

**BRADLEY/GROMBACHER, LLP**  
Marcus J. Bradley, Esq. (SBN 174156)  
Kiley L. Grombacher, Esq. (SBN 245960)  
Lirit A. King, Esq. (SBN 252521)  
31365 Oak Crest Drive, Suite 240  
Westlake Village, California 91361  
Telephone: (805) 270-7100  
Facsimile: (805) 270-7589  
mbradley@bradleygrombacher.com  
kgrombacher@bradleygrombacher.com  
lking@bradleygrombacher.com

Attorneys for RONALD ALCANTARA, an  
individual, on his own behalf and on behalf of all  
others similarly situated

*[Additional counsel on next page]*

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
COUNTY OF PLACER**

RONALD ALCANTARA, an individual,  
on his own behalf and on behalf of all  
others similarly situated,

Plaintiffs,

v.

SAFEWAY, INC., a Delaware  
Corporation; and DOES 1 through 100,  
inclusive,

Defendants.

**CASE NO.**

**CLASS ACTION COMPLAINT FOR:**

1. Failure to pay all Wages and Minimum Wages in Violation of Labor Code sections 221, 223, 1182, 1194, 1197, and 1198;
2. Failure to Provide Meal Periods in Violation of Labor Code sections 226.7, 512, 516 and 1198;
3. Failure to Provide Rest Periods in Violation of Labor Code sections 226.7, 516, 1198;
4. Failure to Timely Furnish Accurate Itemized Wage Statements in Violation of Labor Code section 226(a) and Failure to Maintain Accurate Records;
5. Failure to Pay Accrued Vacation Wages in Violation of California Labor Code § 227.3;
6. Failure to Provide Sick Pay in Violation of Labor Code Section 246;
7. Failure to Provide Suitable Seating in Violation of Labor Code section 1198;
8. Waiting Time Penalties Pursuant to Labor Code sections 201 and 203; and
9. Violations of Business & Professions Code section 17200 et seq.

**DEMAND FOR JURY TRIAL**

1 **MAJARIAN LAW GROUP APC**

2 Garen Majarian, Esq. (SBN 334104)

3 Sahag Majarian, II, Esq. (SBN 146621)

4 18250 Ventura Boulevard

5 Tarzana, California 91356

6 Telephone: (818) 263-7343

7 Facsimile: (818) 609-0892

8 E-Mail: garen@majarianlawgroup.com

9 E-Mail: sahagii@aol.com

1 Plaintiff Ronald Alcantara (hereinafter referred to as “Plaintiff”), hereby submits his Class  
2 Complaint against Safeway, Inc., a Delaware Corporation; and Does 1-100 (hereinafter  
3 collectively referred to as “Defendants”) on behalf of himself and the class of all other similarly  
4 situated current and former employees of Defendants as follows:

### 5 INTRODUCTION

6 1. This is a class action arising out of Defendants’ failure to provide their non-exempt  
7 employees with all wages and meal periods in compliance with the applicable wage order and/or  
8 the California Labor Code, by failing to provide suitable seating by failing to comply with the  
9 applicable wage order and/or the Labor Code regarding the payment of wages.

10 2. This complaint challenges systemic illegal employment practices resulting in  
11 violations of the California *Labor Code*, California Business and Professions Code, against  
12 employees of Defendants.

13 3. Defendants have maintained practices across its locations which have failed and  
14 continue to fail to pay Plaintiff and other non-exempt employees all wages. Specifically,  
15 Defendants have a company-wide policy of subjecting Plaintiff and other non-exempt employees  
16 to work off-the-clock. Specifically, Defendants’ employees are not compensated for all hours  
17 worked. This has resulted in Defendants’ failure to pay all wages including overtime wages to  
18 Plaintiff and other non-exempt employees. Moreover, Defendants fail to provide any seating for  
19 Plaintiff and other non-exempt employees, and employees are required to stand for the duration  
20 of their shifts.

21 4. Defendants also failed to provide Plaintiff and non-exempt employees with compliant  
22 meal and rest breaks.

23 5. In light of the foregoing, Defendants failed to provide Plaintiff and other non-exempt  
24 employees with compliant wage statements and failed to timely pay final wages upon termination  
25 or separation from employment.

26 6. Plaintiff brings Causes of Action One through Nine (the “class claims”) as a class  
27 action on behalf of herself and other similarly situated individuals who have worked for  
28 Defendant in California, at any time from four-years prior to the filing of this complaint, through

1 the resolution of this action. Plaintiff, on her own behalf and on behalf of all Class Members,  
2 brings the class claims pursuant to Labor Code sections 200-203, 221, 223, 226, 226.7, 227.3,  
3 246, 500, 510, 512, 1174, 1194, 1194.2, 1197, 1198, the applicable wage order and under Business  
4 & Professions Code sections 17200-17208, for unfair competition due to Defendants' unlawful,  
5 unfair and fraudulent business acts and practices.

6 7. Plaintiff is informed and believes, and based thereon alleges, that Defendants have  
7 engaged in, among other things a system of willful violations of the Labor Code and the applicable  
8 IWC wage orders by creating and maintaining policies, practices and customs that knowingly  
9 deny employees the above stated rights and benefits.

#### 10 JURISDICTION AND VENUE

11 8. The Court has jurisdiction over the violations of the California *Labor Code* §§ 201-  
12 203, 226a, 226.7, 510, 512, 1174, 1194, 1197, 1197.1, and 1199; and California *Business and*  
13 *Professions Code* § 17200, *et seq.* (Unfair Business Practices Act).

14 9. Venue is proper because the Defendants do business in California and the actions  
15 that gave rise to this action occurred in Sacramento County.

#### 16 PARTIES

17 10. At all relevant times, Plaintiff was a resident of Placer County, California. Plaintiff  
18 worked for Defendant Safeway intermittently from approximately November 2013 to November  
19 2022. Plaintiff last worked for Defendants as an hourly non-exempt employee working as a “meat  
20 cutter” in Defendants' Auburn retail store from approximately November 10, 2013 to November  
21 11, 2022.

22 11. Plaintiff is informed and believes, and based thereon alleges, that Defendant Safeway  
23 Inc., is a Delaware corporation. Plaintiff is further informed and believes that at all times relevant  
24 hereto, Defendant has transacted, and continues to transact, business throughout the State of  
25 California.

26 12. Plaintiff is informed and believes, and based upon such information and belief alleges,  
27 that Defendant is, now and/or at all times mentioned in this Complaint was in some manner legally  
28 responsible for the events, happenings and circumstances alleged in this Complaint.

1           13. Plaintiff is further informed and believes, and based upon such information and belief  
2 alleges, that at all times herein mentioned, Defendants proximately caused Plaintiff, all others  
3 similarly situated, and the general public to be subjected to the unlawful practices, wrongs,  
4 complaints, injuries and/or damages alleged in this Complaint.

5           14. Plaintiff is informed and believes, and based thereon alleges, that at all times herein  
6 mentioned Defendant and DOES 1 through 10, are and were corporations, business entities,  
7 individuals, and partnerships, licensed to do business and actually doing business in the State of  
8 California.

9           15. Plaintiff does not know the true names or capacities, whether individual, partner or  
10 corporate, of the Defendants sued herein as DOES 1 through 10, inclusive, and for that reason,  
11 said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this  
12 complaint when the true names and capacities are known. Plaintiff is informed and believes and  
13 based thereon alleges that each of said fictitious Defendants were responsible in some way for the  
14 matters alleged herein and proximately caused Plaintiff and members of the general public and  
15 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

16           16. At all times herein mentioned, each of said Defendants participated in the doing of the  
17 acts hereinafter alleged to have been done by the named Defendant; and furthermore, the  
18 Defendants, and each of them, were the agents, servants and employees of each of the other  
19 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting  
20 within the course and scope of said agency and employment.

21           17. Plaintiff is informed and believes, and based thereon alleges, that at all times material  
22 hereto, each of the Defendants named herein were the agent, employee, alter ego and/or joint  
23 venturer of, or working in concert with each of the other co-Defendants and were acting within  
24 the course and scope of such agency, employment, joint venture, or concerted activity. To the  
25 extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the  
26 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting  
27 Defendants.

1 18. At all times herein mentioned, Defendants, and each of them, were members of, and  
2 engaged in, a joint venture, partnership, and common enterprise, and acting within the course and  
3 scope of, and in pursuance of, said joint venture, partnership and common enterprise.

4 19. At all times herein mentioned, the acts and omissions of various Defendants, and each  
5 of them, concurred and contributed to the various acts and omissions of each and all of the other  
6 Defendants in proximately causing the injuries and damages as herein alleged. At all times herein  
7 mentioned, Defendants, and each of them, ratified each and every act or omission complained of  
8 herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the  
9 acts and omissions of each and all of the other Defendants in proximately causing the damages as  
10 herein alleged.

11 20. The members of the Classes (as defined below), including the representative Plaintiff  
12 named herein, have been employed during the Class Period in California. The practices and  
13 policies which are complained of by way of this Complaint are enforced throughout the State of  
14 California.

### 15 **FACTUAL ALLEGATIONS**

16 21. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

17 22. Defendants have engaged in, and continues to engage in, unfair business practices  
18 in California by practicing, employing and utilizing the employment practices and policies  
19 outlined above.

20 23. As a direct result of the wage and hour violations herein alleged, Plaintiff and members  
21 of the Classes have suffered, and continue to suffer substantial losses related to the use and  
22 enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in seeking to  
23 compel Defendant to fully perform its obligations under state law, all to Plaintiff's respective  
24 damage in amounts according to proof at the time of trial.

25 24. Plaintiff and the members of the putative class seek unpaid wages, penalties and  
26 other compensation from Defendants for the relevant time period because Defendants improperly:

- 27 a. Failed to pay Plaintiff and the members of the putative class a regular rate of pay  
28 including shift differential pay for overtime, vacation pay, and sick time;

- 1           b. Failed to authorize and permit Plaintiff and the members of the putative class of  
2           statutorily required meal periods;
- 3           c. Failed to authorize and permit Plaintiff and the members of the putative class to  
4           take the requisite rest periods;
- 5           d. Failed to pay all wages due;
- 6           e. Failed to pay all vacation pay that was accrued and vested;
- 7           f. Failed to pay sick time;
- 8           g. Failed to timely pay Plaintiff and the members of the putative class all wages owed  
9           at termination or discharge of employment;
- 10          h. Failed to provide Plaintiff and the members of the putative class with proper  
11          paychecks pursuant to *Labor Code* § 226;
- 12          i. Failed to provide suitable seating to Plaintiff and the members of the putative class;

13          25. Plaintiff alleges that the following violations occurred on a routine basis to him and  
14 the members of the putative class during his employment with Defendants:

15 ***Defendants' Failure to Pay Wages and Overtime Wages***

16          26. During the Class Period, upon information and belief, Defendants have, and continue  
17 to have, a company-wide policy of not paying Plaintiff and the Plaintiff Class for all hours worked.

18          27. Additionally, Defendants failed to pay Plaintiff and the Plaintiff Class for their regular  
19 rate of pay for overtime accrued.

20          28. Because Plaintiff and members of the Classes worked shifts of eight (8) hours a day  
21 or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime  
22 premium pay.

23          29. Therefore, Plaintiff and members of the Classes were not paid overtime wages for all  
24 of the overtime hours they actually worked.

25          30. Thus, Defendants did not pay at least minimum wages for all hours worked by Plaintiff  
26 and members of the Classes. To the extent that these off-the-clock hours did not qualify for  
27 overtime premium payment, Defendants did not pay at least minimum wages for those hours  
28 worked off-the-clock.

***Failure to Provide Compliant Meal Periods***

31. Plaintiff alleges that meal breaks were short due to the proximity of the time clock from the breakroom and Defendants' policies requiring that employees on a meal break show proof of receipt of purchased items to management before leaving the store. As a result, Plaintiff and members of the Classes were forced to work in excess of five (5) hours before taking a meal period.

***Defendants' Failure to Provide Compliant Rest Breaks***

32. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and members of the Classes to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof.

33. In addition to these rest breaks being interrupted or missed entirely, Plaintiff and members of the classes were not permitted to take second rest breaks.

***Defendants' Failure to Provide Compliant Wage Statements***

34. During the relevant time period, Defendants knowingly and intentionally provided Plaintiff and members of the Classes with uniform, incomplete, and inaccurate wage statements. For example, Defendant issued uniform wage statements to Plaintiff and members of the Classes that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate.

35. Because Defendants did not record the time Plaintiff and members of the Classes spent working off-the-clock and deducted time from their meal periods that were missed and/or interrupted (and therefore time for which they should have been paid), Defendant did not list the correct amount of gross wages and net wages earned by Plaintiff and members of the Classes in compliance with Labor Code sections 226(a)(1) and 226(a)(5), respectively.

36. For the same reason, Defendants failed to accurately list the total number of hours worked by Plaintiff and members of the Classes 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

1 each hourly rate.

2 37. Because Defendants failed to provide the correct net and gross wages earned,  
3 applicable rates of pay, and number of total hours worked on wage statements, Plaintiff and  
4 members of the Classes have been prevented from verifying, solely from information on the wage  
5 statements themselves, that they were paid correctly and in full. Instead, Plaintiff and members  
6 of the Classes have had to look to sources outside of the wage statements themselves and  
7 reconstruct time records to determine whether in fact they were paid correctly and the extent of  
8 underpayment, thereby causing them injury.

9 ***Defendants' Failure to Provide Suitable Seating***

10 38. Defendants' California supermarkets are generally similar in their layout and design  
11 and there was, and continues to be, space in the store to allow for the presence and use of a seat  
12 or stool by Plaintiff and class members (with reasonable or no modification to these work areas)  
13 during the performance of their work duties. Defendants could provide Plaintiff and class  
14 members with a seat or stool, but instead deny them seating and force aggrieved employees to  
15 stand throughout the day. Plaintiff and other class members spent a substantial portion of their  
16 day standing, regardless of their actual job title or description. The nature of the work of an  
17 employee performing their job duties can reasonably be accomplished from a seated position.  
18 However, Defendants systematically, and on a company-wide basis, did not provide seats or  
19 stools at or near counters, forcing Plaintiff and other class members to stand throughout their work  
20 shifts, even when there was obvious downtime.

21 39. Defendants did not provide Plaintiff and other class members with seats or stools in  
22 reasonable proximity to their work areas to allow them to use seats when it would not interfere  
23 with the performance of their duties for times when they were not engaged in active duties that  
24 require standing. In other words, to the extent Plaintiff and class members engaged in duties in  
25 which the nature of the work required standing, Defendants denied them the use of seats nearby  
26 during lulls in their work duties. Moreover, Defendants did not inform Plaintiff and other class  
27 members of their rights to a seat or stool under California law.

1 ***Defendants' Failure to Pay Accrued Vacation***

2 40. Plaintiff alleges that Defendants failed to pay all accrued vacation compensation for  
3 the last pay period.

4 41. By way of example, for his final pay Plaintiff was not issued any of his unused accrued  
5 vacation time.

6 42. California Labor Code § 227.3, prohibits employers from forfeiting payment of the  
7 vested vacation wages of their employees.

8 43. As a matter of uniform corporate policy, procedure and practice Defendants violated  
9 California Labor Code § 227.3 by failing to pay Plaintiff and members of the Plaintiff Class all  
10 vested vacation wages at the end of their employment. The uniform policy of not paying Plaintiff  
11 and the members of the Plaintiff Class all vested vacation wages at the end of their employment  
12 resulted in a forfeiture of vested vacation wages in violation of California Labor Code § 227.3.

13 ***Defendants' Failure to Provide Sick Pay at the Regular Rate***

14 44. Plaintiff received compensation, in addition to his hourly wages while employed by  
15 Defendants, including differentials. Those additional amounts should have been included when  
16 calculating his regular rate of pay and used when paying overtime wages, premium wages, and  
17 sick leave wages, but were not. Instead, Plaintiff and members of the Classes were paid sick wages  
18 at their base rate of pay.

19 ***Defendants' Failure to Timely Pay Final Wage Upon Termination***

20 45. Defendants willfully failed to pay Plaintiff and members of the Classes who are no  
21 longer employed by Defendants the earned and unpaid wages set forth above, including but not  
22 limited to, overtime wages, minimum wages, and meal period premiums, either at the time of  
23 discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

24 ***Facts Regarding Willfulness***

25 46. Plaintiff is informed and believes, and based thereon alleges, that Defendant is and  
26 was advised by skilled lawyers, other professionals, employees with human resources background  
27 and advisors with knowledge of the requirements of California wage and hour laws and that at all  
28 relevant times, Defendant knew or should have known, that the Plaintiff Class Members,

1 including Plaintiff, were entitled to receive one hour of pay at the employee's regular rate of  
2 compensation for each day that a meal and period was not provided and were and are entitled to  
3 receive pay for all hours worked, accurate itemized wage statements, and final pay in a timely  
4 manner.

5 ***Unfair Business Practices***

6 47. Defendants have further engaged in, and continues to engage in, unfair business  
7 practices in California by practicing, employing and utilizing the unlawful employment practices  
8 and policies outlined above.

9 48. As a direct result of the wage and hour violations herein alleged, Plaintiff and members  
10 of the Plaintiff Class have suffered, and continue to suffer substantial losses related to the use and  
11 enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in seeking to  
12 compel Defendant to perform their obligations under state law, all to Plaintiff's and the Plaintiff  
13 Class members' respective damage in amounts according to proof at the time of trial.

14 ***Plaintiff's Exhaustion of Administrative Remedies***

15 49. Plaintiff is currently complying with the procedures for bringing suit specified in  
16 Labor Code section 2699.3.

17 50. By letter dated May 2, 2023, required notice was provided to the Labor and Workforce  
18 Development Agency ("LWDA") and Defendant, of the specific provisions of the Labor Code  
19 alleged to have been violated, including the facts and theories to support the alleged violations.

20 51. This Complaint will be amended when more than sixty-five (65) days have passed  
21 since the date the notice was mailed to Defendant and the LWDA, if the LWDA chooses not to  
22 investigate the allegations herein.

23 52. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

24 53. Pursuant to Code of Civil Procedure section 382, this action is brought and may be  
25 properly maintained as a class action. This action satisfies the ascertainability, numerosity,  
26 commonality, typicality, adequacy, predominance, and superiority requirements of those  
27 provisions.  
28

1           54. Plaintiff brings this suit as a class action on behalf of two classes of individuals defined  
2 as follows (collectively the “Classes”):

3           55. Plaintiff Class: All persons who have been, or currently are, employed by Defendant  
4 and who held, or hold, job positions which Defendant has classified as “non-exempt” employees in  
5 the State of California, at any time since four years prior to filing this action, through the date  
6 judgment is rendered in this action.

7           56. Terminated Sub Class: All members of the Plaintiff Class whose employment ended  
8 during the Class Period.

9           57. Numerosity: Plaintiff is informed and believes, and on that basis alleges, that during  
10 the class period hundreds of class members have been employed by Defendant as non-exempt  
11 employees in the State of California. Because so many persons have been employed by Defendant  
12 in this capacity, the members of the Plaintiff Class are so numerous that joinder of all members  
13 is impossible and/or impracticable.

14           58. Common Questions of Law and/or Fact: Common questions of law and fact exist as  
15 to all members of the Plaintiff Class and predominate over any questions affecting solely  
16 individual members of the Plaintiff Class. Among the questions of law and fact, that are relevant  
17 to the adjudication of Class Members’ claims are as follows:

- 18           a. Whether Plaintiff and Class Members are subject to and entitled to the benefits of
- 19           California wage and hour statutes;
- 20           b. Whether Defendants failed to pay Plaintiff and Class Members for all hours
- 21           worked;
- 22           c. Whether Defendants failed to pay Plaintiff and Class Members all overtime;
- 23           d. Whether Defendants had a standard policy of not providing compliant meal breaks
- 24           and premiums to Plaintiff and members of the Plaintiff Class;
- 25           e. Whether Defendants had a standard policy of not providing compliant rest breaks
- 26           and premiums to Plaintiff and members of the Plaintiff Class;
- 27           f. Whether Defendants unlawfully and/or willfully failed to provide Plaintiff and
- 28           members of the Plaintiff Class with true and proper wage statements upon payment

of wages, in violation of Labor Code section 226;

- g. Whether Defendants unlawfully and/or willingly failed to timely pay Plaintiff and the Terminated Sub Class upon termination;
- h. Whether Defendants had a standard policy of not providing Plaintiff and members of the Plaintiff Class with all accrued vacation wages; and
- i. Whether Defendants unlawfully and/or willingly failed to provide Plaintiff and members of the Classes with suitable seating;
- j. Whether Plaintiff and members of the Plaintiff Class sustained damages, and if so, the proper measure of such damages, as well as interest, penalties, costs, attorneys' fees, and equitable relief;
- k. Whether Defendants' conduct as alleged herein violates the Unfair Business Practices Act of California (Bus. & Prof. Code, § 17200 et seq.)

59. Typicality: The claims of the named Plaintiff are typical of the claims of the members of the Plaintiff Class. Defendants' common course of conduct in failing to provide their non-exempt employees with meal and rest periods or premium compensation at the regular rate in lieu thereof, all wages in compliance with the applicable wage order, failing to provide them with proper wages and overtime, failing to provide suitable seating, and failing to provide them with compliant wage statements has caused Plaintiff and the proposed Class to sustain the same or similar injuries and damages. Plaintiff's claims are thereby representative of and co-extensive with the claims of the proposed Class. Plaintiff and the proposed Class sustained the same or similar injuries and damages arising from Defendants' common policies, practices, procedures, protocols, routines, and rules which were applied to other Class Members as well as Plaintiff. Plaintiff seeks recovery for the same type of losses, injuries, and damages as were suffered by other members of the proposed class.

60. Adequacy of Representation: Plaintiff is an adequate representative of the proposed classes because he is a member of the class, and his interests do not conflict with the interests of the members he seeks to represent. Plaintiff has retained competent counsel, experienced in the prosecution of complex class actions, and together Plaintiff and her counsel intend to prosecute

1 this action vigorously for the benefit of the classes. The interests of the Class Members will fairly  
2 and adequately be protected by Plaintiff and her attorneys.

3 61. *Superiority of Class Action*: A class action is superior to other available methods for  
4 the fair and efficient adjudication of this litigation since individual litigation of the claims of all  
5 Class Members is impracticable. It would be unduly burdensome to the courts if these matters  
6 were to proceed on an individual basis, because this would potentially result in hundreds of  
7 individual, repetitive lawsuits. Further, individual litigation presents the potential for inconsistent  
8 or contradictory judgments, and the prospect of a “race to the courthouse,” and an inequitable  
9 allocation of recovery among those with equally meritorious claims. By contrast, the class action  
10 device presents far fewer management difficulties, and provides the benefit of a single  
11 adjudication, economics of scale, and comprehensive supervision by a single court.

12 62. The various claims asserted in this action are additionally or alternatively certifiable  
13 under the provisions of the Code of Civil Procedure section 382 because:

14 a. The prosecution of separate actions by hundreds of individual class members  
15 would create a risk of varying adjudications with respect to individual class members, thus  
16 establishing incompatible standards of conduct for Defendant, and

17 b. The prosecution of separate actions by individual class members would also create  
18 the risk of adjudications with respect to them that, as a practical matter, would be dispositive of  
19 the interest of the other class members who are not a party to such adjudications and would  
20 substantially impair or impede the ability of such non-party class members to protect their  
21 interests.

## 22 **FIRST CAUSE OF ACTION**

### 23 **FAILURE TO PAY WAGES INCLUDING MINIMUM WAGES, STRAIGHT TIME**

#### 24 **WAGES, OVERTIME, DOUBLE TIME AND INTEREST**

#### 25 **(By Plaintiff and Members of the Putative Class Against Defendants)**

26 63. Plaintiff repeats and incorporates herein by reference each and every allegation set  
27 forth above, as though fully set forth herein.

1           64. At all times relevant, the IWC wage orders applicable to Plaintiff's and Class  
2 Members' employment by Defendants provided that employees working for more than eight (8)  
3 hours in a day or forty (40) hours in a work week are entitled to overtime compensation at the rate  
4 of one and one-half times the regular rate of pay for all hours worked in excess of eight (8) hours  
5 in a day or forty (40) hours in a work week. An employee who works more than twelve (12)  
6 hours in a day is entitled to overtime compensation at a rate of twice the regular rate of pay.

7           65. At all times relevant, the IWC wage orders applicable to Plaintiff's and the Class  
8 require employers to pay its employees for each hour worked at least minimum wage. "Hours  
9 worked" means the time during which an employee is subject to the control of an employer, and  
10 includes all the time the employee is suffered or permitted to work, whether or not required to do  
11 so, and in the case of an employee who is required to reside on the employment premises, that  
12 time spent carrying out assigned duties shall be counted as hours worked.

13           66. Labor Code §510 codifies the right to overtime compensation at the rate of one and  
14 one-half times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or  
15 forty (40) hours in a work week and to overtime compensation at twice the regular rate of pay for  
16 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on  
17 the seventh day of work in a particular work week.

18           67. At all times relevant, Plaintiff and Class Members consistently worked in excess of  
19 eight (8) hours in a day and/or forty (40) hours in a week.

20           68. At all times relevant, Defendants failed to pay regular wages and overtime wages to  
21 Plaintiff and Class Members by failing to pay for hours worked off the clock all while subject to  
22 Defendants' control.

23           69. On information and belief, at all times relevant, Defendants failed to pay regular wages  
24 and overtime wages to Plaintiff and Class Members by deducting 30 minutes wages for meal  
25 periods less than 30 minutes, and having an unlawful rounding policy in place that over time  
26 resulted in time and therefore wages owed which was not de minimis. As a result, Defendants  
27 failed to pay all minimum wages, straight time compensation, overtime compensation, double-  
28 time compensation, and interest. Defendants also failed to correctly calculate and pay Plaintiff's

1 and Class Members' regular rate of pay and rounded hours worked.

2 70. On information and belief, at all times relevant, Defendants failed to pay regular wages  
3 and overtime wages to Plaintiff and Class Members for off the clock work during meal periods  
4 all while subject to the control of Defendants. Defendants knew or should have known this was  
5 occurring. Yet Defendant failed to pay for all time worked and subject to the control of Defendant.

6 71. Labor Code section 1194(a) provides in relevant part: "[n]otwithstanding any  
7 agreement to work for a lesser wage, any employee receiving less than the legal minimum wage  
8 ... is entitled to recover in a civil action the unpaid balance of the full amount of this minimum  
9 wage ... including interest thereon, reasonable attorney's fees, and costs of suit.

10 72. Labor Code section 1194.2(a) provides in relevant part: "[i]n any action under section  
11 1193.6 or section 1194 to recover wages because of the payment of a wage less than the minimum  
12 wage fixed by an order of the commission, an employee shall be entitled to recover liquidated  
13 damages in an amount equal to the wages unlawfully unpaid and interest thereon."

14 73. Labor Code section 1197 provides: "[t]he minimum wage for employees fixed by the  
15 commission is the minimum wage to be paid to employees, and the payment of a less wage than  
16 the minimum so fixed is unlawful."

17 74. Plaintiff is informed and believes, and therefore alleges, that Defendants'  
18 compensation schemes do not fairly compensate Plaintiff and members of the Classes for all hours  
19 spent performing their job duties.

20 75. The failure to pay at least minimum wages to Plaintiff and members of the Plaintiff  
21 Class for each and every hour worked violates Labor Code sections 1182.11-1182.12, 1194,  
22 1194.2, and 1197; the applicable IWC wage order section 4; and Business & Professions Code.

23 76. The failure to pay designated wages to Plaintiff and members of the Classes for each  
24 and every hour worked violates Labor Code sections 221 and 223; the applicable IWC Wage  
25 Order; and Business & Professions Code.

26 77. During the applicable time period, Defendants have and continue to have a pattern and  
27 practice of not providing its employees all wages.

28 ///

1 78. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of regular  
2 and overtime compensation violates the provisions of Labor Code §§ 221, 222, 222.5, 223, 510,  
3 1182.12, 1194, 1194.2, 1197, 1198, and the applicable IWC wage orders and is therefore  
4 unlawful.

5 79. Accordingly, Defendants owe Plaintiff and Class Members all minimum wages,  
6 straight time compensation, overtime compensation, double-time compensation, and interest.

7 **SECOND CAUSE OF ACTION**

8 **Non-Compliant Meal Breaks**

9 **(By Plaintiff and Members of the Putative Class Against Defendants)**

10 80. Plaintiff hereby incorporates by reference each and every one of the allegations  
11 contained in the preceding paragraphs as if the same were fully set forth herein.

12 81. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and the Class  
13 Members regularly worked more than five (5) hours per shift and were entitled to a meal period  
14 of not less than thirty (30) minutes without duty.

15 82. Nevertheless, Plaintiff is informed and believes, and thereon alleges, that Defendants  
16 routinely failed to provide Plaintiff and the members of the Classes with such meal periods  
17 without duty, notwithstanding the fact that Plaintiff and the members of the Classes had not  
18 waived their right to the same. Thus, Defendants failed to provide Plaintiff and the members of  
19 the Classes with meal periods required by Labor Code sections 226.7, 512, 516 and the applicable  
20 IWC wage order section 10, and categorically failed to pay any and all meal period wages due.

21 83. Plaintiff and Class Members seek damages pursuant to Labor Code section 226.7(b)  
22 and the applicable IWC wage order section 10(F), in the amount of one additional hour of pay at  
23 the regular rate for each work day that the meal period is/was not provided to Plaintiff and any  
24 member of the Classes, the cumulative sum of which is to be determined at trial.

25 84. Under the foregoing, California employers must provide meal periods and authorize  
26 and permit rest periods to all employees during their shifts. In *Augustus et al. v. ABM Security*  
27 *Services, Inc.* (2016) 2 Cal.5th 257, the California Supreme Court reaffirmed that the required  
28 meal and rest periods must be "off-duty," which means that employees must be relieved of "all

work-related duties,” including the duty to remain “on call,” and they must be “free from employer control” over how they “spend their time.” *Id.* at 264, 269. Employees must have the freedom to use meal and rest periods for their own purposes. *Id.* at 270; *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1038-39.

85. When employees must either “remain at the ready and capable of being summoned to action,” “respond when the employer seeks contact with [them],” “perform other work if the employer so requests,” and/or remain “on call” during their meal and rest periods, the employees have not been “relieve[d] ... of all work-related duties and employer control.” *Augustus, supra*, 2 Cal.5th at 270. Such a meal or rest period is not “off duty” and therefore is “impermissible.” *Ibid.*

86. The Supreme Court’s decision in *Augustus* is just the latest in a series of meal and rest break cases that have affirmed California’s broad, protective standard for employees.<sup>1</sup>

87. Moreover, as the mere existence of a facially lawful meal and rest break policy is unavailing if there are practical constraints and pressures on employees to perform their duties in ways that omit breaks. See *Brinker, supra*, 53 Cal.4th at 1040.

88. Yet Defendant did and does not provide Plaintiff and members of the Classes with meal periods during which they are completely relieved of duty for at least thirty (30) minutes by the fifth hour of work and again by the tenth hour of work.

89. Rather, Plaintiff alleges that meal breaks were short. Specifically, Plaintiff would have to walk from the lunchroom all the way to the front of the store to clock in and out. Additionally, if Plaintiff or other Class members wanted to purchase something from the store, they were required to show the item and receipt to the manager off the clock before they could eat the item. Additionally, company policy dictated that all food purchased in the store had to be eaten outside

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<sup>1</sup> See, e.g., *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004; *Lubin v. Wackenhut Corp.* (2016) 5 Cal.App.5th 926, *rehg. denied* (Dec. 14, 2016); *Faulkinbury v. Boyd & Assocs., Inc.* (2013) 216 Cal.App.4th 220; *Berlanga v. Equilon Enterprises LLC* (N.D.Cal., Aug. 31, 2017, No. 17-CV-00282-MMC) 2017 WL 3782245 at \*3 (a policy requiring employees to “remain in contact with supervisors and other employees working in their units throughout their shifts... would appear to be unlawful under [*Augustus*.]”)

1 the store, causing meal breaks to be significantly shortened.

2 90. Furthermore, by way of example, Plaintiff had been previously threatened in writing  
3 with termination for taking a late meal premium. It was commonly known by Plaintiff and the  
4 members of the Plaintiff Class that late meals should not be reported or employees could face  
5 discipline and or termination.

6 91. Thus, Defendant has failed to perform its obligations to provide Plaintiff and the  
7 members of the Plaintiff Class with off-duty meal periods by the end of the fifth hour of work and  
8 a second meal period by the end of the tenth hour of work. Defendants also failed to pay Plaintiff  
9 and the members of the Plaintiff Class one (1) hour of pay at the regular rate for each off-duty  
10 meal period that they have been denied.

11 92. On July 15, 2021, the California Supreme Court issued a decision in *Ferra v. Loews*  
12 *Hollywood Hotel, LLC* (2021) 11 Cal.5th 858 where the court unanimously held that employers  
13 must pay premium payments to employees for missed meal, rest, and recovery breaks at the  
14 employee's "regular rate of pay" instead of their base hourly rate.

15 93. Defendants knew or should have known that as a result of its policies and/or practices,  
16 that Plaintiff and members of the Classes were not actually relieved of all duties to take timely,  
17 uninterrupted meal periods. Defendants further knew or should have known that it did not pay  
18 Plaintiff and members of the Classes all meal period premiums when meal periods were missed,  
19 late, short, and/or interrupted. Furthermore, Defendants have engaged in a company-wide practice  
20 and/or policy of not paying meal period premiums owed when compliant meal periods are not  
21 provided. Because of this practice and/or policy, Plaintiff and members of the Classes have not  
22 received all premium pay for missed, interrupted, or late meal periods. Accordingly, Defendants  
23 failed to provide all meal periods in violation of Labor Code sections 226.7, 512(a), 516, and  
24 1198.

25 94. Plaintiff and members of the Classes are entitled to civil penalties, attorney's fees,  
26 costs, and interest thereon.

27 ///

28 ///

1 **THIRD CAUSE OF ACTION**

2 **Non-Compliant Rest Breaks**

3 **(By Plaintiff and Members of the Putative Class Against Defendants)**

4 95. Plaintiff hereby incorporates by reference each and every one of the allegations  
5 contained in the preceding paragraphs as if the same were fully set forth herein.

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

16 97. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and Class  
17 Members were entitled to a paid rest period of not less than ten (10) minutes without duty for  
18 each and every four (4) hours or major fraction thereof worked during the workday.

19 98. Nevertheless, Plaintiff is informed and believes, and thereon alleges, that Defendant  
20 routinely failed to provide Plaintiff and the members of the Classes with such paid rest periods  
21 without duty, notwithstanding the fact that Plaintiff and the members of the Classes had not  
22 waived their right to the same. Thus, Defendants failed to provide Plaintiff and Class Members  
23 with rest periods required by Labor Code sections 226.7, 512, and 516, the applicable IWC wage  
24 order section 11 and categorically failed to pay any and all rest period wages due.

25 99. Plaintiff and Class Members seek damages pursuant to Labor section 226.7(b) and the  
26 applicable IWC wage order section 11(D), in the amount of one additional hour of pay at the  
27 regular rate for each work day that the rest period is/was not provided or provided late to Plaintiff  
28 and any member of the Classes, the cumulative sum of which is to be determined at trial.

1           100. Therefore, Plaintiff and members of the Plaintiff Class are entitled to compensation  
2 for Defendants' failure to provide rest periods, plus interest, attorneys' fees, expenses, and costs of  
3 suit pursuant to Labor Code section 226.7(b) and the applicable wage order

4                                   **FOURTH CAUSE OF ACTION**

5                   **Failure to Furnish Accurate Itemized Wage Statements and Maintain Accurate Records**

6                   **(By Plaintiff and Members of the Putative Class Against Defendants)**

7           101. Plaintiff hereby incorporates by reference each and every one of the allegations  
8 contained in the preceding paragraphs as if the same were fully set forth herein.

9           102. Labor Code section 226(a) and the applicable IWC wage order section 6(B) requires  
10 employers to furnish each employee with a statement itemizing, among other things, the total hours  
11 worked by the employee, on a semi-monthly basis or at the time of each payment of wages.

12           103. Labor Code section 226(e) provides that if an employer fails to comply with providing  
13 an employee with properly itemized wage statements as set forth in section 226(a), then the employee  
14 is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a  
15 violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed  
16 \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a)  
17 shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation  
18 and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to  
19 provide the employee a wage statement or fails to keep the required records pursuant to section 226(a).

20           104. Defendants knowingly and intentionally failed to furnish Plaintiff and the members of  
21 the Classes with timely, itemized statements in compliance with Labor Code section 226(a) and the  
22 applicable IWC Wage order section 6(B).

23           105. Plaintiff is informed and believes, and thereon alleges, that Defendants knowingly and  
24 intentionally failed to furnish Plaintiff and members of the Classes with timely, itemized statements  
25 showing (a) total hours, (b) gross wages earned, (c) all deductions, and/or (d) all applicable hourly  
26 rates in effect during each respective pay period and the corresponding number of hours worked at  
27 each hourly rate by each respective individual.

28           106. Plaintiff is informed and believes, and thereon alleges, that Defendant did not maintain

1 accurate business records pertaining to the total hours worked for Defendant by Plaintiff and the  
2 members of the Classes as required under Labor Code section 1174.5. This is a result of missing hours  
3 worked, and missed meal-break premiums, as illustrated above.

4 107. As a result of not having kept accurate records, Plaintiff and the Class Members  
5 suffered injuries in the form of confusion over whether they received all wages owed to them, and  
6 difficulty and expense in reconstructing pay records in addition to other injuries which may come to  
7 light during the discovery process.

8 108. Labor Code section 1198 provides that the maximum hours of work and the standard  
9 conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable  
10 IWC wage order. Section 1198 further provides that “[t]he employment of any employees for longer  
11 hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”  
12 Pursuant to the applicable IWC Wage order, employers are required to keep accurate time records  
13 showing when the employee begins and ends each work period and meal period.

14 109. Plaintiff and the members of the Classes herein seek damages and penalties pursuant  
15 to Labor Code section 226(e) for Defendants’ violations of Labor Code section 226(a).

16 110. Plaintiff and Class Members also seek preliminary and permanent injunctive relief  
17 and an award of reasonable attorneys’ fees and costs pursuant to Labor Code section 226(h).

18 **FIFTH CAUSE OF ACTION**

19 **FAILURE TO PAY ACCRUED VACATION WAGES**

20 **IN VIOLATION OF CAL. LABOR CODE § 227.3**

21 **(By Plaintiff and the Members of the Plaintiff Class Against Defendants)**

22 111. Plaintiff hereby re-alleges and incorporates by reference as though set fully forth  
23 herein, the allegations contained above.

24 112. California *Labor Code* § 227.3 sets forth requirements pertaining to vacation pay. The  
25 provision states the following: “whenever a contract of employment or employer policy provides for  
26 paid vacations, and an employee is terminated without having taken off his vested vacation time, all  
27 vested vacation shall be paid to him as wages at his final rate in accordance with such contract of  
28 employment or employer policy respecting eligibility or time served; provided, however, that an

1 employment contract or employer policy shall not provide for forfeiture of vested vacation time upon  
2 termination.”

3 113. As a matter of uniform corporate policy, procedure and practice, Defendants violated  
4 California *Labor Code* § 227.3 by failing to pay Plaintiff and members of the Plaintiff Class all vested  
5 vacation wages at the end of their employment.

6 114. By way of example, Plaintiff had accrued vacation pay when he was terminated but  
7 he was not paid any vacation pay in his final check.

8 115. California *Labor Code* § 227.3, prohibits employers from forfeiting payment of the  
9 vested vacation wages of their employees.

10 116. As a direct and proximate result of the acts and/or omissions of Defendants, Plaintiff  
11 and the members of the Plaintiff Class have been deprived of accrued vacation wages due in amounts  
12 to be determined at trial.

13 117. Wherefore, Plaintiff requests relief as hereinafter provided.

14 **SIXTH CAUSE OF ACTION**

15 **Failure to Provide Suitable Seating**

16 **(By Plaintiff and Members of the Putative Class Against Defendants)**

17 118. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth  
18 herein.

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

25 120. “The ‘nature of the work’ refers to an employee’s tasks performed at a given location  
26 for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range  
27 of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks being performed  
28 at a given location reasonably permit sitting, and provision of a seat would not interfere with

performance of any other tasks that may require standing, a seat is called for.” *Kilby v. CVS Pharmacy, Inc.* (2016) 63 Cal.4th 1, 8. “Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s characteristics.” *Ibid.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 24. In other words, the employer must show that compliance is “infeasible because no suitable seating exists.” See *ibid.*

121. Defendants violated Labor Code section 1198 and Code of Regulations, title 8, section 11070(14)(A) because Plaintiff and members of the Classes were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats within the super markets. Defendants’ management did not inform Plaintiff and members of the Classes that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

122. As a result of Defendants’ company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Plaintiff and members of the Classes were forced to stand during shifts and denied seats when working. Defendants’ failure to provide suitable seating to Plaintiff and members of the Classes violates Labor Code section 1198 and the applicable IWC wage order section 14(A).

123. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. Labor Code section 1198 requires that “the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful.” Code of Regulations, title 8, section 11070(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

124. The IWC states that section 14(B) applies during “lulls in operation” when an

1 employee, while still on the job, is not then actively engaged in any duties. *Kilby* citing IWC, 1976  
2 Wage orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a  
3 seat under section 14(A) if his or her actual tasks at a discrete location make seated work feasible,  
4 while working there. *Ibid.* However, if other job duties take the employee to a different location where  
5 he or she must perform tasks requiring standing, the employee would be entitled to a seat under section  
6 14(B) during “lulls in operation.” *Ibid.*

7 125. Defendants did not provide Plaintiff and members of the Classes with seats or stools  
8 in reasonable proximity to their work areas to allow them to use seats when it would not interfere with  
9 the performance of their duties for times when they were not engaged in active duties that require  
10 standing.

11 126. As a result of Defendants’ company-wide policy and/or practice of prohibiting  
12 employees from sitting at any time, even when they were not engaged in active duties requiring  
13 standing, and company-wide failure to provide seats in reasonable proximity to their work areas,  
14 Plaintiff and members of the Classes were forced to stand during shifts and denied seats. Defendants’  
15 failure to provide suitable seating to Plaintiff and members of the Classes violates Labor Code section  
16 1198 and the applicable IWC Wage order section 14(B).

17 127. Plaintiff and members of the Classes are therefore entitled to recover civil penalties,  
18 attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring Defendants into  
19 compliance with California’s seating requirements, pursuant to Labor Code section 1194.5.

## 20 **SEVENTH CAUSE OF ACTION**

### 21 **Failure to Provide Sick Pay**

#### 22 **(By Plaintiff and Members of the Putative Class Against All Defendants)**

23 128. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth  
24 herein.

25 129. Sick pay must be compensated at the employee’s regular rate of pay, for the workweek  
26 in which the paid leave was taken, or at a rate determined by averaging over 90-days. (Lab. Code §  
27 246(1).)

28 130. Defendants failed to pay Plaintiff and members of the Class sick pay at the correct

1 rate. Plaintiff received compensation in addition to hourly wages, but those additional amounts were  
2 not included when calculating sick pay wages. Plaintiff received compensation, including shift  
3 differentials in addition to his hourly wages while employed by Defendant, which was not factored  
4 into his sick pay wages. By failing to pay Plaintiff and Class Members for sick pay at the correct rate,  
5 Defendants willfully violated Labor Code section 246.

6 131. Defendants' unlawful acts deprived Plaintiff and the Class of all wages. Plaintiff seeks  
7 to represent of sick pay in amounts to be determined at trial, and they are entitled to recover these  
8 amounts with interest, attorneys' fees, and costs.

## 9 **EIGHTH CAUSE OF ACTION**

### 10 **Waiting Time Penalties**

#### 11 **(By Plaintiff and Members of the Terminated Sub Class Against Defendants)**

12 132. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth  
13 herein.

14 133. At all times, relevant herein, Defendants were required to pay their employees all  
15 wages owed in a timely fashion during and at the end of their employment, pursuant to Labor Code  
16 section 201-203.

17 134. As a pattern and practice, Defendants regularly failed to pay Plaintiff and the members  
18 of the Terminated Sub Class their final wages pursuant to Labor Code sections 201-203, and  
19 accordingly owe waiting time penalties pursuant to Labor Code section 203.

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

26 136. On information and belief, Defendants have a company-wide practice or policy of  
27 paying departing employees their final wages late, instead of adhering to the time requirements set  
28 forth in Labor Code sections 201 and 202.

137. Specifically, Defendant willfully failed to pay Plaintiff and members of the Terminated Sub Class the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and/or meal period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

138. Plaintiff and members of the Terminated Sub Class are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 256.

## NINTH CAUSE OF ACTION

## Violation of California

**Business and Professions Code Section 17200 et seq.**

**(By Plaintiff and the Members of the Plaintiff Class Against Defendant)**

139. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

140. Business and Professions Code section 17200 defines unfair competition to include, “unlawful, unfair or fraudulent business practices.”

141. Plaintiff and all proposed Class Members are “persons within the meaning of Business and Professions Code section 17204, who have suffered injury in fact and have lost money or property as a result of Defendants’ unfair competition.

142. Defendants have been committing, and continues to commit, acts of unfair competition by engaging in the unlawful, unfair and fraudulent business practices and acts described in this Complaint, including, but not limited to:

- a) violations of Labor Code sections 510, 1198;
- b) violations of Labor Code sections 221, 223, 1182.11-1182.12, 1194, 1194.2, 1197, 1198;
- c) violations of Labor Code sections 226.7, 512, 516, and 1198;
- d) violations of Labor Code sections 226, 1174;
- e) violations of Labor Code sections 201 and 202;
- f) violations of Labor Code section 204;
- g) violations of Labor Code section 1198.

143. As a result of its unlawful, unfair, and/or fraudulent business acts and practices,

1 Defendant has reaped and continues to reap unfair benefits and illegal profits at the expense of Plaintiff  
2 and proposed Class Members. Defendants' unlawful, unfair, and/or fraudulent conduct has also  
3 enabled Defendant to gain an unfair competitive advantage over law-abiding employers and  
4 competitors.

5 144. Business and Professions Code section 17203 provides that the Court may restore to  
6 an aggrieved party any money or property acquired by means of the unlawful, unfair, and/or  
7 fraudulent business acts or practices.

8 145. Plaintiff seeks a court order enjoining Defendants from the unlawful, unfair, and/or  
9 fraudulent activity alleged herein.

10 146. Pursuant to Civil Code section 3287(a), Plaintiff and other members of the Plaintiff  
11 Class are entitled to recover pre-judgment interest on wages earned, but not paid.

12 147. Plaintiff further seeks an order requiring an audit and accounting of the payroll records  
13 to determine the amount of restitution of all unpaid wages owed to himself and members of the  
14 proposed Plaintiff Class, according to proof, as well as a determination of the amount of funds to be  
15 paid to current and former employees that can be identified and located pursuant to a court order and  
16 supervision.

17 148. Plaintiff seeks restitution for himself and all others similarly situated of these amounts,  
18 including all earned and unpaid wages and attorneys' fees and costs pursuant to Code of Civil  
19 Procedure section 1021.5.

#### 20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff, and the Class Members pray for judgment as follows:

- 22 1. For an order certifying the proposed Plaintiff and Terminated Sub-Class;
- 23 2. For an order that counsel for Plaintiff be appointed class counsel
- 24 3. Certification of this class action on behalf of the proposed Plaintiff and Terminated  
25 Sub-Class;
- 26 4. Designation of Plaintiff as the class representative of the Plaintiff and Terminated Sub  
27 Class;
- 28 5. For restitution of all monies due to Plaintiff and the members of the Plaintiff Class and

- disgorgement of all profits from the unlawful business practices of Defendant;
6. An order appointing Plaintiff's counsel as class counsel;
  7. Prejudgment and post judgment interest on all sums awarded;
  8. For compensatory damages;
  9. For penalties pursuant to Labor Code sections 200, 226, 226.7, 226.3, 2699(a) and 2699(f);
  10. For interest accrued to date;
  11. For costs of suit and expenses incurred herein pursuant to Labor Code sections 226 and 1194;
  12. For reasonable attorneys' fees pursuant to Labor Code section 226, 2699(g)(1) and Code of Civil Procedure section 1021.5, and/or other applicable law; and
  13. A declaratory judgment that Defendant has knowingly and intentionally violated the following provisions of law;
    - a. Labor Code sections 1182.11-1182.12, 1194, 1194.2, 1197, 1198, 221, 223, for failing to pay all wages;
    - b. Labor Code sections 226.7, 512, 516, and 1198 for failing to provide compliant meal breaks;
    - c. Labor Code sections 226.7, 512, 516, and 1198 for failing to provide compliant rest breaks;
    - d. Labor Code section 226, 1174 for failing to provide compliant wage statements and failing to maintain accurate records;
    - e. Labor Code section 246 for failing to pay sick pay wages at the regular rate;
    - f. California Labor Code § 227.3 for failing to pay accrued vacation time upon termination;
    - g. Labor Code sections 201 and 202 for failing to pay wages at termination;
    - h. Labor Code section 1198 for failing to provide suitable seating;

i. Business & Professions Code sections 17200-08 for violating the provisions set forth herein above.

14. For all such other and further relief that the Court may deem just and proper.

DATED: May 2, 2023

**BRADLEY/GROMBACHER, LLP  
MAJARIAN LAW GROUP APC**



By: \_\_\_\_\_

Marcus Bradley, Esq.  
Kiley Grombacher, Esq.  
Lirit King, Esq.  
Garen Majarian, Esq.  
Sahag Majarian, II, Esq.

Attorneys for Plaintiff and  
others similarly situated

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands trial of Plaintiff's and the members of the Classes' claims by jury to the extent authorized by law.

DATED: May 2, 2023

**BRADLEY/GROMBACHER, LLP  
MAJARIAN LAW GROUP APC**



By: \_\_\_\_\_

Marcus Bradley, Esq.  
Kiley Grombacher, Esq.  
Lirit King, Esq.  
Garen Majarian, Esq.  
Sahag Majarian, II, Esq.

Attorneys for Plaintiff  
and others similarly situated