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County of Los Angeles
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Attorneys for Plaintiff PEDRO MENDOZA VAZQUEZ

SUPERIOR COURT OF CALIFORNIA

LOS ANGELES COUNTY

PEDRO MENDOZA VAZQUEZ, an
individual,

Plaintiff,

v.

EL MEXICANO MARKET EL MONTE,
Incorporated; MARINA SOLANO, an
individual; BERTHA E. HERNANDEZ, an
individual; and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: **26STCV24725**

COMPLAINT FOR DAMAGES:

1. FAILURE TO PAY WAGES
2. FAILURE TO TIMELY FURNISH
ACCURATE ITEMIZED WAGE
STATEMENTS
3. UNFAIR BUSINESS PRACTICES
4. WAITING TIME PENALTIES
5. MEAL AND REST PERIOD
VIOLATIONS
6. FAILURE TO REIMBURSE
7. PRIVATE ATTORNEYS GENERAL
ACT OF 2004 ("PAGA") PER LABOR
CODE §2699, et seq.
8. WRONGFUL TERMINATION AND
RETALIATION IN VIOLATION OF
LABOR CODE SECTIONS 1102.5, 98.6
9. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY
10. ASSAULT AND BATTERY

[IMAGED FILE]

1 Plaintiff PEDRO MENDOZA VAZQUEZ, an individual (hereinafter “Plaintiff”) alleges
2 as follows:

3
4 **GENERAL ALLEGATIONS**

5 The public policy of California declares:

6 It is the public policy of this state to vigorously enforce minimum labor standards in
7 order to ensure employees are not required or permitted to work under substandard
8 unlawful conditions or for employers that have not secured the payment of compensation
9 and to protect employers who comply with the law from those who attempt to gain a
competitive advantage at the expense of their workers by failing to comply with
minimum labor standards.

10 (Labor Code §90.5 subd. (a).)

11
12 Despite this clear mandate, DEFENDANTS blatantly violated the California Labor Code
13 and the Industrial Welfare Commission (“IWC”) Wage Orders. Defendants willfully failed to pay
14 all mandated wages, paid some wages in cash under the table, failed to provide meal and rest
15 periods and failed to pay them meal and rest period premiums, failed to reimburse business
16 expenditures, and failed to provide and maintain proper employee records to their employees.

17
18 1. This lawsuit is brought in response to the Defendants’ refusal to pay Plaintiff and
19 the other aggrieved employees all wages and premium wages that they earned during their
20 employment with Defendants, paid them in cash under the table for part of their wages earned,
21 failed to reimburse them for business expenditures, failed to provide them with proper records,
22 among other Labor Code violations, and retaliated against and wrongfully terminated Plaintiff
23 for reporting assault and battery and disagreement with resulting unsafe working conditions.

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25 2. The acts complained of herein have occurred within the time period from four (4)
26 years preceding the filing of the original Complaint herein (hereinafter, the “Relevant Time
27 Period”).
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1 executive officer, chief financial officer, managing agent, owner, and director of EL
2 MEXICANO MARKET EL MONTE, Incorporated, who violated and/or who caused to violate
3 various Labor Code sections and other provisions regulating hours and days of work established
4 by the Industrial Welfare Commission of the State of California rendering him individually liable
5 pursuant to Labor Code Sections 558, 558.1, 1197.1, and 2699 et. seq. In addition, MARINA
6 SOLANO is an officer, director, owner, and person acting either individually or as a managing
7 agent, who paid or caused to be paid the Plaintiff and the other aggrieved employees a wage less
8 than the minimum, regular, and/or overtime rate of pay under the law, paid them in cash under
9 the table for some wages earned, failed to pay sick pay wages, failed to relieve them of duties
10 during their meal and rest periods, failed to reimburse, or by an order of the commission and is
11 therefore subject to a civil penalty, restitution of wages payable to the employee, and any
12 applicable wages, damages and penalties plus fees and costs imposed pursuant to Labor Sections
13 203, 226, 558, 558.1, and 2699 et. seq. Further, MARINA SOLANO is a person who assaulted
14 and battered Plaintiff, and who retaliated against and wrongfully terminated Plaintiff for
15 reporting the assault and battery and workplace violence, his disagreement with it, and his
16 disagreement with an unsafe workplace, which is in violation of Labor Code §§ 98.6, 1102.5,
17 6401.9, 6400 et seq., and is in violation of public policy.

22 8. Plaintiff is informed and believes that Defendant BERTHA E HERNANDEZ is an
23 individual who during the relevant time period has owned, managed and operated and continues
24 to own, manage and operate EL MEXICANO MARKET EL MONTE, Incorporated, and who at
25 all times mentioned in this Complaint herein resided and/or operated his businesses within the
26 jurisdiction of this Court. BERTHA E HERNANDEZ was and remains a person acting on behalf
27 of EL MEXICANO MARKET EL MONTE, Incorporated, on information and belief as the
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1 secretary, managing agent, owner, and director of EL MEXICANO MARKET EL MONTE,
2 Incorporated, who violated and/or who caused to violate various Labor Code sections and other
3 provisions regulating hours and days of work established by the Industrial Welfare Commission
4 of the State of California rendering him individually liable pursuant to Labor Code Sections 558,
5 558.1, 1197.1, and 2699 et. seq. In addition, BERTHA E HERNANDEZ is an officer, director,
6 owner, and person acting either individually or as a managing agent, who paid or caused to be
7 paid the Plaintiff and the other aggrieved employees a wage less than the minimum, regular, and/
8 or overtime rate of pay under the law, paid them in cash under the table for some wages earned,
9 failed to pay sick pay wages, failed to relieve them of duties during their meal and rest periods,
10 failed to reimburse, or by an order of the commission and is therefore subject to a civil penalty,
11 restitution of wages payable to the employee, and any applicable wages, damages and penalties
12 plus fees and costs imposed pursuant to Labor Sections 203, 226, 558, 558.1, and 2699 et. seq..

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16 9. DOES 1 to 50, inclusive are now, and/or at all times mentioned in this Complaint
17 were licensed to do business and/or actually doing business in the State of California. Plaintiff
18 does not know the true names or capacities, whether individual, partner or corporate, of DOES 1
19 to 50, inclusive and for that reason, DOES 1 to 50 are sued under such fictitious names pursuant
20 to California Code of Civil Procedure (“CCP”) §474. Plaintiff will amend this Complaint to
21 allege such names and capacities as soon as they are ascertained.
22

23 10. Plaintiff is informed and believes and thereon alleges that DOES 1 to 50,
24 inclusive, are former co-employers and/or joint employers of Plaintiff.
25

26 11. Plaintiff is informed and believes and thereon alleges that DOES 1 to 50,
27 inclusive, are successors in interest to Defendants or are otherwise obligated to pay Plaintiff the
28 wages due and owing to them, e.g. by way of statute, common law, quantum meruit, express

1 written contract, implied in fact contract, or by way of common counts such as money had and
2 received. Plaintiff reserves the right to augment the foregoing allegations to more clearly set
3 forth this Defendant(s)'s liability as discovery progresses and reveals the same.
4

5 12. Plaintiff is informed and believes, and based upon such information and belief
6 alleges that the Defendants, and each of them, are now and/or at all times mentioned in this
7 Complaint were in some manner legally responsible for the events, happenings and
8 circumstances alleged in this Complaint.
9

10 13. Plaintiff is further informed and believes, and based upon such information and
11 belief alleges, that at all times herein mentioned, all Defendants, and each of them, were and are
12 the agents, servants, employees, joint venturers, and/or partners of each of the other Defendants,
13 and were, at all such times, acting within the course and scope of said employment and/or
14 agency; furthermore, that each and every Defendant herein, while acting as a high corporate
15 officer, director and/or managing agent, principal and/or employer, expressly directed, consented
16 to, approved, affirmed and ratified each and every action taken by the other co-Defendants, as
17 herein alleged and was responsible in whole or in part for the matters referred to herein.
18

19 14. Plaintiff is further informed and believes, and based upon such information and
20 belief alleges, that at all times herein mentioned, Defendants, and each of them, proximately
21 caused Plaintiff to be subjected to the unlawful practices, wrongs, complaints, injuries and/or
22 damages alleged in this Complaint.
23

24 15. Plaintiff is further informed and believes, and based upon such information and
25 belief alleges, that at all times herein mentioned, Defendants, and each of them were co-
26 employers and/or joint employers of Plaintiff.
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1 16. Defendants, and each of them, are now and/or at all times mentioned in this
2 Complaint were members of and/or engaged in a joint venture, partnership and common
3 enterprise, and were acting within the course and scope of, and in pursuit of said joint venture,
4 partnership and common enterprise and, as such were co-employers and/or joint employers of
5 Plaintiff.
6

7 17. Defendants, and each of them, at all times mentioned in this Complaint concurred
8 with, contributed to, approved of, aided and abetted, condoned and/or otherwise ratified the
9 various acts and omissions of each and every one of the other Defendants in proximately causing
10 the complaints, injuries and/or damages alleged in this Complaint.
11

12 18. Plaintiff is informed and believes and thereon alleges that at all times herein
13 mentioned, some of the Defendants DOES 1 through 50, Inclusive, were the *alter egos* of the
14 named Defendants. Plaintiff is informed and believes and thereon alleges that there exists such a
15 unity of interest and ownership between the named Defendants and DOES 1 through 50, that the
16 individuality and separateness of the named Defendants and DOES 1 through 50 has ceased to
17 exist. The business affairs of named Defendants and DOES 1 through 50, are, and at all times
18 relevant hereto were, so mixed and intermingled that the same cannot reasonably be segregated,
19 and the same are in inextricable confusion. Defendants, and at all times relevant hereto, used
20 each other as a mere shell and conduit for the conduct of certain of Defendants' affairs. The
21 recognition of the separate existence of Defendants would not promote justice, in that it would
22 permit Defendants to insulate themselves from liability to Plaintiff. Accordingly, the named
23 Defendants constitute the *alter ego* of Defendants DOES 1 through 50, and the fiction of their
24 separate existence must be disregarded.
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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES**

3 **(Against all Defendants)**

4
5 19. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside
6 this section as though fully set forth herein.

7 20. Plaintiff was an “employee” of Defendants (as defined by section 350 of the
8 Labor Code) but Defendants failed to pay Plaintiff and the other aggrieved employees all wages
9 earned for all hours worked. Plaintiff and the other aggrieved employees were employed as
10 supermarket clerks, cashiers, food preparers, and laborers.

11
12 21. Pursuant to Labor Code section 1197, payment of less than the minimum wage
13 fixed by the commission is unlawful.

14
15 22. During the entire period of time that Plaintiff and the other aggrieved employees
16 were employed by Defendants, and for the four (4) years preceding the filing of this lawsuit,
17 Defendants were required to compensate them at least at the minimum wage, but failed to carry
18 out their duties and responsibilities as an employer imposed under the laws and regulations of the
19 State of California and violated the law by failing to pay Plaintiff and the other aggrieved
20 employees at least the minimum wage for all hours worked pursuant to all applicable wage
21 orders and in accordance with Labor Code sections 200, 226, 500, 510, 558.1, 1194, 1194.2
22 1197, and 1197.1.

23
24 23. Defendants regularly failed to pay Plaintiff and the other aggrieved employees all
25 of the wages that they earned. Specifically, Defendants underpay overtime hours worked, paying
26 them part in cash under the table and check, and skim the time records, even though Plaintiff and
27 the other aggrieved employees regularly worked overtime every week, causing minimum and
28

1 overtime violations (“wage theft”). For instance, Defendants require that Plaintiff and the other
2 aggrieved employees sign a blank piece of paper when they pick up their check and cash each
3 week, and thereafter Defendants print the skimmed time records on the signed blank paper.
4 Defendants do this to avoid paying overtime and meal and rest period premiums and to avoid
5 paying FICA and EDD contributions. Defendants also many times interrupt their meal periods,
6 causing further minimum wage violations.
7

8 24. In violation of state law, Defendants have knowingly and willfully refused to
9 perform their obligations to compensate Plaintiff and the other aggrieved employees for
10 minimum and regular wages earned and all hours worked. As a direct result, Plaintiff and the
11 other aggrieved employees have suffered, and continue to suffer, substantial losses related to the
12 use and enjoyment of such unpaid wages, lost interest on such wages, costs and attorneys’ fees in
13 seeking to compel Defendants to fully perform its obligation under state law, all to their damage
14 in amounts according to proof at the time of trial, but in amounts in excess of the minimum
15 jurisdiction requirement of this Court. Defendants committed the acts alleged herein knowingly
16 and willfully, with wrongful and deliberate intent.
17

18 25. Defendants’ conduct described herein violates Labor Code sections 200, 226,
19 500, 510, 558, 558.1, 1194, 1194.2, 1197, and 1197.1. As a proximate result of the
20 aforementioned violations, Plaintiff and the other aggrieved employees have been damaged in an
21 amount according to proof at the time of trial, but in an amount in excess of the minimum
22 jurisdiction requirement of this Court. Therefore, pursuant to Labor Code sections 200, 203,
23 226, 558, 558.1, 1194, 1194.2, 1197, and 1197.1, Plaintiff is entitled to recover the unpaid
24 balance of minimum wages and damages for minimum wage violations, including but not limited
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1 to LC 1194.2 liquidated damages in an amount to be proven at trial, plus interest, penalties,
2 attorneys' fees, expenses, and costs of suit.

3 26. Pursuant to Labor Code §200, "wages" includes all amounts for labor performed
4 by employees of every description, whether the amount is fixed or ascertained by the standard of
5 time, task, piece, commission basis, or other method of calculation.

6 27. Plaintiff and the other aggrieved employees have not been paid for all of their
7 hours worked at least at their regular rate of pay and are thus entitled to their earned unpaid
8 wages in an amount to be proven at trial, plus interest, penalties, attorneys' fees and costs.
9

10 28. Under California law, including but not limited to, Labor Code sections 200, 226,
11 500, 510, 558, 558.1, and 1198, Defendants were required to compensate Plaintiff and the other
12 aggrieved employees for all overtime, which is calculated at one and one-half (1.5) times the
13 regular rate of pay for hours worked in excess of forty (40) per week or after eight (8) in one day,
14 and double time (2) times the regular rate of pay for hours worked on the seventh consecutive
15 work day, or after twelve (12) hours in any workday.
16

17 29. Throughout their employment with Defendants, Plaintiff and the other aggrieved
18 employees several times worked overtime hours. Plaintiff and the other aggrieved employees are
19 or were non-exempt employees entitled to overtime pay under California law, including but not
20 limited to Labor Code sections 200, 226, 500, 510, 558, 558.1, 1194 and 1198. Specifically,
21 Defendants underpay overtime hours worked, paying them part in cash under the table and
22 check, and skim the time records, even though Plaintiff and the other aggrieved employees
23 regularly worked overtime every week, causing minimum and overtime violations ("wage
24 theft"). For instance, Defendants require that Plaintiff and the other aggrieved employees sign a
25 blank piece of paper when they pick up their check and cash each week, and thereafter
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1 Defendants print the skimmed time records on the signed blank paper. Defendants do this to
2 avoid paying overtime and meal and rest period premiums and to avoid paying FICA and EDD
3 contributions.
4

5 30. Under the applicable wage orders, statutes and regulations, Plaintiff and the other
6 aggrieved employees are entitled to one and one-half (1.5) times and double their regular rate of
7 pay for overtime work performed during the entire course of their employment with Defendants.
8

9 31. As a direct result, Plaintiff and the other aggrieved employees have suffered
10 substantial losses related to the use and enjoyment of such wages, lost interest on such wages,
11 and expenses and attorneys' fees in seeking to compel Defendants to fully perform its obligation
12 under state law, all to their respective damage in amounts according to proof at the time of trial,
13 but in amounts in excess of the jurisdiction of this Court. Defendants committed the acts alleged
14 herein knowingly and willfully, with the wrongful and deliberate intention of injuring Plaintiff
15 and the other aggrieved employees, from improper motives amounting to malice, and in
16 conscious disregard of Plaintiff's rights. Plaintiff is thus entitled to recover nominal, actual,
17 compensatory damages in amounts according to proof at the time of trial, but in amounts in
18 excess of the jurisdiction of this Court.
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21 32. Defendants' conduct described herein violates Labor Code sections 200, 226,
22 500, 510, 558, 558.1, 1194, and 1198. As a proximate result of the aforementioned violations,
23 Plaintiff has been damaged in an amount according to proof at the time of trial, but in an amount
24 in excess of the jurisdiction of this Court. Therefore, pursuant to Labor Code sections 200, 203,
25 226, 558, 558.1, 1198, and 1194, Plaintiff is entitled to recover the unpaid balance of overtime
26 compensation Defendants owe to Plaintiff and the other aggrieved employees in an amount to be
27 proven at trial, plus interest, penalties, attorneys' fees, expenses, and costs of suit.
28

1 33. An employer must pay its employees sick leave pursuant to Labor Code §246, et
2 seq. Defendants failed to pay for sick pay leave in violation of Labor Code §246, et seq.
3
4 Therefore, Plaintiff and the other aggrieved employees are entitled to unpaid sick pay leave in an
5 amount to be proven at trial, plus interest, penalties, attorneys' fees and costs.

6 **SECOND CAUSE OF ACTION**

7 **FAILURE TO TIMELY FURNISH**

8 **ACCURATE ITEMIZED WAGE STATEMENTS**

9 **(Pursuant to Labor Code §226(a) and (e))**

10 **(Against all Defendants)**

11
12 34. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside
13 this section as though fully set forth herein.

14
15 35. Plaintiff is informed and believes and thereon alleges that Defendants, in
16 violation of Labor Code §226(a), engaged in a practice with respect to Plaintiff and the other
17 aggrieved employees of regularly failing to furnish them with accurate, itemized statements in
18 writing showing (1) all gross wages earned, (2) all deductions, (3) net wages earned, (4) accurate
19 rate of pay during each respective pay period for which wages and premium wages have been
20 and continue to be due and owing, (8) all employer information, and/or (9) all applicable hourly
21 rates in effect during the pay period and the corresponding number of hours worked at each
22 hourly rate by the employee, as well as all other information required by section 226 of the Labor
23 Code.
24

25
26 36. Specifically, Defendants failed to provide wage statements to Plaintiff and the
27 other aggrieved employees showing the above required information to the employees' damage,
28 particularly due to the skimming of the time records and the cash payments under the table. This

1 allowed Defendants to get away with underpaying minimum, regular, overtime, sick pay, and
2 meal and rest period premium wages (“wage theft”), and caused Plaintiff significant damages.

3
4 37. Plaintiff seeks damages and penalties pursuant to Labor Code §226(e) for each
5 violation by Defendants of Labor Code §226 and pursuant to §§ 226.3, 558, 558.1, plus
6 attorneys’ fees and costs. In addition, Plaintiff seeks preliminary and permanent injunctive relief
7 pursuant to Labor Code §226(h).

8
9 **THIRD CAUSE OF ACTION**

10 **UNFAIR BUSINESS PRACTICES**

11 **(BUSINESS & PROFESSIONS CODE §17200, et seq.)**

12 **(Against all Defendants)**

13 38. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside
14 this section as though fully set forth herein.

15
16 39. Defendants have engaged in unfair business practices in California by utilizing
17 and engaging in an unlawful pattern and practice of failing to properly pay employee
18 compensation as described throughout this Complaint, specifically, by requiring the Plaintiff and
19 the other aggrieved employees to perform work without proper payment of minimum, regular,
20 overtime, sick pay, and other pay earned, without meal and rest periods and without meal and
21 rest period premiums, failed to reimburse business expenditures, without proper records, and
22 failed to pay and report proper taxes to the US and California governments regarding these
23 underpayments, particularly due to underpayments and the payments in cash under the table.
24 Defendants’ use of such practices constitutes a statutorily illegal, and thus, unfair business
25 practice and provides an unfair advantage over Defendants’ competitors.
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40. Plaintiff seeks full restitution by Defendants as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by the Defendants by means of the unfair business practices complained of herein.

41. Plaintiff seeks the appointment of a receiver, as necessary, to oversee said restitution, including all wages earned and unpaid, including interest thereon.

42. The acts complained of herein, occurred, at least in part, within the last 4 years preceding this Complaint for Damages.

43. Further, if Defendants are not enjoined from the unlawful conduct described above, Defendants will continue unabated in its unlawful conduct, which will continue to result in irreparable injury to members of the general public, including, but not limited to Plaintiff and the other aggrieved employees, who are current and former employees of the Defendants, and for which there is no adequate remedy at law. Thus, Plaintiff requests that the Court issue a preliminary and permanent injunction prohibiting Defendants from engaging in the foregoing conduct.

FOURTH CAUSE OF ACTION

WAITING TIME PENALTIES

(Against all Defendants)

44. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this section as though fully set forth herein.

45. Defendants failed to pay Plaintiff and the other aggrieved employees all earned wages upon the separation of their employment with Defendants in violation of Labor Code sections 201 and 202, including but not limited to, minimum, regular, overtime, and meal and

1 rest period premium wages. Further, Defendants have paid their employees late, causing
2 damages to the employees in violation of Labor Code §§ 204, 202, 210.

3 46. Defendants' failure to pay Plaintiff and the other aggrieved employees all wages
4 due was willful and done with malice. Plaintiff and the other aggrieved employees are therefore
5 entitled to penalties and damages pursuant to Labor Code §§ 203, 202, 204, 210, and pursuant to
6 §§ 558, 558.1, plus attorneys' fees and costs. and pursuant to §§ 558, 558.1.
7

8 **FIFTH CAUSE OF ACTION**

9 **MEAL AND REST PERIOD VIOLATIONS**

10 **LABOR CODE §§ 226.7 and 512**

11 **(Against all Defendants)**

12 47. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside
13 this section as though fully set forth herein.
14

15 48. Under California Labor Code sections 226.7, 512 and California Wage Orders,
16 Off Duty Meal Periods of 30 minutes are required for all non-exempt employees who work at
17 least 5 hours in a shift, except that when a work period of not more than 6 hours will complete
18 the day's work then the meal period may be waived by mutual consent of the employer and
19 employee. Time records of meal periods must be kept except that meal periods during which
20 operations cease need not be recorded. Employers must provide non-exempt employees 2 Off
21 Duty Rest Periods of 10 minutes each in a normal 8 hour shift. Rest Periods need not be
22 recorded. The Meal Periods are unpaid unless the employee is not fully relieved of all duties.
23 Rest Periods must be paid. An employer who fails to provide off duty meal and rest periods
24 (breaks) must pay the employee an additional 1 hour regular pay for each category of break not
25 provided in a work day.
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1 49. At all times mentioned herein, Defendants violated Labor Code sections 226.7
2 and 512 by refusing to allow Plaintiff and the other aggrieved employees to be fully relieved of
3 their duties during any of their rest periods, and many times interrupt their meal periods
4 particularly during busy times, even despite the employees' complaints.
5

6 50. Accordingly, Plaintiff and the other aggrieved employees are entitled to seek
7 damages available pursuant to the Labor Code, including but not limited to Labor Code sections
8 226.7, 512, 558, and 558.1 in an amount proven at trial, plus interest, penalties, fees, and costs.
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10 **SIXTH CAUSE OF ACTION**

11 **FAILURE TO REIMBURSE**

12 **(Against All Defendants)**

13 51. Plaintiff incorporates by reference and re-alleges each and every one of the
14 allegations contained in this Complaint as though fully set forth herein.
15

16 52. Pursuant to Labor Code §2802(a), an employer shall indemnify his or her
17 employee for all necessary expenditures or losses incurred by the employee in direct
18 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
19 the employer.
20

21 53. Defendants required the aggrieved employees to incur expenditures including but
22 not limited to purchase of uniforms to perform their duties. Defendants, however, failed to
23 reimburse the other aggrieved employees for such expenditures.

24 54. Defendants paid Plaintiff and the other aggrieved employees in cash under the
25 table for some of their wages, but failed to pay the employer's share of FICA (7.65%) of the
26 employees' gross wages, such as Social Security and Medicare contributions, and the EDD
27 contributions to the California EDD, causing loss to Plaintiff and the other aggrieved employees.
28

1 Defendants must therefore issue amended W-2 forms with the correct amount of gross wages
2 paid and/or earned, and remit the employer's portion of unpaid Social Security and Medicare
3 taxes to the IRS and EDD contributions to the California EDD. As a consequence, Plaintiff will
4 need an amount for loss caused due to having to hire accountants to file any necessary
5 amendments to his tax returns and/or payment of any penalties to the IRS or other agencies due
6 to the new W-2 forms and wage statements that will have to be issued by Defendants.
7

8 55. Therefore, pursuant to Labor Code §§ 2802(c) and 558.1, the aggrieved
9 employees are entitled to recover reimbursement for all necessary expenditures of purchases of
10 uniforms, all necessary expenditures for loss caused by Defendants' failure to pay FICA and
11 EDD contributions due to their payment of cash under the table for gross wages, and other
12 business expenditures incurred in discharge of their daily duties for Defendants in an amount to
13 be proven at trial, plus interest, plus penalties, attorneys' fees, expenses, and costs of suit.
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16 **SEVENTH CAUSE OF ACTION**

17 **PRIVATE ATTORNEYS GENERAL ACT OF 2004 ("PAGA")**

18 **PER LABOR CODE §2699, et seq.**

19 **(Against All Defendants)**

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21 56. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside
22 this section as though fully set forth herein.

23 57. On or about June 1, 2026, pursuant Labor Code sections 2699(a) and 2699.3,
24 Plaintiff, through his counsel, provided notice in writing by online submission to the California
25 Labor Workforce Development Agency ("LWDA") and via certified US Mail to Defendants and
26 each of them, that Plaintiff intended to assert a PAGA claim pursuant to section 2699(a) on his
27 own behalf, and in a representative capacity on behalf of other aggrieved employees of
28

1 Defendants, for Defendants' violations of specified provisions of the California Labor Code. See
2 Exhibit 1 attached to this Complaint. The LWDA did not respond within 65 days.

3 58. As a result, Plaintiff has perfected his right to sue Defendants in a civil action,
4 and to collect statutory penalties, pursuant to Labor Code section 2699.3(a)(2)(A)(1) on behalf of
5 all aggrieved employees (PAGA Employees).
6

7 59. As a result of the acts alleged throughout this Complaint, Plaintiff brings this
8 action on his own behalf, and in a representative capacity on behalf of other current or former
9 aggrieved employees (PAGA Employees), for penalties pursuant to California Labor Code
10 section 2699 for Defendants' violations of the enumerated Labor Code sections, including, but
11 not limited to sections 200, 201, 202, 203, 204, 210, 216, 220, 221, 222, 223, 224, 225.5, 226,
12 226.3, 226.7, 226.8, 227, 227.3, 233, 246, 432, 510, 512, 558, 558.1, 98.6, 1102.5, 1174, 1174.5,
13 1175, 1194, 1194.2, 1197.1, 1198, 1198.5, 1199, 1770-1781, 98.6, 1102.5, 6401.9, 6400, et seq.,
14 and 2802.
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17 60. Pursuant to California Labor Code section 2699, Plaintiff and PAGA Employees
18 are entitled to be awarded thirty-five (35%) percent of all penalties due under California law, in
19 addition to interest, attorney's fees and costs.
20

21 61. The Court should award sixty-five (65%) percent of all penalties due under
22 California law to the State of California.

23 62. Plaintiff, on behalf of the State of California and the aggrieved employees,
24 therefore seeks to recover from Defendants, and each of them, allowable damages and civil
25 penalties for the violations claimed above regarding Plaintiff's claims, plus interest, costs, and
26 attorneys' fees, plus civil penalties regarding the other aggrieved employees' claims in an amount
27 according to proof at trial, in accordance with Labor Code sections 2699, *et seq.*
28

1 63. Defendants intentionally misclassified Plaintiff and the other aggrieved
2 employees as independent contractors and paid them part in W-2 employee paycheck with FICA
3 withholdings and part in cash under the table or all in cash under the table in order to underpay
4 the employees, save money on FICA contributions and payments to the EDD and other
5 government entities, and to gain an unfair competitive advantage at the expense of Plaintiff and
6 the other aggrieved employees, the State and Federal governments, and Defendants' business
7 competitors that do comply with the law. This is in violation of LC § 226.8, et seq.
8

9 64. Labor Code Section 558 states that “[a]ny employer or *other person* acting on
10 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
11 provision regulating hours and days of work in any order of the Industrial Welfare Commission
12 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
13 each underpaid employee for each pay period for which the employee was underpaid in addition
14 to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one
15 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
16 was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages
17 recovered pursuant to this section shall be paid to the affected employee. The Section goes on to
18 state that “[t]he civil penalties provided for in this section are in addition to any other civil or
19 criminal penalty provided by law.”
20
21

22 65. Labor Code Section 558.1(a) provides in pertinent part: “Any employer or other
23 person acting on behalf of an employer, who violates, or causes to be violated, any provision
24 regulating minimum wages or hours and days of work in any order of the Industrial Welfare
25 Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or
26 2802, may be held liable as the employer for such violation.”
27
28

1 66. Defendants violated/violate, or caused/causes to be violated, multiple sections of
2 the Labor Code as well as provisions regulating hours and days of work in any order of the
3 Industrial Welfare Commission including those requiring payment of overtime wages, meal and
4 rest periods, business reimbursements, records violations, as set forth in detail throughout this
5 Complaint.
6

7 67. Accordingly, Plaintiff is also entitled to recovery of wages, premium wages,
8 damages, and penalties pursuant to Labor Code Sections 558 and 558.1.
9

10 **EIGHTH CAUSE OF ACTION**

11 **WRONGFUL TERMINATION AND RETALIATION IN VIOLATION OF LABOR CODE**

12 **CAL. LABOR CODE §§ 1102.5, 98.6**

13 **(Against all Defendants Except Bertha E Hernandez)**

14 68. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside
15 this section as though fully set forth herein.
16

17 69. Labor Code §1102.5, subdivision (a), prohibits employers from making,
18 adopting, or enforcing any rule, regulation or policy that prevents employees from disclosing
19 information to his or her employer or to governmental agencies where the employee has
20 reasonable cause to believe that the information discloses a violation of state or federal law, or a
21 violation or noncompliance with a state or federal rule or regulation.
22

23 70. Labor Code §1102.5, subdivision (b), prohibits employers from retaliating
24 against an employee for disclosing information to his employer or a governmental agency where
25 the employee has reasonable cause to believe the information discloses a violation of state or
26 federal law, or a violation or noncompliance with a state or federal rule or regulation.
27

28 ///

1 71. Labor Code §98.6, subdivision (a), prohibits employers from discharging an
2 employee or in any manner discriminating, retaliating, or taking any adverse action against any
3 employee or applicant for employment because the employee or applicant engaged in any
4 conduct delineated in Chapter 4 of Division 1 or Chapter 5 of Part 3 of Division 2 of the Labor
5 Code, made a written or oral complaint that he or she is owed unpaid wages, or because of the
6 exercise by the employee or applicant for employment on behalf of herself or others of any of
7 their rights.
8

9 72. Defendants violated Labor Code §§ 1102.5, 98.6 where Defendants retaliated
10 against Plaintiff by terminating him due to the following incident: On or about December 27,
11 2025, owner, officer and manager Defendant MARINA SOLANO aggressively struck Plaintiff
12 on his hand because he did not remember the price of one of products at the supermarket.
13 Plaintiff told Defendant MARINA SOLANO to please not hit him and that he did not agree with
14 her hitting him. Defendant MARINA SOLANO immediately told Plaintiff to leave and go home.
15 Within less than a week, Defendants retaliated against and terminated Plaintiff because he
16 objected to the owner and manager committing battery against him despite him having an
17 exemplary record at the company. Based on the misconduct alleged in this Complaint, Plaintiff
18 believes and alleges that Plaintiff's termination was wrongful because it was in violation of the
19 public policy of the State of California in that Plaintiff's termination was based on Defendants'
20 violations of the above-mentioned laws.
21

22 73. As a proximate result of Defendants' actions, Plaintiff has suffered and continues
23 to suffer general and special damages such as lost and continued loss of income and benefits, loss
24 of professional advancement and reputation, and has suffered and continues to suffer
25 humiliation, embarrassment, mental and emotional distress, and discomfort, all to their damage
26
27
28

1 in an amount according to proof, but in excess of the jurisdictional amounts, plus penalties of at
2 least \$10,000 per incident pursuant to LC §§ 1102.5, 98.6, plus other damages and penalties.

3 74. In doing the things herein alleged, Defendants were guilty of oppression, fraud
4 and malice, and, insofar as the things alleged were attributable to employees of Defendants, said
5 employees were employed by Defendants with advance knowledge of the unfitness of the
6 employees and they were employed with a conscious disregard for the rights of others; or
7 Defendants authorized or ratified the wrongful conduct; or there was advance knowledge,
8 conscious disregard, authorization, ratification or act of oppression, fraud or malice on the part of
9 an officer, director or managing agent of Defendants all entitling Plaintiff to the recovery of
10 exemplary and punitive damages.

11
12
13 **NINTH CAUSE OF ACTION**

14 **. WRONGFUL TERMINATION AND RETALIATION**

15
16 **IN VIOLATION OF PUBLIC POLICY**

17 **(Against All Defendants Except Bertha E Hernandez)**

18
19 75. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside
20 this section as though fully set forth herein.

21 76. California Labor Code §§ 1102.5, 6401.9, 6400, et seq., 98.6, generally prohibit
22 employers from retaliating against and terminating employees who report illegal activity, such as
23 assault and battery, workplace violence, and unsafe working conditions such as the ones
24 mentioned here below.

25
26 77. Defendants violated Labor Code §§ 1102.5, 98.6, 6401.9, 6400, et seq., where
27 Defendants retaliated against Plaintiff by terminating him due to the following incident: On or
28 about December 27, 2025, owner, officer and manager Defendant MARINA SOLANO

1 aggressively struck Plaintiff on his hand because he did not remember the price of one of
2 products at the supermarket. Plaintiff told Defendant MARINA SOLANO to please not hit him
3 and that he did not agree with her hitting him. Defendant MARINA SOLANO immediately told
4 Plaintiff to leave and go home. Within less than a week, Defendants retaliated against and
5 terminated Plaintiff because he objected to the owner and manager committing battery against
6 him despite him having an exemplary record at the company. Based on the misconduct alleged in
7 this Complaint, Plaintiff believes and alleges that Plaintiff's termination was wrongful because it
8 was in violation of the public policy of the State of California in that Plaintiff's termination was
9 based on Defendants' violations of the above-mentioned laws.
10
11

12 78. In reducing his work hours, harassing Plaintiff and terminating Plaintiff for these
13 reasons and under the circumstances alleged herein, Defendants' retaliation and discharge of
14 Plaintiff violated the public policy of the State of California, as expressed in provisions of the
15 above-mentioned laws.
16

17 79. As a direct, foreseeable, and proximate result of Defendants' retaliation and
18 wrongful termination of Plaintiff in violation of the public policy of the State of California,
19 Plaintiff sustained damages in the form of lost and continued loss of income and benefits, loss of
20 professional advancement and reputation, and has suffered and continues to suffer humiliation,
21 embarrassment, depression, mental and emotional distress, and discomfort all to Plaintiff's
22 damage in an amount to be proven at trial, but in excess of the jurisdictional amount.
23

24 80. In doing the things herein alleged, Defendants are guilty of oppression, fraud and
25 malice, and, insofar as the things alleged were attributable to employees of Defendants, said
26 employees were employed by Defendants with advance knowledge of the unfitness of the
27 employees and they were employed with a conscious disregard for the rights of others; or
28

1 Defendants authorized or ratified the wrongful conduct; or there was advance knowledge,
2 conscious disregard, authorization, ratification or act of oppression, fraud or malice on the part of
3 an officer, director or managing agent of defendants all entitling Plaintiff to the recovery of
4 exemplary and punitive damages, as alleged above.
5

6 **TENTH CAUSE OF ACTION**

7 **ASSAULT AND BATTERY**

8 **(Against All Defendants Except Bertha E Hernandez)**

9
10 81. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside
11 this section as though fully set forth herein.

12 82. By engaging in the acts and omissions detailed herein, Defendants' officer,
13 owner, managing agent, and director, Defendant MARINA SOLANO, acted with the specific
14 intent to make a contact with Plaintiff's person and to injure Plaintiff.
15

16 83. At no time did Plaintiff consent to any of the acts of Defendants alleged herein.

17 84. At all times material herein, Defendants, and each of them, knew or reasonably
18 should have known, that the incidents, conduct, acts and failures to act described herein above,
19 would and did proximately result in emotional distress to Plaintiff, including, but not limited to,
20 loss of sleep, anxiety, tension, fear of being harassed, depression and humiliation.
21

22 85. Plaintiff is further informed, believes and alleges that Defendants have ratified
23 the above-referenced conduct of Defendant MARINA SOLANO, in that they were informed of
24 the inappropriate actions by Defendant MARINA SOLANO, but they did not fully and properly
25 investigate and failed to repudiate her conduct by redressing the harm done and punishing or
26 removing her from the store, but instead actually terminated Plaintiff in retaliation (see above).
27
28

86. As a direct and proximate result of the failure of Defendants to protect Plaintiff, and to adequately supervise, prohibit, control, regulate, discipline, and/or otherwise penalize the conduct, acts, and failures to act of all other Defendants, managers, owners, and/or supervisors, agents or employees as alleged herein above, said conduct, acts, and failures to act were perceived by them as, and in fact had the effect of, ratifying, encouraging, condoning, exacerbating, increasing, and/or worsening said conduct, acts, and failures to act. As a direct and proximate result of the actions of Defendants Plaintiff has suffered and will continue to suffer pain and suffering, extreme and severe mental anguish and emotional distress. Plaintiff is thereby entitled to general and compensatory damages in amounts to be proven at trial.

87. In light of the outrageous and malicious conduct of Defendants, Plaintiff seeks an award of punitive and exemplary damages against Defendants in an amount according to proof. Defendants recognized their obligation to not assault and batter Plaintiff and of their obligation not to abuse employees. Defendants were aware and conscious of Plaintiff's rights and yet, they chose, to ignore and disregard them, and instead terminated his employment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants in an amount in excess of \$1,000,000, as follows:

1. For compensatory damages, including but not limited to, those pursuant to Labor Code §§ 200, 201, 203, 218, 221, 222, 223, 224, 225.5, 226, 226.3, 226.7, 226.8, 233, 246, 350-356, 500, 510, 512, 558, 558.1, 6400, et seq., 98.6, 1102.5, 1174, 1174.5, 1194, 1194.2, 1194.3, 1197.1, 1198, 1198.5, 1770-1781, 98.6, 1102.5, 6401.9, 6400, et seq., 2802, 2699, et seq., California Wage Orders, California common law and other statutes and laws:

2. For special damages according to proof;
3. For general damages according to proof;
4. For pre-judgment interest pursuant to all applicable statutes including but not limited to, Labor Code §§218.6, et seq., loss of earnings damages, and pursuant to Civil Code §§ 3287(b) and 3289;
5. For penalties pursuant to Labor Code §§ 203, 225.5, 226, 226(f) and 1198.5, 432, 226.3, 226.7, 226.8, 233, 246, 350-356, 98.6, 1102.5, 512, 558, 558.1, 1174.5, 1194.2, 1197.1, 2802, 98.6, 1102.5, 6401.9, 6400, et seq., civil penalties pursuant to section 2699, et seq., and other statutes and laws;
6. For all damages available pursuant to all applicable sections of the Labor Code;
7. For injunctive relief pursuant to Labor Code §226(h);
8. For an award of reasonable attorneys' fees and costs;
9. For restitution of all monies due to Plaintiff and disgorged profits from the unlawful business practices of Defendants;
10. For all remedies available pursuant to Business and Professions Code section 17200 et seq.;
11. For punitive and exemplary damages;
12. For all other appropriate injunctive, declaratory and equitable relief;
13. For interest to the extent permitted by law; and
14. For such other and further relief as the Court may deem proper.

Dated: August 5, 2026


Rodolfo Ruiz-Velasco, Esq.
Attorneys for Plaintiff,
PEDRO MENDOZA VAZQUEZ

EXHIBIT 1

RUIZ-VELASCO LAW FIRM

June 1, 2026

Via Electronic Submission

California Labor & Workforce Development Agency
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

By Certified Mail

Marina Solano
Bertha E Hernandez
El Mexicano Market El Monte, Incorporated
12242 Valley Blvd
El Monte, CA 91732

Re: **El Mexicano Market El Monte, Incorporated, et al.**

To Whom It May Concern:

We represent Pedro Mendoza Vazquez individually and on behalf of all other individuals (collectively “Plaintiffs”) who are either former or current employees of El Mexicano Market El Monte, Incorporated, and its owners, officers, and managing agents Marina Solano and Bertha E Hernandez (collectively “Defendants”). Pursuant to Labor Code section 2699.3, this letter constitutes written notice of Defendant’s Labor Code violations and of our client’s intent to recover statutory penalties under the Labor Code Private Attorney General Act of 2004. A copy of this letter is also being sent to Defendants via certified mail pursuant to Labor Code section 2699.3.

Plaintiffs were employed by Defendants as supermarket clerks, cashiers, food preparers, and laborers. Defendants underpay overtime hours worked in cash under the table, paying them part in cash and check, and skim the time records, even though Plaintiffs regularly worked overtime every week, causing minimum and overtime violations (“wage theft”). For instance, Defendants require that Plaintiffs sign a blank piece of paper when they pick up their check and cash each week, and thereafter Defendants print the skimmed time records on the signed blank paper. Defendants do this to avoid paying overtime and meal and rest period premiums correctly and to avoid paying FICA and EDD contributions.

Defendants fail to fully relieve Plaintiffs from meal and rest periods and regularly require Plaintiffs to work through their rest periods, and many times interrupt their meal periods particularly during busy times, but fail to pay them any premiums for their on-duty meal and rest periods. Specifically, Plaintiffs are not fully relieved of their duties during any of their rest periods because Defendants require them to work through their rest periods, but even if they were allowed, they are not able to because there was no one there to cover them, and Defendants many times interrupt their meal periods. As a result, Plaintiffs are owed meal and rest period premium wages, plus interest and penalties.

Defendants have failed to provide paycheck statements with accurate hours worked, and with all overtime, regular wages, meal and rest period premium gross wages earned, all deductions, all net premium wages earned as required by Labor Code Section 226, particularly because Defendants pay Plaintiffs part in cash under the table and because they misclassify employees, and because of the violations above. Inaccurate time records is in violation of LC 1174, 1174.5, and IWC Wage Order 7. It is also a violation of LC 226.8 to pay in cash under the table.

Plaintiffs were not paid all of their overtime, minimum, premium, sick pay, and other wages owed at the time of their separation of work and paid wages late in violation of LC §§ 203, 204, 210.

Defendants required Plaintiffs to purchase uniforms in performance of their duties, however, they did not reimburse Plaintiffs for said expenditures in violation of LC §2802. Further, Plaintiffs' incurred loss of FICA and EDD contributions from Defendants for amounts paid in cash under the table, which are also in violation of LC §2802, among other statutes and laws.

On or about December 27, 2025, owner, officer and manager Defendant Ms. Solano aggressively struck Mr. Mendoza Vazquez on his hand because he did not remember the price of one of products at the supermarket. Mr. Mendoza Vazquez told Ms. Solano to please not hit him and that he did not agree with her hitting him. Ms. Solano immediately told him to leave and go home. Within less than a week, Defendants retaliated against and terminated Mr. Mendoza Vazquez because he objected to the owner and manager committing battery against him despite him having an exemplary record at the company. Defendants' conduct was despicable, has caused great harm to Mr. Mendoza Vazquez, and is in violation of Labor Code §§ 98.6, 1102.5, 6401.9, and *Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167, 172. Therefore, Defendants owe

Mr. Mendoza Vazquez general, special and punitive damages, penalties, and fees and costs.

Marina Solano and Bertha E Hernandez as the owners, officers, directors, and/or managing agents of El Mexicano Market, El Monte Incorporated are jointly and severally liable for the above violations pursuant to LC Sections 558, 558.1, 98.6, 1102.5, 1197.1, and others.

The payment of a less wage than the California minimum wage and minimum wage violations, including failure to pay split shift premiums, are unlawful pursuant to Labor Code Sections 1197, 1197.1, 1194, 558, 558.1. Overtime compensation is statutorily required by California Labor Code Section 510, 558, 558.1. Meal and rest periods are required pursuant to Labor Code section 226.7 and 512, 558, 558.1. Failure to reimburse for expenses incurred in the course of one's employment is a violation of Labor Code Section 2802, et seq. Accurate wage statements must be timely given to employees pursuant to Labor Code section 226. Illegal deductions are in violation of LC Sections 220, 221, 222, 223, 224, et seq. Failure to pay sick pay wages is a violation of LC 246. Failure to pay vacation pay is a violation of LC 227, 227.3. Defendants' misclassification of Plaintiffs is a violation of LC 226.8. Retaliation and threats for requesting his or her rights and reporting illegal behavior is a violation of Labor Code Sections 98.6, 1102.5, among other laws and statutes. Defendants' employment practices implicate violations of numerous other Labor Code sections, including but not limited to the following: Labor Code §§ 98.6, 201, 202, 203, 204, 220, 221, 222, 223, 224, 225.5, 226, 226.3, 226.7, 227.3, 350-356, 510, 512, 558, 558.1, 1102.5, 1194, 1194.2, 1197.1, 2802, et seq., and 2698, et seq.

Accordingly, Plaintiffs respectfully request that the Labor & Workforce Development Agency ("LWDA") initiate an enforcement action with respect to the aforementioned violations. If the LWDA declines to pursue enforcement, Plaintiffs will pursue these claims for statutory penalties on behalf of themselves and all other current and former employees. If you have any questions or concerns regarding the above, do not hesitate to contact us.

Very truly yours,



Rodolfo Ruiz-Velasco, Esq.