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David W. Slayton,
Executive Officer/Clerk of Court,
By G. Delgado, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

OLIVIA NUNEZ, as an aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"), on behalf of the
State of California and other aggrieved
employees,

Plaintiff,

vs.

CHEDRAUI USA, INC., a Delaware
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: **26STCV09076**

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

- (1) Claim for Civil Penalties Pursuant to
PAGA § 2699 for Violations of California
Labor Code and IWC Wage Order No.
7-2001, subdivision 14(A); and
- (2) Claim for Civil Penalties Pursuant to
PAGA § 2699 for Violations of California
Labor Code and IWC Wage Order No.
7-2001, subdivision 14(B).

1 Plaintiff Olivia Nunez, as an aggrieved employee and on behalf of the State of
2 California and all other 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 on behalf of Plaintiff, the State of California, and other current and former employees who
7 worked for Defendants in California as a non-exempt employee at a California retail store
8 location and who suffered violations of Industrial Welfare Commission (“IWC”) Wage Order
9 No. 7-2001 subdivision 14(A) and/or (B) as set forth in this complaint at any time between
10 one year prior to the filing of the pre-filing written notice to the Labor and Workforce
11 Development Agency (“LWDA”) in this case on January 12, 2026, until judgment (“non-party
12 Aggrieved Employees”). Plaintiff’s share of civil penalties sought in this action does not
13 exceed \$75,000.

14 2. This Court has jurisdiction over this action pursuant to the California
15 Constitution, Article VI, section 10. The overall amount in controversy exceeds \$35,000. The
16 statute under which this action is brought does not specify any other basis for jurisdiction.

17 3. This Court has jurisdiction over all Defendants because, on information and
18 belief, Defendants are either citizens of California, have sufficient minimum contacts in
19 California, and otherwise intentionally avail themselves of the California market so as to
20 render the exercise of jurisdiction over them by the California courts consistent with
21 traditional notions of fair play and substantial justice. Also, Plaintiff and all other non-party
22 Aggrieved Employees were employed by Defendants in California.

23 4. There is no basis for federal diversity jurisdiction in this action given that the
24 State of California, as the real party in interest in this action, is not a “citizen” for purposes of
25 satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118, 1123 (9th Cir.
26 Cal. 2013). *Urbino* also holds that civil penalties cannot be aggregated to satisfy the amount
27 in controversy requirement for federal diversity jurisdiction in this action, and that diversity
28 jurisdiction cannot be established when Plaintiff’s share of the civil penalties attributable to

violations personally suffered are less than \$75,000. *Id.* at 1122.

5. Venue is proper in this Court, because Defendants filed Statement of Information forms with the California Secretary of State designating a principal place of business in Commerce, County of Los Angeles, in accordance with California Corporations Code section 2105(a)(3). Cal. Code Civ. P. § 395.5. Venue is also proper in this Court because Defendants employ persons in this county, and thus a substantial portion of the transactions and occurrences related to this action occurred in this county.

6. California Labor Code sections 2698, *et seq.*, the “Labor Code Private Attorneys General Act of 2004,” 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. Labor Code section 1198 makes a violation of a Wage Order such as subdivision 14(A) or 14(B) a violation of the Labor Code.

THE PARTIES

7. Defendants have employed Plaintiff Olivia Nunez as a non-exempt employee since approximately June 2023. Plaintiff has worked for Defendants as a Cashier at their store in Corona, California (located at 1212 Magnolia Avenue, Corona, California 92881). Plaintiff typically works five (5) to six (6) hours per day and four (4) days per week, on a varied schedule. Plaintiff’s job duties included, without limitation, operating the cash register, handling the cash register, handling customer transactions, and providing customer service.

8. Defendant CHEDRAUI USA, INC. was and is, upon information and belief, a Delaware corporation doing business in California, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California, or the various states of the United States of America.

9. 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.

10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10

1 are the partners, agents, owners, shareholders, managers, or employees of CHEDRAUI USA,
2 INC., at all relevant times.

3 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the
4 acts and omissions alleged herein was performed by, or is attributable to, CHEDRAUI USA,
5 INC. and/or DOES 1 through 10 (collectively, “Defendants” or “EL SUPER”), each acting as
6 the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the
7 other co-Defendants and was acting within the course and scope of such agency, employment,
8 joint venture, or concerted activity with legal authority to act on the others’ behalf. The acts
9 of any and all Defendants were in accordance with, and represent, the official policy of
10 Defendants.

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

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

18 **PAGA REPRESENTATIVE ALLEGATIONS**

19 14. Defendants operate supermarket chains for produce, meats, and packaged
20 foods, plus discounted bulk items under various brands, including El Super. Defendants
21 operate approximately 55 El Super branded grocery store locations in California.

22 15. Upon information and belief, Defendants maintain a single, centralized Human
23 Resources (HR) department at their corporate headquarters in Commerce, California, for all
24 non-exempt employees working for Defendants in California, which is responsible for the
25 recruiting and hiring of new employees, and communicating and implementing Defendants’
26 company-wide policies to employees throughout California.

27 16. In particular, on information and belief, Plaintiff and other non-party Aggrieved
28 Employees received the same standardized documents and/or written policies. Upon

1 information and belief, Defendants maintained uniform practices with respect to their
2 provision of seats (or lack thereof) in their retail stores for all non-exempt employees in
3 California, including Plaintiff and other non-party Aggrieved Employees, regardless of their
4 location or position.

5 17. During the relevant time period, Plaintiff and other non-party Aggrieved
6 Employees have spent or spend a substantial portion of their day behind Defendants'
7 cashwraps. The nature of the work of an employee performing cashier duties can reasonably
8 be accomplished from a seated position. However, as set forth herein, Defendants
9 systematically, and on a company-wide basis, designed cashwraps that require standing and
10 do not provide suitable seats at cashwraps, forcing Plaintiff and other non-party Aggrieved
11 Employees to stand throughout their work shifts.

12 18. Plaintiff alleges that Defendants' California retail stores are generally similar in
13 their layout and design and that the cashwraps could allow for the presence and use of a seat
14 or stool by Defendants' employees during the performance of their work duties at these
15 cashwraps. However, on information and belief, Defendants have designed their cashwraps to
16 require Plaintiff and other non-party Aggrieved Employees to stand while performing their
17 cashwrap work duties. Defendants could have designed their cashwraps in a manner that
18 would allow Plaintiff and other non-party Aggrieved Employees to perform cashwrap duties
19 while seated and could have provided Plaintiff and other non-party Aggrieved Employees with
20 suitable seats at the cashwraps. Instead, on information and belief, Defendants have denied
21 and continue to deny them seats altogether or deny them suitable seats. As a result, Plaintiff
22 and other non-party Aggrieved Employees are and have been forced to stand throughout the
23 day. In addition, Defendants have failed to expressly advise Plaintiff and other non-party
24 Aggrieved Employees that they could utilize seats while performing their duties.

25 19. Additionally, Defendants have not placed an adequate number of suitable seats
26 within reasonable proximity to the work areas of employees who perform duties whose nature
27 requires standing and therefore has not permitted employees to use those seats when not
28 actively engaged in performing their standing duties (i.e., during "lulls in operation"), even

1 though sitting would not interfere with the performance of their job duties.

2 20. Defendants continue to employ non-exempt employees at retail store locations
3 throughout California.

4 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
6 suitable seating when the nature of their work reasonably permits the use of seats and/or were
7 entitled to sit when it did not interfere with the performance of their cashier duties. In
8 violation of the California Labor Code and applicable IWC Wage Order, Defendants failed to
9 provide Plaintiff and other non-party Aggrieved Employees suitable seating.

10 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
12 have seats in reasonable proximity to their work area(s) and be permitted to use such seats
13 when it did not interfere with the performance of their duties whose nature require standing
14 during lulls in performing those tasks. In violation of the California Labor Code and
15 applicable IWC Wage Order, Defendants failed to provide Plaintiff and other non-party
16 Aggrieved Employees suitable seating within reasonable proximity of their work areas and
17 failed to permit them to use such seats when not actively engaged in their standing duties.

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

24 24. PAGA defines an “aggrieved employee” in Labor Code section 2699(c)(1) as
25 “any person who was employed by the alleged violator and personally suffered each of the
26 violations alleged.”

27 25. Plaintiff and other current and former California employees of Defendants are
28 “aggrieved employees” as defined by Labor Code section 2699(c)(1) in that they are all

Defendants' current or former California employees and each of the alleged violations of IWC Wage Order No. 7-2001, subdivisions 14(A) and 14(B), were committed against them.

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

- (a) The aggrieved employee or representative shall give written notice by online filing with 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 violation.
- (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 notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation ("LWDA Notice") within sixty (60) calendar days of the postmark date of the aggrieved employee's notice. Upon receipt of the LWDA Notice, or if no LWDA Notice is provided within sixty-five (65) calendar days of the postmark date of the aggrieved employee's notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties.

27. On January 12, 2026, Plaintiff provided written notice by online filing to the LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice was accompanied with the applicable filing fees of seventy-five dollars (\$75). That same day, the LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned Plaintiff PAGA Case Number LWDA-CM-1149452-26. A true and correct copy of

1 Plaintiff's written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

2 28. As of the filing date of this complaint, over 65 days have passed since Plaintiff
3 sent the notice described above to the LWDA, and the LWDA has not responded that it
4 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

5 29. Thus, Plaintiff has satisfied the administrative prerequisites under California
6 Labor Code section 2699.3(a) to recover civil penalties against Defendants for violations of
7 California Labor Code section 1198.

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

11 31. As set forth below, Defendants have violated provisions of both the Labor Code
12 sections regulating conditions of labor as well as the applicable IWC Wage Order,
13 specifically, Labor Code section 1198 and California Code of Regulations, Title 8, section
14 11070(14)(A)-(B).

15 32. Pursuant to PAGA, and in particular, California Labor Code sections 1194.5,
16 2699(a), 2699(k), 2699.3(a), and 2699.5, Plaintiff, acting in the public interest as private
17 attorneys general, seek assessment and collection of civil penalties and injunctive relief for
18 themselves, all other non-party Aggrieved Employees, and the State of California against
19 Defendants for violations of California Labor Code section 1198.

20 **FIRST CAUSE OF ACTION**

21 **FAILURE TO PROVIDE SUITABLE SEATING**

22 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
23 **REGULATIONS, TITLE 8, SECTION 11070(14)(A)**

24 **(By Plaintiff on Behalf of the State of California and Aggrieved Employees Against all**
25 **Defendants)**

26 33. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
27 and every allegation set forth above.

28 34. California Labor Code sections 2698, *et seq.* permit Plaintiff to recover civil

1 penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
2 2699.5. Section 2699.5 enumerates Labor Code section 1198, among others. Defendants'
3 conduct, as alleged herein, violates section 1198 of the California Labor Code, by failing to
4 provide suitable seating to Plaintiff and other non-party Aggrieved Employees as set forth
5 below.

6 35. At all relevant times herein, California Labor Code section 1198 makes it
7 illegal to employ an employee under conditions of labor that are prohibited by the applicable
8 wage order. California Labor Code section 1198 requires that “. . . the standard conditions of
9 labor fixed by the commission shall be the . . . standard conditions of labor for employees.
10 The employment of any employee . . . under conditions of labor prohibited by the order is
11 unlawful.”

12 36. California Code of Regulations, Title 8, section 11070(14)(A) provides that
13 “[a]ll working employees shall be provided with suitable seats when the nature of the work
14 reasonably permits the use of seats.”

15 37. During the relevant time period, Defendants violated California Labor Code
16 section 1198 and California Code of Regulations, Title 8, section 11070(14)(A), because
17 Plaintiff and other non-party Aggrieved Employees have not been allowed to sit, even when
18 the nature of their work would reasonably permit the use of seats, nor have they been provided
19 with suitable seats. As employees assigned cashier duties, Plaintiff’s and other non-party
20 Aggrieved Employees’ tasks, including operating the cash register, scanning items, and
21 bagging items, could be performed from a seated position. Plaintiff and other non-party
22 Aggrieved Employees could have handled cash register transactions and performed other
23 similar tasks at cashwraps at any of Defendants’ retail stores while seated, without affecting
24 the quality and effectiveness of the performance of their job duties.

25 38. Defendants could have designed their cashwraps in a manner that allows
26 Plaintiff and other non-party Aggrieved Employees to sit while performing cashwrap duties
27 and could have placed suitable seats or stools at or near each cashwrap for use by Plaintiff and
28 other non-party Aggrieved Employees. Instead, on information and belief, Defendants have

1 designed the cashwraps to require Plaintiff and other non-party Aggrieved Employees to stand
2 at the work area(s) and have not provided suitable seats or stools they could use while
3 working at the cashwrap. In addition, upon information and belief, Defendants have
4 prohibited employees from sitting while working. Defendants' management has not informed
5 Plaintiff and other non-party Aggrieved Employees that they are allowed to sit down, provide
6 any means for them to sit down, or mention any policy regarding sitting.

7 39. For example, during her employment, when Plaintiff performed cashiering
8 duties at the cashwrap, she has been required to stand the entire time because Defendants, on
9 information and belief, have designed their cashwraps for standing and have not provided
10 suitable seating for employees' use while working at cashwraps. Other non-party Aggrieved
11 Employees similarly are not permitted to sit while performing cash register duties because
12 Defendants have designed their cashwraps for standing and have not provided seats or stools
13 at the cashwraps.

14 40. As a result of Defendants' company-wide policy and/or practice prohibiting
15 employees from sitting during their shifts and failure to provide suitable seating to these
16 employees, as well as designing their cashwraps to require standing, Plaintiff and other non-
17 party Aggrieved Employees have been forced to stand during shifts and have been denied
18 seats. Defendants' failure to provide suitable seating to Plaintiff and other non-party
19 Aggrieved Employees violated and continues to violate California Labor Code section 1198
20 and IWC Wage Order No. 7-2001, subdivision 14(A).

21 41. Plaintiff and other non-party Aggrieved Employees and the State of California
22 are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f),
23 and (k).

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SECOND CAUSE OF ACTION
FAILURE TO PROVIDE SUITABLE SEATING
VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF
REGULATIONS, TITLE 8, SECTION 11070(14)(B)
(By Plaintiff on Behalf of the State of California and Aggrieved Employees Against all
Defendants)

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

43. California Labor Code sections 2698, *et seq.* permit Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code section 1198, among others. Defendants’ conduct, as alleged herein, violates section 1198 of the California Labor Code, by failing to provide suitable seating to Plaintiff and other non-party Aggrieved Employees as set forth below.

44. At all relevant times herein, California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California 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.”

45. California 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.”

46. During the relevant time period, Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(B), because Plaintiff and other non-party Aggrieved Employees have not been allowed to sit, even during

1 lulls in their work duties, nor have they been provided with suitable seats in reasonable
2 proximity to their work areas.

3 47. Defendants have not placed an adequate number of suitable seats or stools
4 within reasonable proximity to the work areas of employees who perform duties whose nature
5 requires standing, and therefore have not permitted employees to use those seats when not
6 actively engaged in performing their standing duties (i.e., during “lulls in operation”), even
7 though sitting would not interfere with the performance of their job duties. Defendants could
8 have provided Plaintiff and other non-party Aggrieved Employees with a suitable seat or stool
9 within reasonable proximity of their work areas but instead deny employees seats and force
10 them to stand throughout the day. Moreover, Defendants have not informed Plaintiff and
11 other non-party Aggrieved Employees of their right to a seat or stool under California law.

12 48. For example, during her employment, Plaintiff has experienced lulls in her
13 work at various times during a typical shift, when the store is less busy, in the early mornings
14 or late evenings. During these lulls, when Plaintiff was not actively performing tasks (which,
15 on information and belief, Defendants would claim that the nature of the work requires
16 standing), Plaintiff could have taken a moment to sit and rest her legs, back, and feet if seating
17 had been provided. Other non-party Aggrieved Employees similarly have not been permitted
18 to sit during these lulls in operation and have been forced to stand throughout the day.

19 49. As a result of Defendants’ company-wide failure to provide seats in reasonable
20 proximity to employees’ work areas and failure to permit them to use those seats when not
21 actively engaged in what Defendants claim are standing duties, Plaintiff and other non-party
22 Aggrieved Employees have been forced to stand during shifts and have been denied seats.
23 Defendants’ failure to provide suitable seating to Plaintiff and other non-party Aggrieved
24 Employees violated and continues to violate California Labor Code section 1198 and IWC
25 Wage Order No. 7-2001, subdivision 14(B).

26 50. Plaintiff and other non-party Aggrieved Employees and the State of California
27 are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f),
28 and (k).

1 **PRAYER FOR RELIEF**

2 Plaintiff, on behalf of the State of California and all other non-party Aggrieved
3 Employees, prays for relief and judgment against Defendants, jointly and severally, as
4 follows:

5 1. For civil penalties, injunctive relief, and attorneys' fees in excess of thirty-five
6 thousand dollars (\$35,000) to the State of California and aggrieved employees.

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

8 2. That the Court declare, adjudge and decree that Defendants violated California
9 Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(A) as to Plaintiff
10 and other non-party Aggrieved Employees (by failing to provide suitable seating);

11 3. For civil penalties pursuant to California Labor Code sections 2699(a), (f), and
12 (k) for violations of California Labor Code section 1198;

13 4. For injunctive relief pursuant to California Labor Code sections 1194.5 and/or
14 2699(k) to bring Defendants into compliance with California's seating requirements;

15 5. For attorneys' fees and costs pursuant to California Labor Code section
16 2699(k)(1), and any and all other relevant statutes, for Defendants' violations of California
17 Labor Code section 1198;

18 6. For pre-judgment and post-judgment interest as provided by law; and

19 7. For such other and further relief as the Court may deem equitable and
20 appropriate.

21 **As to the Second Cause of Action**

22 8. That the Court declare, adjudge and decree that Defendants violated California
23 Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B) as to Plaintiff
24 and other non-party Aggrieved Employees (by failing to provide suitable seating);

25 9. For civil penalties pursuant to California Labor Code sections 2699(a), (f), and
26 (k) for violations of California Labor Code section 1198;

27 10. For injunctive relief pursuant to California Labor Code sections 1194.5 and/or
28 2699(k) to bring Defendants into compliance with California's seating requirements;

1 11. For attorneys' fees and costs pursuant to California Labor Code section
2 2699(k)(1), and any and all other relevant statutes, for Defendants' violations of California
3 Labor Code section 1198;

4 12. For pre-judgment and post-judgment interest as provided by law; and

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

7
8 Dated: March 19, 2026

Respectfully submitted,

Capstone Law APC



By: _____

Melissa Grant
Robert Drexler
Jonathan Lee
Robert Myong

Attorneys for Plaintiff Olivia Nunez

EXHIBIT “1”



1875 Century Park East, Suite 1860
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

ALEXANDER LIMA
310.712.8154 Direct
Alexander.Lima@capstonelawyers.com

January 12, 2026

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.govfa.net/411>)

Subject: *Olivia Nunez v. Chedraui USA, Inc.*

Dear PAGA Administrator:

This office represents Olivia Nunez in connection with her claims under the California Labor Code, and this letter is sent in compliance with the notice requirements of the California Labor Code Private Attorneys General Act, California Labor Code section 2699.3. Ms. Nunez is an employee of CHEDRAUI USA, INC. ("EL SUPER").

The employer may be contacted directly at the address below:

CHEDRAUI USA, INC.
600 CITADEL DRIVE
COMMERCE, CA 90040

Ms. Nunez intends to seek civil penalties, attorneys' 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"). Ms. Nunez seeks relief on behalf of herself, the State of California, and other persons who are or were employed by EL SUPER as a non-exempt employee in a California retail store location ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

EL SUPER has employed Ms. Nunez as a non-exempt employee since approximately June 2023. Ms. Nunez has worked for EL SUPER as a Cashier at its store in Corona, California (located at 1212 Magnolia Avenue, Corona, California 92881). Ms. Nunez typically works five (5) to (6) hours per day and four (4) days per week, on a varied schedule. Ms. Nunez's job duties included, without limitation, operating the cash register, handling customer transactions, and providing customer service.

EL SUPER committed each of the following Labor Code violations against Ms. Nunez, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c)(1).¹ Ms. Nunez’s relevant claims are as follows:

EL SUPER’s Company-Wide and Uniform HR Practices

CHEDRAUI USA, INC. is incorporated in Delaware and operates supermarket chains for produce, meats, and packaged foods, plus discounted bulk items under various brands, including El Super. EL SUPER operates approximately 55 El Super branded grocery store locations in California.

Upon information and belief, EL SUPER maintains a centralized Human Resources (HR) department at its corporate headquarters in Commerce, California, for all non-exempt employees working for EL SUPER at retail stores in California, including Ms. Nunez and other aggrieved employees. EL SUPER maintained uniform practices with respect to its provision of seats (or lack thereof) in its retail stores for all non-exempt employees in California, including Ms. Nunez and other aggrieved employees, regardless of their location or position.

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(A) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable Industrial Welfare Commission (“IWC”) Wage Order. California 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.” California Code of Regulations, Title 8, section 11070(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

“The ‘nature of the work’ refers to an employee’s tasks performed at a given location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks being performed 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.*, 368 P.3d 554, 558 (Cal. 2016). “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.” *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is “infeasible because no suitable seating exists.” *See id.*

¹ These facts, theories, and claims are based on Ms. Nunez’s experience and counsel’s review of those records currently available relating to Ms. Nunez’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, Ms. Nunez reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

EL SUPER's California retail stores are generally similar in their layout and design and there was, and continues to be, space at cashwraps that could allow for the presence and use of a seat or stool by Ms. Nunez and other aggrieved employees during the performance of their work duties at the cashwraps. However, EL SUPER has designed its cashwraps to require Ms. Nunez and other aggrieved employees to stand while performing their cashwrap duties. EL SUPER could have designed its cashwraps in a manner that allows Ms. Nunez and other aggrieved employees to sit while performing cashwrap duties and could have placed suitable seats or stools at or near each cashwrap for use by Ms. Nunez and other aggrieved employees. Instead, EL SUPER designed its cashwraps to require Ms. Nunez and other aggrieved employees to stand at the work area(s) and has not provided suitable seats or stools they could use while working at the cashwrap. In addition, EL SUPER has prohibited Ms. Nunez and other aggrieved employees from sitting while working, and EL SUPER's management has failed to expressly advise Ms. Nunez and other aggrieved employees that they could utilize seats while performing their duties.

During her employment, Ms. Nunez has performed cashiering duties at the cashwrap and has spent a significant portion of her day behind the cashwrap. Other aggrieved employees similarly spend a portion of their day at cashwraps performing cash register duties. The nature of the work of an employee performing cashier duties can reasonably be accomplished from a seated position. Ms. Nunez and other aggrieved employees could have handled cash register transactions and performed other similar tasks at cashwraps at any of EL SUPER's retail stores while seated without affecting the quality and effectiveness of the performance of their job duties. However, as set forth herein, EL SUPER systematically, and on a company-wide basis, designed cashwraps to require employees to stand while performing their cashier duties and did not provide suitable seats at cashwraps, forcing Ms. Nunez and other aggrieved employees to stand throughout their work shifts.

EL SUPER has violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because Ms. Nunez and other aggrieved employees are not allowed to sit, even when the nature of their work would reasonably permit the use of seats, nor are they provided with suitable seats. EL SUPER's management has not informed Ms. Nunez and other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting. EL SUPER's failure to provide suitable seating to Ms. Nunez and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(A).

Ms. Nunez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring EL SUPER into compliance with the applicable IWC Wage Order and Labor Code section 1198, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California 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.” California 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.”

The IWC states that subdivision 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under subdivision 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat placed within reasonable proximity to their work area(s) under subdivision 14(B) during “lulls in operation.” *Id.*

EL SUPER has not placed an adequate number of suitable seats within reasonable proximity to the work areas of employees who perform duties whose nature require standing, and therefore has not permitted employees to use those seats when not actively engaged in performing their standing duties (i.e., during “lulls in operation”), even though sitting would not interfere with the performance of their job duties.

During her employment, Ms. Nunez has experienced lulls in her work at various times during a typical shift, especially when the store is less busy, in the early mornings or late evenings. During these lulls, when Ms. Nunez was not actively performing tasks (which, on information and belief, EL SUPER would claim that the nature of the work requires standing), Ms. Nunez could have taken a moment to sit and rest her legs, back, and feet if seating was provided. EL SUPER could provide Ms. Nunez and other aggrieved employees with a suitable seat or stool in its work areas but instead denies employees seats and forces Ms. Nunez and other aggrieved employees to stand throughout the day. Moreover, EL SUPER has not informed Ms. Nunez and other aggrieved employees of their rights to a seat or stool under California law. EL SUPER’s failure to provide suitable seating to Ms. Nunez and other aggrieved employees within reasonable proximity of their work areas and failure to permit them to use those seats when not actively engaged in what EL SUPER claims are standing duties violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

Ms. Nunez and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring EL SUPER into compliance with the applicable IWC Wage Order and Labor Code section 1198, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f), and (k).

Ms. Nunez, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for herself, all other aggrieved employees, and the State of California against EL SUPER for violations of California Labor Code section 1198 and the applicable IWC Wage Order.

Therefore, on behalf of all aggrieved employees, Ms. Nunez seeks all applicable 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:

Alexander Lima
Capstone Law APC
1875 Century Park East, Suite 1860
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in black ink, appearing to read 'Alexander Lima', with a stylized flourish extending to the right.

Alexander Lima

Copy: CHEDRAUI USA, INC. (via U.S. Certified Mail); Laura Reathaford, Esq., Lathrop GPM LLP, 2029 Century Park East, Suite 1280N, Los Angeles, CA 90067 (via U.S. Certified Mail)

Capstone Law, APC
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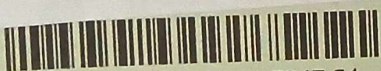
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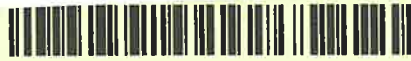
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