully failed to pay all overtime wages owed to Mr. Trejo and other aggrieved employees. During the relevant time period, Mr. Trejo and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of ten (10) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, TONYs had, and continues to have, a company-wide policy and/or practice of understaffing its facilities while assigning heavy workloads, including pressuring employees to meet shipping metrics and deadlines, resulting in a failure to provide Mr. Trejo and other aggrieved employees with adequate meal period coverage (*see infra*). As a result of TONYs's policy of understaffing, Mr. Trejo and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Additionally, TONYs, on a company-wide basis, had a practice of failing to adhere to a schedule for meal periods which, in conjunction with the assignment of heavy workloads, further caused Mr. Trejo and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Mr. Trejo's meal periods were interrupted approximately twice per week by TONYs's management requiring that he discuss work assignments and provide them with the status of meeting shipping deadlines. Thus, Mr. Trejo and other aggrieved employees worked through their meal periods and/or had them interrupted to complete their assigned workloads, and TONYs did not pay Mr. Trejo and other aggrieved employees for the time they continued to perform tasks during meal periods.

Additionally, on information and belief, because TONYs frowned upon employees accruing meal period penalties, TONYs's management pressured Mr. Trejo and other aggrieved employees to clock out for meal periods and/or adjusted Mr. Trejo's and other aggrieved employees' time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit the meal penalties that would need to be paid by TONYs.

Second, during the relevant period, TONYs had a policy and/or practice of discouraging and impeding other aggrieved employees from recording hours worked that were outside of their scheduled shifts, in order to limit the amount of overtime employees could accrue. This policy of limiting overtime, coupled with TONYs's practices of understaffing and assigning heavy workloads, led other aggrieved employees to work off-the-clock before and after their scheduled shift times. For example, other aggrieved employees spent approximately 30 minutes cleaning the loading dock after clocking out because TONYs's management pressured employees to clock out at their scheduled shift-end times and continue performing work related duties to prevent overtime accrual. Thus, TONYs failed to track all of the time that employees spent performing work-related tasks outside of their shifts, and other aggrieved employees received no compensation for this time.

Moreover, TONYs failed to provide other aggrieved employees with a sufficient number of timeclock machines to use, which caused other aggrieved employees to wait in line off-the-clock and under TONYs's control, time for which they were not paid. For example, because TONYs provided employees with only two (2) access points to its timekeeping system at its warehouse location in

Sacramento, other aggrieved employees would often have to wait to clock in for the start of their shifts, because there would be a line of employees clocking in. For instance, other aggrieved employees were required to wait in line for up to seven (7) minutes under TONY'S control until employees in the front of the line clocked in, time for which they were not paid. Furthermore, during the time when other aggrieved employees waited to clock in for the start of their shifts, TONY'S management directed other aggrieved employees to complete tasks such as off-loading trailers, preparing pallets, and moving products to storage or shipping.

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

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

Specifically, TONY'S paid Mr. Trejo and other aggrieved employees shift differential pay, commissions, incentive pay, and/or nondiscretionary bonuses for working in the freezer areas or meeting distribution goals, which were listed on Mr. Trejo's and other aggrieved employees' wage statements as "Premium" and "DC Success Sharing Plan." During pay periods that Mr. Trejo and other aggrieved employees were paid overtime and double-time wages, TONY'S did not incorporate the shift differential pay, commissions, incentive pay, and/or nondiscretionary bonuses into Mr. Trejo's and/or other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, TONY'S paid Mr. Trejo and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay for overtime wages, and during pay periods that Mr. Trejo and other aggrieved employees worked more than twelve (12) hours in a day, TONY'S paid Mr. Trejo and other aggrieved employees two (2) times their hourly rate of pay instead of two (2) times their regular rate of pay for double-time wages. For example, for the pay period from September 25, 2022 to October 1, 2022, TONY'S paid Mr. Trejo shift differential pay, but only paid him 2.0 times his hourly rate ($\$20.25 \times 2.0 = \40.50) for overtime wages. TONY'S's failure to properly calculate the overtime and double-time rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Mr. Trejo and other aggrieved employees on a company-wide basis.

TONY'S's failure to pay Mr. Trejo and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Trejo and other aggrieved employees are entitled to recover civil

penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 9-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11090(2)(H) (defining "Hours Worked").

As stated, due to TONY'S policies and/or practices of understaffing its facilities while assigning heavy workloads including meeting shipping metrics and deadlines, and failing to adhere to a schedule for meal periods, Mr. Trejo and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. Moreover, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, TONY'S management pressured Mr. Trejo and other employees to clock out for meal periods and/or adjusted Mr. Trejo's and other aggrieved employees' time records to reflect compliant meal periods, even when meal periods were missed, short, and/or interrupted.

As also stated above, due to TONY'S policy of limiting the amount of overtime employees could accrue, combined with understaffing and assignment of heavy workloads, TONY'S required other aggrieved employees perform work off-the-clock before and after their scheduled shifts, such as off-loading trailers, preparing pallets, moving products to storage or shipping, cleaning the loading dock, and waiting in line to clock-in at an inadequate number of timekeeping machines prior to the start of their schedule shifts. However, TONY'S failed to track all of this time other aggrieved employees spent working off-the-clock, and thus, other aggrieved employees received no compensation for this time.

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

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

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

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at

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

As set forth above, during the relevant time period, TONY'S had, and continues to have, company-wide policies and/or practices of understaffing its facilities and assigning strict metrics and deadlines for shipping. TONY'S enforced certain shipping goals or "Productivity Expectations" (*see infra*), such as loading 120 pallets a day, which required the preparation of 14 pallets an hour, but TONY'S only assigned a limited number of employees to perform loading duties, such as Mr. Trejo, to operate forklifts. Per TONY'S's written policy on Productivity Expectations, employees failing to meet 95% of TONY'S's Productivity Expectations, are subject to a 4-step disciplinary process up to and including termination. These company-wide practices, combined with the failure to adhere to a schedule for meal periods, led to a lack of meal period coverage and prevented Mr. Trejo and other aggrieved employees from taking all timely, uninterrupted meal periods which they were entitled.

As a result of TONY'S's policies and/or practices, Mr. Trejo and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, in order to comply with TONY'S's management's expectations, such as immediately cleaning up spilled pallets, Mr. Trejo was required to take his meal periods after his fifth hour of work. As a further example, other aggrieved employees experienced late meal periods in order to complete the loading assignments and meet shipping departure timeframes.

Further, as stated, because TONY'S frowned upon employees accruing meal period penalties, TONY'S's management pressured Mr. Trejo and other aggrieved employees to record that they took meal periods on their timesheets and/or adjusted Mr. Trejo's and other aggrieved employees' time records regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by TONY'S.

TONY'S also did not provide Mr. Trejo and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, when Mr. Trejo would work in excess of ten (10) hours in a shift, he was not provided his second meal period during these shifts. Mr. Trejo and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

Moreover, TONY'S had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. TONY'S took the position that non-exempt, hourly paid employees had waived their rights to first and/or second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were

entitled. Further, TONY'S "Voluntary Meal Break Waiver Form" requires employees to provide written notice should they wish to revoke the waiver. TONY'S presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours and for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal period waivers signed at or near the time of hire, and imposition on employees to revoke the waivers in writing, discouraged and impeded Mr. Trejo and other aggrieved employees from taking all meal periods to which they were entitled.

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

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

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

At all times herein mentioned, TONY'S knew or should have known that, as a result of these policies, Mr. Trejo and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. TONY'S further knew or should have known that TONY'S did not pay Mr. Trejo and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, or missed.

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

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

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

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

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, TONYs regularly failed to authorize and permit Mr. Trejo and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, TONYs's company-wide practices of understaffing while assigning heavy workloads, including meeting shipping metrics and deadlines, prevented Mr. Trejo and other aggrieved employees from being able to take rest periods. Additionally, TONYs failed to adhere to a schedule for rest periods, which, coupled with TONYs's failure to provide adequate rest period coverage, further led to Mr. Trejo and other aggrieved employees not being authorized and permitted to take compliant rest periods.

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

As a result of TONYs's practices and policies, Mr. Trejo and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Trejo missed some of his rest periods because of the heavy workload and lack of coverage. Additionally, Mr. Trejo did not receive a third rest period at all when working shifts in excess of 10 hours.

TONYS has also engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Trejo and other aggrieved employees have not received premium pay for missed rest periods. Alternatively, to the extent that TONYs did pay Mr. Trejo and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, TONYs did not pay Mr. Trejo and other aggrieved employees at the correct rate of pay for premiums because TONYs failed

to include all forms of compensation, such as shift differential pay, commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

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

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

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

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

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

Additionally, because TONYs did not calculate Mr. Trejo's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, and/or paid sick leave, TONYs did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, TONYs failed to list the correct amount of net wages in violation of section 226(a)(5). TONYs also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, in violation of section 226(a)(9).

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

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d), TONYs willfully failed to maintain accurate payroll records for Mr. Trejo and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

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

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

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

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month

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

During the relevant time period, TONYs willfully failed to pay Mr. Trejo and other aggrieved employees all wages due including, but not limited to, overtime wages, meal and rest period premiums, and/or paid sick leave, within the time periods specified by California Labor Code section 204.

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

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

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

TONYS willfully failed to pay Mr. Trejo and other aggrieved employees who are no longer employed by TONYs the earned and unpaid wages set forth above, including but not limited to, overtime wages, meal and rest period premiums, and/or paid sick leave, either at the time of discharge, or within seventy-two (72) hours of their leaving TONYs's employ.

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

Violation of California Labor Code §§ 246 and 248.6 – Failure to Properly Calculate Paid Sick Leave

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4), employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Further, Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[:]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the

employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

At all relevant times herein, California Labor Code section 248.6 provides covered employees with COVID-19 supplemental paid sick leave. California Labor Code section 248.6(b)(3)(A), provides that each hour of COVID-19 supplemental paid sick leave shall be compensated at a rate equal to the following: 1) "[c]alculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[:]" or 2) "[c]alculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total nonovertime hours worked in the full pay periods occurring within the prior 90 days of employment; provided that, for nonexempt employees paid by piece rate, commission or other method that uses all hours to determine the regular rate of pay, total wages, not including overtime premium pay, shall be divided by all hours, to determine the correct amount of COVID-19 supplemental paid sick leave under this subdivision."

During the relevant time period, TONYs did not pay Mr. Trejo and other aggrieved employees the correct sick leave rates of pay. As stated, in addition to an hourly wage, TONYs paid Mr. Trejo and other aggrieved employees shift differential pay, commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, TONYs failed to incorporate all remunerations, including shift differential pay, commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick leave rate. Therefore, during times when Mr. Trejo and other aggrieved employees took sick leave and received these other forms of pay, TONYs failed to pay all sick leave benefits by paying a lower sick leave rate than required. Specifically, TONYs paid Mr. Trejo and other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

For example, during the pay period ending December 24, 2022, Mr. Trejo took 10 hours of sick leave and earned \$60.69 from the "DC Success Sharing Plan" in incentive pay or nondiscretionary bonuses during the same pay period. However, TONYs paid Mr. Trejo's sick leave rate based on his hourly rate of \$20.25 instead of his regular rate of pay.

TONYs's failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to Mr. Trejo other aggrieved employees on a company-wide basis in violation of Labor Code sections 246(l) and/or 248.6(b)(3)(A). Mr. Trejo and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 9-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft." IWC Wage Order

No. 9-2001 further provides that: “[w]hen uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.”

First, during the relevant time period, TONYs required Mr. Trejo and other aggrieved employees to wear uniforms bearing the company logo. Due to the nature of his work, Mr. Trejo’s uniform items would become stained with grease, sweat, soiled, and/or acquire an unpleasant odor such that he was unable to mix these clothes in with other laundry. As a result, he had to wash his uniform items separately from his regular clothing, thus incurring additional laundry expenses for the upkeep of his uniforms. Thus, TONYs failed to maintain uniforms they required Mr. Trejo and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

Moreover, during the relevant time period, TONYs failed to provide Mr. Trejo and other aggrieved employees with adequate uniform items for the tasks they were required to perform, and instead, forced Mr. Trejo and other aggrieved employees to pay out-of-pocket for some of their uniform components. For example, as TONYs is a wholesale food distributor, it must adhere to certain food safety temperature standards, requiring TONYs’s facility to remain at low temperatures, which in turn necessitates that employees work in refrigerated environments for extended periods of time. Due to the low temperatures in TONYs’s work areas, Mr. Trejo and other aggrieved employees were required to wear protective gear, i.e., long-sleeved shirts, sweaters, and/or jackets, to protect them from the cold temperatures. However, TONYs did not provide these uniform components to employees working in the refrigeration and freezer areas. Instead, Mr. Trejo and other aggrieved employees were required to purchase long-sleeved shirts, sweaters, and/or jackets in order to perform their work duties, and were not reimbursed for this cost.

Second, during the relevant time period, TONYs, on a company-wide basis, required other aggrieved employees to purchase their own supplies and tools. For example, other aggrieved employees were required to spend approximately \$10.00 on gloves and \$5.00 on office supplies in order to carry out their work-related duties. Although TONYs required other aggrieved employees to purchase their own supplies and tools for use on the job, TONYs did not reimburse them for these expenses.

Third, during the relevant time period, other aggrieved employees were required to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but TONYs failed to reimburse them for the costs of their work-related mobile device expenses. For example, other aggrieved employees were required to use their personal cellular phones to communicate with TONYs’s management about work-related matters, such as loading dock maintenance and frozen food storage. Although TONYs required other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, TONYs failed to reimburse them for these costs.

TONYS could have provided Mr. Trejo and other aggrieved employees with access to laundering services and actual uniforms for use on the job, including long-sleeved shirts, sweaters, and/or jackets, or reimbursed employees for their uniform/laundry expenses or provided a uniform maintenance allowance. Additionally, TONYs could have provided other aggrieved employees with actual tools for use on the job, such as company mobile devices and gloves and office supplies, or, TONYs could have reimbursed employees for the costs of their mobile device usage and gloves and office supply expenses. Instead, TONYs passed these operating costs off onto Mr. Trejo and other

aggrieved employees. At all relevant times, Mr. Trejo did not earn at least two (2) times the minimum wage.

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

California Labor Code § 558(a)

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

Accordingly, Mr. Trejo seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Trejo, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against TONYs for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 248.6, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Mr. Trejo seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Mr. Trejo's reasonable attempt to settle his dispute with TONYs prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform TONYs of Mr. Trejo's aforementioned grievances and the proposed remedies as detailed below, while affording TONYs a reasonable opportunity to satisfy Mr. Trejo's demands.

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

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

2. TONYs shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, provided lawful meal and rest periods.
3. TONYs shall conduct a survey or interview all current and former aggrieved employees in California who worked for TONYs in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for uniform expenses and maintenance, tools, supply, and equipment expenses, mobile device expenses, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. TONYs shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. TONYs also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. TONYs shall properly calculate aggrieved employees' rates of pay for overtime, meal and rest period premiums, and/or paid sick leave based on all remuneration paid, pursuant to Labor Code sections 226.7, 510, 246(l), and/or 248.6(b)(3)(A).
6. TONYs shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for TONYs's benefit, including, but not limited to, costs of uniform expenses and maintenance, tools, supply, and equipment expenses, mobile device expenses, or other expenditures, as required by Labor Code section 2802.
7. TONYs shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
8. TONYs shall provide all aggrieved employees employed by TONYs at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
9. TONYs shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
10. TONYs shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and IWC Wage Order No. 9-2001, section 20.

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

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

Best Regards,

A handwritten signature in black ink, appearing to read "J. Ron". The signature is stylized with a large, looped "J" and a cursive "Ron".

Jezzette Ron

Copy: TONY'S FINE FOODS (via U.S. Certified Mail); UNITED NATURAL FOODS, INC. (via U.S. Certified Mail); UNITED NATURAL FOODS WEST, INC. (via U.S. Certified Mail); UNFI GROCERS DISTRIBUTION, INC. (via U.S. Certified Mail); NOR-CAL PRODUCE, INC. (via U.S. Certified Mail)

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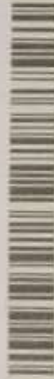
TONY'S FINE FOODS
313 IRON HORSE WAY
PROVIDENCE, RI 02908

TONY'S FINE FOODS
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PROVIDENCE, RI 02908

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UNITED NATURAL FOODS,
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313 IRON HORSE WAY
PROVIDENCE, RI 02908

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UNITED NATURAL FOODS,
INC.
313 IRON HORSE WAY
PROVIDENCE, RI 02908



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Continued Next Page

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313 IRON HORSE WAY
PROVIDENCE, RI 02908

NOR-CAL PRODUCE, INC.
313 IRON HORSE WAY
PROVIDENCE, RI 02908

■ Print your name and address on the reverse so that we can return the card to you.

NOR-CAL PRODUCE, INC.
313 IRON HORSE WAY
PROVIDENCE, RI 02908

9590 9402 7690 2122 7164 12

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A. Signature

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Los Angeles, CA. 90067



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WEST, INC.
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PROVIDENCE, RI 02908

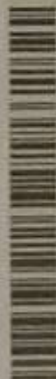
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UNITED NATURAL FOODS
WEST, INC.
313 IRON HORSE WAY
PROVIDENCE, RI 02908

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UNITED NATURAL FOODS
WEST, INC.
313 IRON HORSE WAY
PROVIDENCE, RI 02908



9590 9402 7690 2122 7164 29

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A. Signature ☒ Agent

☒ Addressee

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**UNFI GROCERS
DISTRIBUTION, INC.**
11840 VALLEY VIEW RD
EDEN PRAIRIE, MN 55344



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2. Article Number (Transfer from service label)

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COMPLETE THIS SECTION ON DELIVERY

A. Signature

Thomas Price

- ☐ Agent
- ☐ Addressee

B. Received by (Printed Name)

Thomas Price

C. Date of Delivery

6/1/23

D. Is delivery address different from item 1? ☒ Yes
If YES, enter delivery address below: ☐ No

Service Type

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TONY'S FINE FOODS
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PROVIDENCE, RI 02908



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2. Article Number (Transfer from service label)

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A. Signature

X

- ☐ Agent
☐ Addressee

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5/3/23

D. Is delivery address different from item 1? ☐ Yes
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3. Service Type

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UNITED NATURAL FOODS,
INC.
313 IRON HORSE WAY
PROVIDENCE, RI 02908



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2. Article Number (Transfer from service label)

7022 2410 0000 2405 8481

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A. Signature

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- ☒ Agent
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D. Is delivery address different from item 1? ☐ Yes
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UNITED NATURAL FOODS
WEST, INC.
313 IRON HORSE WAY
PROVIDENCE, RI 02908



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2. Article Number (Transfer from service label)

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A. Signature

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NOR-CAL PRODUCE, INC.
313 IRON HORSE WAY
PROVIDENCE, RI 02908



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2. Article Number (Transfer from service label)

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Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

JEZZETTE RON
310.712.8142 Direct
Jezzette.Ron@capstonelawyers.com

May 30, 2023

VIA ONLINE SUBMISSION

Division of Occupational Safety and Health
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/310>)

Subject: *Ramon Trejo v. Tony's Fine Foods, et al.*
LWDA Case No. LWDA-CM-957863-23 – AMENDED NOTICE

Dear PAGA Administrator:

This office represents Ramon Trejo in connection with his claims under the California Labor Code. Mr. Trejo was an employee of TONY'S FINE FOODS; UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; UNFI GROCERS DISTRIBUTION, INC.; and/or NOR-CAL PRODUCE, INC. For the purpose of this letter, Mr. Trejo collectively refers to these entities as "TONYS." We previously provided notice of Mr. Trejo's claims to the California Labor and Workforce Development Agency ("LWDA") on May 26, 2023, and submitted the applicable filing fee pursuant to Labor Code section 2699.3(a)(1)(B). This amended notice supplements Mr. Trejo's prior LWDA notice and adds an additional claim.

The employers may be contacted directly at the addresses below:

TONY'S FINE FOODS
313 IRON HORSE WAY
PROVIDENCE, RI 02908

UNFI GROCERS DISTRIBUTION, INC.
11840 VALLEY VIEW RD
EDEN PRAIRIE, MN 55344

UNITED NATURAL FOODS, INC.
313 IRON HORSE WAY
PROVIDENCE, RI 02908

NOR-CAL PRODUCE, INC.
313 IRON HORSE WAY
PROVIDENCE, RI 02908

UNITED NATURAL FOODS WEST, INC.
313 IRON HORSE WAY
PROVIDENCE, RI 02908

Mr. Trejo intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Trejo seeks relief on behalf of himself, the State of California, and other persons who are or were employed by TONY'S as a non-

exempt, hourly paid employee in California and who received at least one wage statement (“aggrieved employees”). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

TONYS employed Mr. Trejo as an hourly paid, non-exempt employee from approximately September 2022 to February 2023. Mr. Trejo worked for TONYs as a Forklift Operator at its facility in Sacramento, California. During his employment, Mr. Trejo typically worked eight (8) or more hours per day and five (5) days per week. By the end of his employment, Mr. Trejo was compensated approximately \$22.25 per hour. His job duties included, without limitation, operating a forklift to prepare and move pallets of frozen food products to different areas in the warehouse for storing and shipping.

TONYS committed one or more of the following Labor Code violations against Mr. Trejo, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

Violation of California Labor Code §§ 6401 and 6403 – Failure to Provide Safety Devices and Safeguards

California Labor Code section 6401 provides that employers must furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the employment and place of employment safe and healthy. California Labor Code Section 6401 further provides that an employer must do everything reasonably necessary to protect the life, safety and health of its employees. California Labor Code section 6403(a) requires that employers provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

During the relevant time period, TONYs failed to provide Mr. Trejo and other aggrieved employees with personal protective equipment, such as gloves, long-sleeved shirts, sweaters, and/or jackets, to keep them safe in TONYs’s refrigeration and freezer work areas. As TONYs is a wholesale food distributor, it must adhere to certain food safety temperature standards, requiring certain zones of its facilities to remain at low temperatures, which in turn necessitates that employees work in refrigerated or freezing environments for extended periods of time. Despite the fact that TONYs required Mr. Trejo and other aggrieved employees to wear certain personal protective equipment, including gloves, long-sleeved shirts, sweaters, and/or jackets, while engaged in their work-related duties, TONYs failed to provide such reasonably necessary equipment to Mr. Trejo and other aggrieved employees to keep them warm and/or safe while working in refrigerated or freezing temperatures for extended periods of time. For example, Mr. Trejo and other aggrieved employees were required to purchase long-sleeved shirts, sweaters, and/or jackets to protect themselves from the cold temperatures.

¹ These facts, theories, and claims are based on Mr. Trejo’s experience and counsel’s review of those records currently available relating to Mr. Trejo’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Trejo reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

TONYS's failure to provide Mr. Trejo and other aggrieved employees with safety devices and safeguards for the workplace violates Labor Code sections 6401 and 6403. Mr. Trejo and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Accordingly, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a)-(c), and 2699.5, Mr. Trejo, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against TONYs for violations of California Labor Code sections 6401 and 6403.

Therefore, on behalf of all aggrieved employees, Mr. Trejo seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

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

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

Best Regards,

A handwritten signature in black ink, appearing to read "J. Ron". The signature is stylized with a large, looped "J" and a cursive "Ron".

Jezzette Ron

Copy: TONY'S FINE FOODS (via U.S. Certified Mail); UNITED NATURAL FOODS, INC. (via U.S. Certified Mail); UNITED NATURAL FOODS WEST, INC. (via U.S. Certified Mail); UNFI GROCERS DISTRIBUTION, INC. (via U.S. Certified Mail); NOR-CAL PRODUCE, INC. (via U.S. Certified Mail)

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1875 Century Park, East, 1000
Los Angeles, CA. 90067

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Signature Confirmation (attach fee) \$

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Signature Confirmation (attach fee) \$

Signature Confirmation (attach fee) \$

Signature Confirmation (attach fee) \$

Signature Confirmation (attach fee) \$

Signature Confirmation (attach fee) \$

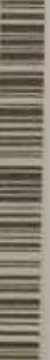
UNITED NATURAL FOODS, INC.
313 IRON HORSE WAY
PROVIDENCE, RI 02908

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

UNITED NATURAL FOODS, INC.
313 IRON HORSE WAY
PROVIDENCE, RI 02908

9590 9402 7690 2122 7164 43



COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

□ Agent

□ Addressee

B. Received by (Printed Name)

C. Date of Delivery

2. Is delivery address different from item 1? If YES, enter delivery address below:

□ Yes
□ No

3. Service Type

□ Adult Signature

□ Adult Signature Restricted Delivery

□ Certified Mail

□ Certified Mail Restricted Delivery

□ Collect on Delivery

□ Collect on Delivery Restricted Delivery

□ Priority Mail Express

□ Registered Mail[™]

□ Registered Mail Restricted Delivery

□ Signature Confirmation[™]

□ Signature Confirmation[™] Restricted Delivery

7022 2410 0000 2405 8528

Restricted Delivery

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

Domestic Return Receipt

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA 90067



7022 2410 0000 2405 8542

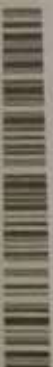
UNITED NATURAL FOODS WEST
INC.
313 IRON HORSE WAY
PROVIDENCE, RI 02908

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

UNITED NATURAL FOODS WEST,
INC.
313 IRON HORSE WAY
PROVIDENCE, RI 02908

9590 9402 7890 2122 7164 57



COMPLETE THIS SECTION ON DELIVERY

A. Signature
X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

- | | |
|---|--|
| <p>1. Service Type</p> <ul style="list-style-type: none"> ☐ Adult Signature ☐ Adult Signature Restricted Delivery ☐ Certified Mail ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery | <ul style="list-style-type: none"> ☐ Priority Mail Express ☐ Registered Mail™ ☐ Registered Mail Restricted Delivery ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery |
|---|--|

Restricted Delivery

PS Form 3811, July 2000 PSN 7530-02-000-6003

Domestic Return Receipt

7022 2410 0000 2405 8542

U.S. Postal Service®
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

OFFICIAL USE

TP630 4
702415
Postmark

UNITED NATURAL FOODS WEST,
INC.
313 IRON HORSE WAY
PROVIDENCE, RI 02908

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067



7022 2410 0000 2405 8535

CERTIFIED MAIL

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

OFFICIAL USE

For delivery information, visit our website at www.usps.com

Customer Use Only

12:50 PM

7022 2410 0000 2405 8535

1. Complete this form and attach to the back of the mailpiece.
2. Attach this receipt to the back of the mailpiece.
3. Attach this receipt to the back of the mailpiece.

Postmark

NOR-CAL PRODUCE, INC.
313 IRON HORSE WAY
PROVIDENCE, RI 02908

7022 2410 0000 2405 8535

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

NOR-CAL PRODUCE, INC.
313 IRON HORSE WAY
PROVIDENCE, RI 02908



9590 9402 7890 2122 7164 50

2. Article Number (Transfer from service label)

7022 2410 0000 2405 8535

PS Form 3811, July 2020 PSN 7530-02-000-9003

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Received by (Printed Name)

☐ Agent
☐ Addressee

C. Date of Delivery

Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery
- ☐ Registered Mail
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation
- ☐ Signature Confirmation Restricted Delivery
- ☐ Priority Mail Express
- ☐ Registered Mail
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation
- ☐ Signature Confirmation Restricted Delivery

Insured Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

■ Complete items 1, 2, and 3.

■ Print your name and address on the reverse so that we can return the card to you.

UNITED NATURAL FOODS, INC.
313 IRON HORSE WAY
PROVIDENCE, RI 02908


9590 9402 7690 2122 7164 43

2. Article Number (Transfer from service label)
7022 2410 0000 2405 8528

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X 

☐ Agent
☐ Addressee

3. Received by (Printed Name)

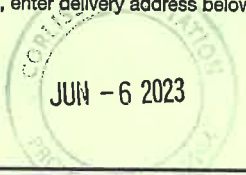
C. Date of Delivery

6/5

6/5

D. Is delivery address different from item 1?
If YES, enter delivery address below:

☐ Yes
☒ No



3. Service Type

☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery

☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Restricted Delivery

SENDER: COMPLETE THIS SECTION

■ Complete items 1, 2, and 3.

■ Print your name and address on the reverse so that we can return the card to you.

UNITED NATURAL FOODS WEST, INC.
313 IRON HORSE WAY
PROVIDENCE, RI 02908


9590 9402 7690 2122 7164 67

2. Article Number (Transfer from service label)
7022 2410 0000 2405 8542

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X 

☒ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

L. Mongillo

D. Is delivery address different from item 1?
If YES, enter delivery address below:

☐ Yes
☒ No

3. Service Type

☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery

☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

■ Complete items 1, 2, and 3.

■ Print your name and address on the reverse so that we can return the card to you.

NOR-CAL PRODUCE, INC.
313 IRON HORSE WAY
PROVIDENCE, RI 02908


9590 9402 7690 2122 7164 50

2. Article Number (Transfer from service label)
7022 2410 0000 2405 8535

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X 

☒ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

L. Mongillo

D. Is delivery address different from item 1?
If YES, enter delivery address below:

☐ Yes
☒ No

3. Service Type

☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery

☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

■ Complete items 1, 2, and 3.

■ Print your name and address on the reverse

1. TONY'S FINE FOODS
313 IRON HORSE WAY
PROVIDENCE, RI 02908


9590 9402 7690 2122 7164 74

2. Article Number (Transfer from service label)
7022 2410 0000 2405 8450

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X 

☒ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

L. Mongillo

D. Is delivery address different from item 1?
If YES, enter delivery address below:

☐ Yes
☒ No

3. Service Type

☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail

☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

**UNFI GROCERS DISTRIBUTION,
INC.
11840 VALLEY VIEW RD
EDEN PRAIRIE, MN 55344**



9590 9402 7690 2122 7164 36

2. Article Number (Transfer from service label)
7022 2410 0000 2405 8511

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒ *Thomas Price*

☐ Agent

☐ Addressee

Received by (Printed Name)

Thomas Price

C. Date of Delivery

6/18/23

Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

D. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

Restricted Delivery

Domestic Return Receipt