

3/19/2024 5:56 PM

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

CIVSB2409306

SHASTA KING, CARLOS CALLEROS,
and CARMEN TORIBIO, as aggrieved
employees pursuant to the Private Attorneys
General Act ("PAGA"), on behalf of the
State of California and other aggrieved
employees,

Plaintiffs,

vs.

SMART & FINAL STORES LLC, a
California limited liability company;
SMART & FINAL LOGISTICS LLC, a
Delaware limited liability company; and
DOES 1 through 10, inclusive,

Defendants.

Case No.:

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

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

Jury Trial Demanded

1 Plaintiffs Shasta King, Carlos Calleros, and Carmen Toribio, as aggrieved employees
2 and on behalf of the State of California and all other non-party Aggrieved Employees, allege
3 as follows:

4 **JURISDICTION AND VENUE**

5 1. This is an enforcement action under the Labor Code Private Attorneys General
6 Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”) to recover civil penalties
7 and any other available relief on behalf of Plaintiffs, the State of California, and other current
8 and former employees who worked for Defendants in California as non-exempt, hourly paid
9 employees and against whom one or more violations of any provision in Division 2 Part 2
10 Chapter 1 of the Labor Code or any provision regulating hours and days of work in the
11 applicable Industrial Welfare Commission (“IWC”) Wage Order were committed, as set forth
12 in this complaint, at any time between one year prior to the filing of the pre-filing written
13 notices to the Labor and Workforce Development Agency (“LWDA”) in this case on January
14 11, 2024, until judgment (“non-party Aggrieved Employees”). Plaintiffs’ share of civil
15 penalties sought in this action does not exceed \$75,000.

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

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

1 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

2 4. Venue is proper in this Court because Defendants employ or employed persons
3 within the County of San Bernardino and have violated the requirements of the California
4 Labor Code and applicable Industrial Welfare Commission (“IWC”) Wage Order in this
5 county which give rise to the penalties sought in this action. Cal. Code Civ. P. § 393.
6 Specifically, Defendants have violated the requirements of the California Labor Code and
7 applicable IWC Wage Order in at least 10 locations within the County of San Bernardino,
8 including Defendants’ stores located in Chino Hills (4200 Chino Hills Parkway, Chino Hills,
9 California 91709); Chino (12164 Central Avenue, Chino, California 91710); Colton (1023
10 North Mt. Vernon Avenue, Colton, California 92324); Fontana (17000 Foothill Boulevard,
11 Fontana, California 92335); Hesperia (15111 Bear Valley Road, Hesperia, California 92345);
12 Highland (27550 Base Line Street, Highland, California 92346); Ontario (1337 4th Street,
13 Ontario, California 91764); Rancho Cucamonga (8675 Baseline Road, Rancho Cucamonga,
14 CA 91730); Redlands (1720 W Redlands Boulevard, Redlands, California 92373); and Upland
15 (1028 North Mountain Avenue, Upland, California 91786). Pursuant to California Civil Code
16 of Procedure section 393, venue is proper for the recovery of a penalty imposed by statute in
17 the county in which the cause, or some part of the cause, arose. Because Defendants have
18 employees in San Bernardino County, and Plaintiff could bring an action filed under PAGA in
19 any county in which an aggrieved employee worked and Labor Code violations occurred,
20 venue is proper. *Crestwood Behavioral Health, Inc. v. Superior Court of Alameda County*, 60
21 Cal. App. 5th 1069 (2021).

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

26 THE PARTIES

27 6. Plaintiff Shasta King (“Plaintiff King”) is a resident of Sacramento, in
28 Sacramento County, California. Defendants employed Plaintiff King as an hourly paid, non-

1 exempt employee from approximately March 2021 to February 2023. Plaintiff King worked
2 as a Shift Supervisor at Defendants' store location in Sacramento, California. During her
3 employment, Plaintiff King typically worked eight (8) hours or more per day and five (5) days
4 or more per week. Plaintiff King's primary job duties included, without limitation, cashiering,
5 restocking store inventory, balancing the registers, stocking and cleaning the warehouse, and
6 handling deliveries.

7 7. Plaintiff Carlos Calleros ("Plaintiff Calleros") is a resident of Hemet, in
8 Riverside County, California. Defendants have employed Plaintiff Calleros as an hourly paid,
9 non-exempt employee since approximately April 2012. Plaintiff Calleros works as a Loader
10 at Defendants' warehouse location in Riverside, California. During his employment, Plaintiff
11 Calleros typically works nine (9) hours per day and five (5) days per week. Plaintiff
12 Calleros's primary job duties included, without limitation, consolidating and loading orders
13 onto trailers.

14 8. Plaintiff Carmen Toribio ("Plaintiff Toribio") is a resident of Winnetka, in Los
15 Angeles County, California. Defendants have employed Plaintiff Toribio as an hourly paid,
16 non-exempt employee since approximately June 2013. Plaintiff Toribio works as a Cashier
17 and Bulk Lead at Defendants' store location in Winnetka, California. Plaintiff Toribio
18 typically works seven (7) hours or more per day and four (4) days per week. Plaintiff
19 Toribio's primary job duties included, without limitation, checking out customers, stocking,
20 organizing, and restocking cashiers' areas.

21 9. SMART & FINAL STORES LLC was and is, upon information and belief, a
22 California limited liability company, and at all times hereinafter mentioned, an employer
23 whose employees are engaged throughout this county and the State of California.

24 10. SMART & FINAL LOGISTICS LLC was and is, upon information and belief,
25 a Delaware limited liability company, and at all times hereinafter mentioned, an employer
26 whose employees are engaged throughout this county and the State of California.

27 11. Plaintiffs are unaware of the true names or capacities of the Defendants sued
28 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to

1 amend the complaint and serve such fictitiously named Defendants once their names and
2 capacities become known.

3 12. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10
4 were the partners, agents, owners, or managers of SMART & FINAL STORES LLC and
5 SMART & FINAL LOGISTICS LLC at all relevant times.

6 13. Plaintiffs are informed and believe, and thereon allege, that each and all of the
7 acts and omissions alleged herein was performed by, or is attributable to, SMART & FINAL
8 STORES LLC; SMART & FINAL LOGISTICS LLC; and/or DOES 1 through 10
9 (collectively, “Defendants” or “SMART & FINAL”), each acting as the agent, employee, alter
10 ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and
11 was acting within the course and scope of such agency, employment, joint venture, or
12 concerted activity with legal authority to act on the others’ behalf. The acts of any and all
13 Defendants were in accordance with, and represent, the official policy of Defendants.

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

18 15. Plaintiffs are informed and believe, and thereon allege, that each of said
19 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
20 omissions, occurrences, and transactions alleged herein.

21 16. Under California law, Defendants are jointly and severally liable as employers
22 for the violations alleged herein because they have each exercised sufficient control over the
23 wages, hours, working conditions, and employment status of Plaintiffs and other non-party
24 Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiffs and other
25 non-party Aggrieved Employees, supervised and controlled their work schedule and/or
26 conditions of employment, determined their rate of pay, and maintained their employment
27 records. Defendants suffered or permitted Plaintiffs and other non-party Aggrieved
28 Employees to work and/or “engaged” Plaintiffs and other non-party Aggrieved Employees so

1 as to create a common-law employment relationship. As joint employers of Plaintiffs and
2 other non-party Aggrieved Employees, Defendants are jointly and severally liable for the civil
3 penalties available to Plaintiffs and other non-party Aggrieved Employees under the law.

4 17. Plaintiffs are informed and believe, and thereon allege, that at all relevant
5 times, Defendants, and each of them, have acted as joint employers with respect to Plaintiffs
6 and other non-party Aggrieved Employees because Defendants have:

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

25 18. Plaintiffs are informed and believe, and thereon allege, that at all relevant times
26 there has existed a unity of interest and ownership between Defendants such that any
27 individuality and separateness between the entities has ceased.

28 19. SMART & FINAL STORES LLC; SMART & FINAL LOGISTICS LLC;

1 and/or DOES 1 through 10 are therefore alter egos of each other.

2 20. Adherence to the fiction of the separate existence of Defendants would permit
3 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
4 from liability for the wrongful acts committed by them under the name SMART & FINAL.

5 21. Plaintiffs further allege, upon information and belief, that the Defendants
6 SMART & FINAL STORES LLC and SMART & FINAL LOGISTICS LLC are alter egos of
7 each other for the following reasons:

- 8 (a) On the California Secretary of State’s website
9 (<https://bizfileonline.sos.ca.gov/>), SMART & FINAL STORES LLC
10 and SMART & FINAL LOGISTICS LLC share the same principal
11 address and mailing address, “600 CITADEL DR, COMMERCE, CA
12 90040”;
- 13 (b) According to their most recent “Statement of Information” forms filed
14 with the California Secretary of State, SMART & FINAL STORES
15 LLC and SMART & FINAL LOGISTICS LLC share the same
16 managers, members, and/or officers, including, but not limited to, Jack
17 L Hook, Carlos A Smith, and Josemaria Angulo;
- 18 (c) On the California Secretary of State’s website, SMART & FINAL
19 STORES LLC and SMART & FINAL LOGISTICS LLC share the same
20 agent for service of process, C T CORPORATION SYSTEM; and
- 21 (d) On information and belief, SMART & FINAL STORES LLC and
22 SMART & FINAL LOGISTICS LLC utilize the same standardized
23 employment forms and issue the same employment policies.

24 **PAGA REPRESENTATIVE ALLEGATIONS**

25 22. Defendants operate approximately 240 warehouse-style grocery and supply
26 store locations and distribution centers in California. Upon information and belief,
27 Defendants maintain a single, centralized Human Resources (“HR”) department at their
28 company headquarters in Commerce, California, which is responsible for the recruiting and

1 hiring of new employees, and communicating and implementing Defendants' company-wide
2 policies, including timekeeping policies and meal and rest period policies, to employees
3 throughout California.

4 23. In particular, Plaintiffs and other non-party Aggrieved Employees, on
5 information and belief, received the same standardized documents and/or written policies.
6 Upon information and belief, the usage of standardized documents and/or written policies,
7 including new-hire documents, indicate that Defendants dictated policies at the corporate level
8 and implemented them company-wide, regardless of their employees' assigned locations or
9 positions. Upon information and belief, Defendants set forth uniform policies and procedures
10 in several documents provided at an employee's time of hire.

11 24. Upon information and belief, Defendants maintain a centralized Payroll
12 department at their company headquarters in Commerce, California, which processes payroll
13 for all non-exempt, hourly paid employees working for Defendants at their various locations
14 in California, including Plaintiffs and other non-party Aggrieved Employees. Based upon
15 information and belief, Defendants issue the same formatted wage statements to all non-
16 exempt, hourly paid employees in California, irrespective of their work locations. Upon
17 information and belief, Defendants process payroll for departing employees in the same
18 manner throughout the State of California, regardless of the manner in which each employee's
19 employment ends.

20 25. Defendants continue to employ non-exempt or hourly paid employees in
21 California.

22 26. Plaintiffs are informed and believe, and thereon allege, that at all times herein
23 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
24 and advisors knowledgeable about California labor and wage law, employment and personnel
25 practices, and about the requirements of California law.

26 27. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and other
27 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
28 were not recorded.

1 28. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
2 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
3 receive certain wages for overtime compensation and that they were not receiving certain
4 wages for overtime compensation.

5 29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
6 should have known that other non-party Aggrieved Employees were entitled to be paid at a
7 regular rate of pay, and corresponding rates of pay for overtime wages and/or meal and rest
8 period premiums, that included as eligible income all remuneration required by law, including
9 but not limited to, all income derived from shift differential pay, incentive pay,
10 nondiscretionary bonuses, and/or other forms of compensation, but failed to include all forms
11 of remuneration in calculating the regular rate of pay for other non-party Aggrieved
12 Employees.

13 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
14 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
15 receive at least minimum wages for compensation and that they were not receiving at least
16 minimum wages for work that was required to be done off-the-clock. In violation of the
17 California Labor Code, Plaintiffs and other non-party Aggrieved Employees were not paid at
18 least minimum wages for work done off-the-clock.

19 31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
20 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
21 meal periods in accordance with the California Labor Code and applicable IWC Wage Order
22 or payment of one (1) additional hour of pay at their regular rates of pay when they were not
23 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiffs and
24 other non-party Aggrieved Employees were not provided with all meal periods or payment of
25 one (1) additional hour of pay at their regular rates of pay when they did not receive a timely,
26 uninterrupted, thirty (30) minute meal period.

27 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
28 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to

1 rest periods in accordance with the California Labor Code and applicable IWC Wage Order or
2 payment of one (1) additional hour of pay at their regular rates of pay when they were not
3 authorized and permitted to take a compliant rest period and that Plaintiffs and other non-party
4 Aggrieved Employees were not authorized and permitted to take compliant rest periods or
5 provided with payment of one (1) additional hour of pay at their regular rates of pay when
6 they were not authorized and permitted to take a compliant rest period.

7 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
8 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
9 receive complete and accurate wage statements in accordance with California law. In
10 violation of the California Labor Code, Plaintiffs and other non-party Aggrieved Employees
11 were not provided complete and accurate wage statements.

12 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
13 should have known that they had a duty to maintain accurate and complete payroll records in
14 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
15 knowingly, and intentionally failed to do so.

16 35. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
17 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
18 timely payment of wages during their employment. In violation of the California Labor Code,
19 Plaintiffs and other non-party Aggrieved Employees did not receive payment of all wages,
20 including, but not limited to, overtime wages, minimum wages, meal and rest period
21 premiums, and/or sick leave pay, within permissible time periods.

22 36. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
23 should have known that Plaintiff King and other non-party Aggrieved Employees were
24 entitled to timely payment of all wages earned upon termination of employment. In violation
25 of the California Labor Code, Plaintiff King and other non-party Aggrieved Employees did
26 not receive payment of all wages due, including, but not limited to, overtime wages, minimum
27 wages, meal and rest period premiums, and/or sick leave pay, within permissible time periods.

28 37. Plaintiff are informed and believe, and thereon allege, that Defendants knew or

1 should have known that Plaintiff Calleros and other non-party Aggrieved Employees were
2 entitled to receive sick leave benefits to be paid at a regular rate of pay, that included as
3 eligible income all remuneration required by law, including but not limited to, all income
4 derived from shift differential pay, incentive pay, nondiscretionary bonuses, and/or other
5 forms of compensation. In violation of the California Labor Code, Defendants failed to
6 include all forms of remuneration in calculating the regular rate of pay for sick leave pay.

7 38. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
8 should have known that Plaintiff Toribio and other non-party Aggrieved Employees were
9 entitled to suitable seating and/or were entitled to sit when it did not interfere with the
10 performance of their duties and also have seats nearby to use during a lull in tasks that do
11 require moving about or standing. In violation of the California Labor Code and applicable
12 IWC Wage Order, Defendants failed to provide Plaintiff Toribio and other non-party
13 Aggrieved Employees suitable seating.

14 39. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
15 should have known that Plaintiff King and other non-party Aggrieved Employees were
16 entitled to receive full reimbursement for all business-related expenses and costs they incurred
17 during the course and scope of their employment and that they did not receive full
18 reimbursement of applicable business-related expenses and costs incurred.

19 40. Plaintiff are informed and believe, and thereon allege, that at all times herein
20 mentioned, Defendants knew or should have known that Defendants had a duty to provide
21 Plaintiffs and other non-party Aggrieved Employees with written notice of the material terms
22 of their employment with Defendants as required by the California Wage Theft Prevention
23 Act, but failed to do so.

24 41. Plaintiffs are informed and believe, and thereon allege, that at all times herein
25 mentioned, Defendants knew or should have known that they had a duty to compensate
26 Plaintiffs and other non-party Aggrieved Employees for all hours worked, and that Defendants
27 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
28 failed to do so, and falsely represented to Plaintiffs and other non-party Aggrieved Employees

1 that they were properly denied wages, all in order to increase Defendants' profits.

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

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

11 44. Plaintiffs and other current and former employees of Defendants are "aggrieved
12 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
13 or former employees and one or more of the alleged violations were committed against them.

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

- 17 (a) The aggrieved employee shall give written notice by online filing
18 (hereinafter "Employee's Notice") to the LWDA and by certified mail
19 to the employer of the specific provisions of the California Labor Code
20 alleged to have been violated, including the facts and theories to support
21 the alleged violations.
- 22 (b) An aggrieved employee's notice filed with the LWDA pursuant to
23 2699.3(a) and any employer response to that notice shall be
24 accompanied by a filing fee of seventy-five dollars (\$75).
- 25 (c) The LWDA shall provide notice (hereinafter "LWDA Notice") to the
26 employer and the aggrieved employee by certified mail that it does not
27 intend to investigate the alleged violation within sixty (60) calendar
28 days of the postmark date of the Employee's Notice. Upon receipt of

1 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
2 five (65) calendar days of the postmark date of the Employee's Notice,
3 the aggrieved employee may commence a civil action pursuant to
4 California Labor Code section 2699 to recover civil penalties in addition
5 to any other penalties to which the employee may be entitled.

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

- 10 (a) The aggrieved employee or representative shall give written notice
11 by online filing to the LWDA and by certified mail to the employer
12 of the specific provisions of the California Labor Code alleged to
13 have been violated (other than those listed in Section 2699.5),
14 including the facts and theories to support the alleged violation.
- 15 (b) An aggrieved employee's notice filed with the LWDA pursuant to
16 2699.3(c) and any employer response to that notice shall be
17 accompanied by a filing fee of seventy-five dollars (\$75).
- 18 (c) The employer may cure the alleged violation within thirty-three (33)
19 calendar days of the postmark date of the notice. The employer
20 shall give written notice by certified mail within that period of time
21 to the aggrieved employee or representative and the agency if the
22 alleged violation is cured, including a description of actions taken,
23 and no civil action pursuant to Section 2699 may commence. If the
24 alleged violation is not cured within the 33-day period, the employee
25 may commence a civil action pursuant to Section 2699.

26 47. On January 11, 2024, Plaintiff King provided written notice by online filing to
27 the LWDA and by certified mail to Defendants of the specific provisions of the California
28 Labor Code alleged to have been violated, including facts and theories to support the alleged

1 violations, in accordance with California Labor Code section 2699.3. Plaintiff King's written
2 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
3 LWDA PAGA Administrator has confirmed receipt of Plaintiff King's written notice and
4 assigned Plaintiff King PAGA Case Number LWDA-CM-1004521-24. A true and correct
5 copy of Plaintiff King's written notice to the LWDA and Defendants dated January 11, 2024,
6 is attached hereto as "Exhibit 1."

7 48. On January 11, 2024, Plaintiff Calleros provided written notice by online filing
8 to the LWDA and by certified mail to Defendants of the specific provisions of the California
9 Labor Code alleged to have been violated, including facts and theories to support the alleged
10 violations, in accordance with California Labor Code section 2699.3. Plaintiff Calleros's
11 written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75).
12 The LWDA PAGA Administrator has confirmed receipt of Plaintiff Calleros's written notice
13 and assigned Plaintiff Calleros PAGA Case Number LWDA-CM-1004523-24. A true and
14 correct copy of Plaintiff Calleros's written notice to the LWDA and Defendants dated January
15 11, 2024, is attached hereto as "Exhibit 2."

16 49. On January 11, 2024, Plaintiff Toribio provided written notice by online filing
17 to the LWDA and by certified mail to Defendants of the specific provisions of the California
18 Labor Code alleged to have been violated, including facts and theories to support the alleged
19 violations, in accordance with California Labor Code section 2699.3. Plaintiff Toribio's
20 written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75).
21 The LWDA PAGA Administrator has confirmed receipt of Plaintiff Toribio's written notice
22 and assigned Plaintiff Toribio PAGA Case Number LWDA-CM-1004522-24. A true and
23 correct copy of Plaintiff Toribio's written notice to the LWDA and Defendants dated January
24 11, 2024, is attached hereto as "Exhibit 3."

25 50. As of the filing date of this complaint, over 65 days have passed since Plaintiffs
26 sent the written notices described above, and the LWDA has not responded that it intends to
27 investigate Plaintiffs' claims, and Defendants have not cured the violations.

28 51. Thus, Plaintiffs have satisfied the administrative prerequisites under California

1 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
2 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a),
3 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

4 52. Labor Code section 558(a) provides “[a]ny employer or other person acting on
5 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
6 provision regulating hours and days of work in any order of the Industrial Welfare
7 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
8 dollars (\$50) for each underpaid employee for each pay period for which the employee was
9 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
10 underpaid employee for each pay period for which the employee was underpaid” Labor
11 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
12 to any other civil or criminal penalty provided by law.” Plaintiffs, acting in the public interest
13 as private attorneys general, seek assessment and collection of civil penalties under Labor
14 Code section 558 for themselves, all other non-party Aggrieved Employees, and the State of
15 California against Defendants for violations of Labor Code sections 510, 512(a), 516, and
16 1198, and the applicable IWC Wage Order. Plaintiffs, acting in the public interest as private
17 attorneys general, do not seek the recovery of unpaid wages under Labor Code section 558
18 from Defendants for violations of Labor Code sections 510, 512(a), 516, and 1198, and the
19 applicable IWC Wage Order.

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

24 54. As set forth below, Defendants have violated numerous provisions of both the
25 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
26 Order.

27 55. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
28 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiffs, acting in the public interest as

private attorneys general, seek assessment and collection of civil penalties for themselves, all other non-party Aggrieved Employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

FIRST CAUSE OF ACTION

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

(Against all Defendants)

56. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

57. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiffs 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 sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiffs, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 246, 516, 1182.12, and 2810.5.

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

- (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC Wage Order for Defendants’ failure to compensate Plaintiffs and other non-party Aggrieved Employees with all required overtime pay, as set forth below;
- (b) Violation of Labor Code sections 226.7, 510, and 1198, and the applicable IWC Wage Order for Defendants’ failure to include all forms of remuneration in the regular rate of pay as required by law for purposes of paying overtime wages and/or meal and rest period premiums to other non-party Aggrieved Employees, as set forth below;
- (c) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and

1 the applicable IWC Wage Order for Defendants' failure to compensate
2 Plaintiffs and other non-party Aggrieved Employees with at least
3 minimum wages for all hours worked, as set forth below;

4 (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
5 applicable IWC Wage Order for Defendants' failure to provide
6 Plaintiffs and other non-party Aggrieved Employees with meal periods,
7 as set forth below;

8 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the
9 applicable IWC Wage Order for Defendants' failure to authorize and
10 permit Plaintiffs and other non-party Aggrieved Employees to take rest
11 periods, as set forth below;

12 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
13 IWC Wage Order for failure to provide accurate and complete wage
14 statements to Plaintiffs and other non-party Aggrieved Employees, as
15 set forth below;

16 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable
17 IWC Wage Order for failure to maintain payroll records, as set forth
18 below;

19 (g) Violation of Labor Code section 204 for failure to pay all earned wages
20 during employment, as set forth below;

21 (h) Violation of Labor Code sections 201 and 202 for failure to pay all
22 earned wages upon termination, as set forth below;

23 (i) Violation of Labor Code sections 246 for failure to properly calculate
24 the sick leave paid to Plaintiff Calleros and/or other non-party
25 Aggrieved Employees, as set forth below;

26 (j) Violation of Labor Code section 1198 for failing to provide suitable
27 seating to Plaintiff Toribio and other non-party Aggrieved Employees,
28 as set forth below;

- 1 (k) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
2 King and other non-party Aggrieved Employees for all business
3 expenses necessarily incurred, as set forth below; and
4 (l) Violation of Labor Code section 2810.5 for failure to provide notice of
5 material terms of employment, as set forth below.

6 **FAILURE TO PAY OVERTIME**

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

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

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

17 61. Specifically, the applicable IWC Wage Order provides that Defendants are and
18 were required to pay Plaintiffs and other non-party Aggrieved Employees working more than
19 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
20 one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty
21 (40) hours in a workweek.

22 62. The applicable IWC Wage Order further provides that Defendants are and were
23 required to pay Plaintiffs and other non-party Aggrieved Employees working more than
24 twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate
25 of pay. An employee’s regular rate of pay includes all remuneration for employment paid to,
26 or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

27 63. California Labor Code section 510 codifies the right to overtime compensation
28 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)

1 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
2 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
3 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
4 in a day on the seventh (7th) day of work.

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

11 65. First, during the relevant time period, Defendants had, and continue to have, a
12 company-wide policy and/or practice of requiring Plaintiffs and other non-party Aggrieved
13 Employees to perform work while off-the-clock before and/or after their scheduled shifts. For
14 example, Defendants have prohibited Plaintiffs and other non-party Aggrieved Employees
15 from clocking in more than two (2) minutes prior to their scheduled shift time. As a result,
16 before Plaintiff King had an opportunity to clock in for her shift, Defendants would require
17 her to perform work-related tasks off-the-clock, such as obtaining change from the bank,
18 picking up supplies from another Defendants' store, unloading delivery trucks, and providing
19 coverage at the cash registers while cashiers were on their breaks. Similarly, before they had
20 an opportunity to clock in for their shifts, Defendants have required Plaintiff Calleros and
21 Plaintiff Toribio to wait in line off-the-clock and under Defendants' control to clock in for
22 their shifts. Further, Plaintiff Toribio worked off-the-clock prior to the start of her shifts
23 assisting customers and receiving assignments for the day from Defendants' management. As
24 a further example, after her scheduled shift and approximately twice a month, Plaintiff King
25 was required to work off-the-clock up to one (1) hour to complete closing duties, such as
26 restocking the store and balancing the registers to prepare the store for opening the next day.
27 Plaintiffs and other non-party Aggrieved Employees have been unable to complete all of their
28 assigned tasks during their scheduled shifts and have instead worked off-the-clock at

1 Defendants' direction. Defendants could have allowed Plaintiffs and other non-party
2 Aggrieved Employees to record this off-the-clock work, but they have refused to do so to
3 avoid paying Plaintiffs and other non-party Aggrieved Employees overtime wages.

4 66. Second, on information and belief, Defendants had, and continue to have, a
5 company-wide policy and/or practice of strictly staffing their locations based on the labor
6 hours allocated by each location's labor or payroll budget set by corporate. Defendants' use
7 of labor budgets has resulted in a policy of understaffing, including adopting a single-staffing
8 model for some of their positions, such as Shift Supervisors, resulting in a failure to provide
9 Plaintiff King and other non-party Aggrieved Employees with adequate meal period coverage,
10 because there were too few employees on duty to handle the workload and attend to
11 customers. Because Defendants did not employ or staff a sufficient number of employees to
12 meet customer demand and productivity requirements, there was no one available to relieve
13 employees needing meal period coverage, and thus, Plaintiff King and other non-party
14 Aggrieved Employees were not always afforded uninterrupted 30-minute meal periods during
15 shifts when they were entitled to receive a meal period.

16 67. Additionally, Defendants have a practice of failing to adhere to a schedule for
17 meal periods which, coupled with the lack of adequate meal period coverage, further led
18 Plaintiff King and other non-party Aggrieved Employees to not be relieved of their duties to
19 take compliant meal periods. Consequently, Plaintiff King and other non-party Aggrieved
20 Employees were required to work through and/or had their unpaid meal periods interrupted in
21 order to complete their assigned duties and handle customer demand, time for which they
22 were not paid.

23 68. Third, on information and belief, Defendants' timekeeping system has
24 prevented Plaintiff King and other non-party Aggrieved Employees from recording all hours
25 worked when their meal periods were shortened or interrupted, because the system locked out
26 Plaintiff King and other non-party Aggrieved Employees once they clocked out for a meal
27 period, and would not permit them to clock back in from a meal period until 30 minutes had
28 elapsed. Thus, Defendants' timekeeping system has further prevented Plaintiff King and other

1 non-party Aggrieved Employees from recording all hours worked when their meal periods
2 were shortened or interrupted.

3 69. Furthermore, on information and belief, because Defendants frowned upon
4 employees accruing meal period penalties, Defendants' management pressured Plaintiff King
5 and other non-party Aggrieved Employees to record compliant meal periods, regardless of
6 whether they had received a compliant meal period or not, in order to strictly limit meal
7 penalties that Defendants would otherwise owe. Thus, Defendants did not record all hours
8 worked during meal periods and Plaintiff King and other non-party Aggrieved Employees
9 performed work during meal periods for which they were not paid.

10 70. Defendants knew or should have known that as a result of these company-wide
11 practices and/or policies, Plaintiffs and other non-party Aggrieved Employees were
12 performing assigned duties off-the-clock before and after their shifts and/or during meal
13 periods, and were suffered or permitted to perform work for which they were not paid.
14 Because Plaintiffs and other non-party Aggrieved Employees worked shifts of eight (8) hours
15 a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified
16 for overtime premium pay. Therefore, Plaintiffs and other non-party Aggrieved Employees
17 were not paid overtime wages for all of the overtime hours they actually worked.

18 71. Furthermore, Defendants did not pay other non-party Aggrieved Employees the
19 correct overtime rate for the recorded overtime hours that they generated. In addition to an
20 hourly wage, Defendants paid other non-party Aggrieved Employees shift differential pay,
21 incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in
22 violation of the California Labor Code, Defendants failed to incorporate all compensation,
23 including shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of
24 remuneration, into the calculation of the regular rate of pay for purposes of calculating the
25 overtime wage rate. Therefore, during times when other non-party Aggrieved Employees
26 worked overtime and received these other forms of pay, Defendants failed to pay all overtime
27 wages by paying a lower overtime rate than required.

28 72. Defendants' failure to pay Plaintiffs and other non-party Aggrieved Employees

1 the balance of overtime compensation as required by California law, violates the provisions of
2 California Labor Code sections 510 and 1198. Plaintiffs and other non-party Aggrieved
3 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
4 558 and/or 2699(a), (f), and (g).

5 **FAILURE TO PAY MINIMUM WAGES**

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

7 73. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
8 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
9 to be paid to employees, and the payment of a wage less than the minimum so fixed is
10 unlawful. Compensable work time is defined in IWC Wage Order No. 7-2001 as “the time
11 during which an employee is subject to the control of an employer, and includes all the time
12 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code
13 Regs. tit. 8, § 11070(2)(G) (defining “Hours Worked”).

14 74. First, during the relevant time period, Defendants had, and continue to have, a
15 company-wide policy and/or practice of requiring Plaintiffs and other non-party Aggrieved
16 Employees to perform various work-related tasks while off-the-clock, before and after their
17 scheduled shifts, including obtaining change from the bank, picking up supplies from other
18 store locations, unloading delivery trucks, providing coverage at the cash registers, assisting
19 customers, discussing work-related matters with management, and/or waiting in line to clock
20 in. Thus, Defendants failed to track this time Plaintiffs and other non-party Aggrieved
21 Employees spent working off-the-clock, and Plaintiffs and other non-party Aggrieved
22 Employees have received no compensation for this time.

23 75. Second, as set forth above, due to Defendants’ uniform practices of utilizing
24 labor budgets, understaffing and/or single-staffing, assigning heavy workloads and
25 productivity requirements, failing to adhere to a schedule for meal periods, and resultant lack
26 of meal period coverage, Plaintiff King and other non-party Aggrieved Employees were
27 impeded from taking all uninterrupted meal periods to which they were entitled and were
28 required to work off-the-clock during meal periods. Furthermore, as set forth above,

1 Defendants systematically failed to pay Plaintiff King and other non-party Aggrieved
2 Employees for actual hours worked during unpaid meal periods, because Defendants'
3 timekeeping system locked out employees for 30 minutes when they clocked out for a meal
4 period. Moreover, as stated, to limit the meal penalties that Defendants would otherwise owe,
5 Defendants' management pressured employees to record compliant meal periods when meal
6 periods were missed, short, and/or interrupted. As a result, Defendants systematically failed
7 to pay Plaintiff King and other non-party Aggrieved Employees for actual hours worked
8 during unpaid meal periods because these hours were not always correctly recorded.

9 76. Thus, Defendants did not pay at least minimum wages for all hours worked by
10 Plaintiffs and other non-party Aggrieved Employees. Also, to the extent that these off-the-
11 clock hours did not qualify for overtime premium payment, Defendants did not pay at least
12 minimum wages for those hours worked off-the-clock in violation of California Labor Code
13 sections 1182.12, 1194, 1197, and 1198.

14 77. Defendants' failure to pay Plaintiffs and other non-party Aggrieved Employees
15 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
16 Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover civil
17 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

18 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**
19 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

20 78. At all relevant times herein set forth, the applicable IWC Wage Order and
21 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiffs' and
22 other non-party Aggrieved Employees' employment by Defendants.

23 79. At all relevant times herein set forth, California Labor Code section 512(a)
24 provides that an employer may not require, cause, or permit an employee to work for a period
25 of more than five (5) hours per day without providing the employee with a meal period of not
26 less than thirty (30) minutes, except that if the total work period per day of the employee is
27 not more than six (6) hours, the meal period may be waived by mutual consent of both the
28 employer and the employee. Under California law, first meal periods must start after no more

1 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

2 80. At all relevant times herein set forth, California Labor Code sections 226.7,
3 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
4 meal period mandated by an applicable order of the IWC.

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

11 82. During the relevant time period, as stated, Defendants had, and continue to
12 have, company-wide policies and/or practices of utilizing labor budgets and understaffing
13 their locations by adopting a single-staffing model for certain positions, which, combined with
14 the assignment of heavy workloads and productivity requirements, and failure to adhere to a
15 schedule for meal periods, resulted in lack of meal period coverage and has prevented
16 Plaintiffs and other non-party Aggrieved Employees from taking all timely, uninterrupted
17 meal periods to which they were entitled. As a result, Plaintiffs and other non-party
18 Aggrieved Employees have had to work through all or part of their meal periods, had their
19 meal periods interrupted, and/or had to wait extended periods of time before taking meal
20 periods. For example, approximately once per month, Plaintiff King missed her meal periods
21 entirely due to the lack of coverage, and often had her meal periods interrupted and/or cut
22 short in order to accept incoming deliveries. Additionally, Plaintiffs sometimes took their
23 meal periods late, after having worked in excess of five (5) hours into their shifts.

24 83. Also, as stated, Defendants' company-wide timekeeping system prevented
25 Plaintiff King and other non-party Aggrieved Employees from recording all hours worked
26 when their meal periods were shortened or interrupted, because the system locked out Plaintiff
27 King and other non-party Aggrieved Employees once they clocked out for a meal period, and
28 would not permit them to clock back in from a meal period before 30 minutes had elapsed.

1 84. Furthermore, as stated, on information and belief, because Defendants frowned
2 upon employees accruing meal period penalties, Defendants' management pressured Plaintiff
3 King and other non-party Aggrieved Employees to clock out for meal periods to reflect
4 compliant meal periods, regardless of whether they had received a compliant meal period or
5 not. For example, Plaintiff King was required to clock out for her meal periods to record that
6 she had received compliant meal periods on shifts when she had not, in fact, received these
7 timely, uninterrupted meal periods.

8 85. Moreover, Defendants did not provide Plaintiffs and other non-party Aggrieved
9 Employees with second 30-minute meal periods on days that they worked in excess of ten (10)
10 hours in one day. During their employment, Plaintiff King and Plaintiff Calleros worked
11 shifts in excess of ten (10) or more hours per day but were not provided a second 30-minute
12 meal period. Plaintiffs and other non-party Aggrieved Employees did not sign valid meal
13 period waivers on days that they were entitled to meal periods and were not relieved of all
14 duties.

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

21 87. Furthermore, Defendants engaged in a company-wide practice and/or policy of
22 not paying meal period premiums owed when compliant meal periods were not provided.
23 Because of this practice and/or policy, Plaintiffs and other non-party Aggrieved Employees
24 have not received all premium pay for missed, interrupted, late and/or shortened meal periods.
25 Alternatively, to the extent that Defendants did pay other non-party Aggrieved Employees
26 premium pay for missed, late, interrupted, and/or shortened meal periods, Defendants did not
27 pay other non-party Aggrieved Employees at the correct rate of pay for premiums because
28 Defendants systematically failed to include all forms of compensation, such as shift

1 differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration,
2 in the regular rate of pay.

3 88. Thus, Defendants failed to provide Plaintiffs and other non-party Aggrieved
4 Employees compliant meal periods and failed to pay the full meal period premiums due.
5 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
6 sections 226.7, 512(a), 516, and 1198. Plaintiffs and other non-party Aggrieved Employees
7 are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
8 2699(a), (f), and (g).

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

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

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

14 90. At all relevant times, the applicable IWC Wage Order provides that "[e]very
15 employer shall authorize and permit all employees to take rest periods, which insofar as
16 practicable shall be in the middle of each work period" and that the "rest period time shall be
17 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
18 hours or major fraction thereof" unless the total daily work time is less than three and one-half
19 (3 ½) hours.

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

28 92. Pursuant to the applicable IWC Wage Order and California Labor Code section

226.7(c), Plaintiffs and other non-party Aggrieved Employees are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

93. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiffs and other non-party Aggrieved Employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants' company-wide practices of labor budgeting, understaffing and/or single-staffing, and assigning heavy workloads resulted in a lack of rest period coverage and has prevented Plaintiffs and other non-party Aggrieved Employees from being relieved of all duty in order to take compliant rest periods. Defendants also have failed to schedule rest periods and/or adhere to a schedule for rest periods, which, coupled with Defendants' failure to provide adequate rest period coverage, has further led to Plaintiffs and other non-party Aggrieved Employees not being authorized and permitted to take rest periods.

94. Furthermore, on information and belief, during the relevant time period, Defendants have maintained a company-wide on-premises rest period policy, which effectively requires that Plaintiffs and/or other non-party Aggrieved Employees remain on Defendants' premises during their rest periods. Because Plaintiffs and/or other non-party Aggrieved Employees were restricted from leaving the premises during rest periods, they have been denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, Defendants have effectively maintained control over Plaintiffs and/or other non-party Aggrieved Employees during rest periods.

95. As a result of Defendants' practices and policies, Plaintiffs and other non-party Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, throughout her employment, Plaintiff King had to regularly forego her rest periods entirely due to the heavy workload and lack of coverage. As a further example, throughout their employment, Plaintiff Calleros and Plaintiff Toribio have had to sometimes forego their rest periods due to the heavy workload.

1 96. Defendants also have engaged in a company-wide practice and/or policy of not
2 paying all rest period premiums owed when compliant rest periods are not authorized and
3 permitted. Because of this practice and/or policy, Plaintiffs and other non-party Aggrieved
4 Employees have not received premium pay for all missed rest periods. Alternatively, to the
5 extent that Defendants did pay other non-party Aggrieved Employees one (1) additional hour
6 of premium pay for missed rest periods, Defendants did not pay other non-party Aggrieved
7 Employees at the correct rate of pay for premiums because Defendants failed to include all
8 forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses,
9 and/or other forms of remuneration, in the regular rate of pay.

10 97. Accordingly, Defendants failed to authorize and permit all compliant rest
11 periods and failed to pay the full rest period premiums due. Defendants' conduct violates the
12 applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198.
13 Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover civil
14 penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

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

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

22 99. At all relevant times, Defendants have knowingly and intentionally provided
23 Plaintiffs and other non-party Aggrieved Employees with uniform, incomplete, and inaccurate
24 wage statements. For example, Defendants issued uniform wage statements to Plaintiffs and
25 other non-party Aggrieved Employees that fail to correctly list: gross wages earned; total
26 hours worked; net wages earned; and all applicable hourly rates in effect during the pay
27 period, including rates of pay for overtime wages, meal and rest period premiums, and/or paid
28 sick leave, and the corresponding number of hours worked at each hourly rate. Specifically,

1 Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

2 100. Because Defendants did not record the time Plaintiffs and other non-party
3 Aggrieved Employees spent working off-the-clock and/or deducted time from their records for
4 meal periods that were interrupted and/or missed (and therefore time for which they should
5 have been paid), Defendants did not list the correct amount of gross wages and net wages
6 earned by Plaintiffs and other non-party Aggrieved Employees in compliance with section
7 226(a)(1) and section 226(a)(5), respectively. For the same reason, Defendants failed to
8 accurately list the total number of hours worked by Plaintiffs and other non-party Aggrieved
9 Employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of
10 pay in effect during the pay period and the corresponding accurate number of hours worked at
11 each hourly rate, in violation of section 226(a)(9).

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

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

27 103. California Labor Code section 1174(d) provides that “[e]very person employing
28 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees

1 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
2 plants or establishments at which employees are employed, payroll records showing the hours
3 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
4 applicable piece rate paid to, employees employed at the respective plants or
5 establishments” Labor Code section 1174.5 provides that employers are subject to a
6 \$500 civil penalty if they fail to maintain accurate and complete records as required by section
7 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
8 Defendants willfully failed to maintain accurate payroll records for Plaintiffs and other non-
9 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto
10 as a result of failing to record the off-the-clock hours that they worked.

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

24 105. Defendants’ conduct violates California Labor Code sections 226(a), 1174(d),
25 and 1198. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to
26 recover civil penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and
27 (g).

28 //

1 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

2 **VIOLATION OF LABOR CODE SECTION 204**

3 106. At all relevant times herein set forth, California Labor Code section 204
4 requires that all wages earned by any person in any employment between the 1st and the 15th
5 days, inclusive, of any calendar month, other than those wages due upon termination of an
6 employee, are due and payable between the 16th and the 26th day of the month during which
7 the labor was performed. Labor Code section 204 further provides that all wages earned by
8 any person in any employment between the 16th and the last day, inclusive, of any calendar
9 month, other than those wages due upon termination of an employee, are due and payable
10 between the 1st and the 10th day of the following month.

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

17 108. During the relevant time period, Defendants have willfully failed to pay
18 Plaintiffs and other non-party Aggrieved Employees all wages due including, but not limited
19 to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay,
20 within the time periods specified by California Labor Code section 204.

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

23 **FAILURE TO PAY WAGES UPON TERMINATION**

24 **VIOLATION OF LABOR CODE SECTIONS 201 AND 202**

25 110. At all times relevant herein set forth, California Labor Code sections 201 and
26 202 provide that if an employer discharges an employee, the wages earned and unpaid at the
27 time of discharge are due and payable immediately, and that if an employee voluntarily leaves
28 his or her employment, his or her wages shall become due and payable not later than seventy-

1 two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous
2 notice of his or her intention to quit, in which case the employee is entitled to his or her wages
3 at the time of quitting.

4 111. Defendants willfully failed to pay Plaintiff King and other non-party Aggrieved
5 Employees who are no longer employed by Defendants the earned and unpaid wages set forth
6 above, including but not limited to, overtime wages, minimum wages, meal and rest period
7 premiums, and/or sick leave pay, either at the time of discharge, or within seventy-two (72)
8 hours of their leaving Defendants' employ.

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

15 **FAILURE TO PROPERLY CALCULATE PAID SICK LEAVE**
16 **VIOLATION OF LABOR CODE SECTION 246**

17 113. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,
18 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more
19 days from the commencement of employment with paid sick days, to be accrued at least one
20 hour for every 30 hours worked. California Labor Code section 246(l) provides that an
21 employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time
22 for nonexempt employees shall be calculated in the same manner as the regular rate of pay for
23 the workweek in which the employee uses paid sick time, whether or not the employee
24 actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt
25 employees shall be calculated by dividing the employee's total wages, not including overtime
26 premium pay, by the employee's total hours worked in the full pay periods of the prior 90
27 days of employment."

28 114. During the relevant time period, Defendants did not pay other non-party

1 Aggrieved Employees the correct sick leave rates of pay. In addition to an hourly wage,
2 Defendants paid other non-party Aggrieved Employees shift differential pay, incentive pay,
3 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the
4 California Labor Code, Defendants failed to incorporate all remunerations, including shift
5 differential pay, incentive pay, and/or nondiscretionary bonuses, into the calculation of the
6 regular rate of pay for purposes of calculating the sick leave rate. Therefore, during times
7 when other non-party Aggrieved Employees took sick leave and received these other forms of
8 pay, Defendants failed to pay all sick leave benefits by paying a lower sick leave rate than
9 required. Specifically, Defendants paid other non-party Aggrieved Employees sick leave
10 based on their hourly rate of pay instead of their regular rate of pay.

11 115. Defendants' failure to properly calculate the sick leave rates of pay based on all
12 remuneration paid has resulted in an underpayment of sick leave benefits to other non-party
13 Aggrieved Employees on a company-wide basis in violation of California Labor Code section
14 246(l).

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

17 **FAILURE TO PROVIDE SUITABLE SEATING**
18 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
19 **REGULATIONS, TITLE 8, SECTION 11070(14)(A)**

20 117. At all relevant times herein, California Labor Code section 1198 makes it
21 illegal to employ an employee under conditions of labor that are prohibited by the applicable
22 wage order. California Labor Code section 1198 requires that “. . . the standard conditions of
23 labor fixed by the commission shall be the . . . standard conditions of labor for employees.
24 The employment of any employee . . . under conditions of labor prohibited by the order is
25 unlawful.”

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

1 119. Defendants' California locations are generally similar in their layout and design
2 and there was, and continues to be, space at the employee work areas to allow for the presence
3 and use of a seat or stool by other aggrieved employees (with reasonable or no modification to
4 these work areas) during the performance of their work duties. Defendants could provide
5 Plaintiff Toribio and other non-party Aggrieved Employees with a seat or stool at their cash
6 wraps, but instead deny employees seating and force Plaintiff Toribio and other non-party
7 Aggrieved Employees to stand throughout the day.

8 120. Plaintiff Toribio and other non-party Aggrieved Employees spend a substantial
9 portion of their day behind or at these cash wraps. The nature of the work of an employee
10 performing cashier duties in these work areas can reasonably be accomplished from a seated
11 position. However, as set forth herein, Defendants systematically, and on a company-wide
12 basis, do not provide seats or stools at or near cash wraps, forcing Plaintiff Toribio and other
13 non-party Aggrieved Employees to stand throughout their work shifts.

14 121. During the relevant time period, Defendants violated California Labor Code
15 section 1198 and California Code of Regulations, Title 8, section 11070(14)(A), because
16 Plaintiff Toribio and other non-party Aggrieved Employees were not allowed to sit, even
17 when the nature of their work would reasonably permit the use of seats, nor were they
18 provided with suitable seats. Defendants' management did not inform Plaintiff Toribio and
19 other non-party Aggrieved Employees that they were allowed to sit down, provide any means
20 for them to sit down, or mention any policy regarding sitting.

21 122. As a result of Defendants' company-wide policy and/or practice of prohibiting
22 employees from sitting during their shifts and failure to provide suitable seating, Plaintiff
23 Toribio and other non-party Aggrieved Employees were forced to stand during shifts and
24 denied seats. Defendants' failure to provide suitable seating to Plaintiff Toribio and other
25 non-party Aggrieved Employees violated and continues to violate California Labor Code
26 section 1198 and IWC Wage Order No. 7-2001, subdivision 14(A).

27 123. Plaintiff Toribio and other non-party Aggrieved Employees are therefore
28 entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

FAILURE TO PROVIDE SUITABLE SEATING
VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF
REGULATIONS, TITLE 8, SECTION 11070(14)(B)

124. 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.”

125. 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.”

126. 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 Toribio and other non-party Aggrieved Employees were not allowed to sit, even during lulls in their work duties, nor were they provided with suitable seats in reasonable proximity to their work areas.

127. Defendants’ California locations are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Plaintiff Toribio and other non-party Aggrieved Employees during lulls in operation. Defendants could have provided Plaintiff Toribio and other non-party Aggrieved Employees with a seat or stool in their work areas, but instead denied, and continue to deny, employees seating, forcing them to stand throughout the day.

128. Defendants have not provided Plaintiff Toribio and other non-party Aggrieved Employees with seats or stools in reasonable proximity to their work areas to allow them to

1 use seats when it would not interfere with the performance of their duties for times when they
2 were not engaged in active duties that require standing. In other words, to the extent Plaintiff
3 Toribio and other non-party Aggrieved Employees engage in duties in which the nature of the
4 work required standing, Defendants deny them the use of seats nearby during lulls in their
5 work duties. Moreover, Defendants did not inform Plaintiff Toribio and other non-party
6 Aggrieved Employees of their rights to a seat or stool under California law.

7 129. As a result of Defendants company-wide policy and/or practice of prohibiting
8 employees from sitting at any time, even when they were not engaged in active duties
9 requiring standing, and company-wide failure to provide seats in reasonable proximity to their
10 work areas, Plaintiff Toribio and other non-party Aggrieved Employees have been forced to
11 stand during shifts and denied seats. Defendants' failure to provide suitable seating to
12 Plaintiff Toribio and other non-party Aggrieved Employees violated and continues to violate
13 California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

14 130. Plaintiff Toribio and other non-party Aggrieved Employees are therefore
15 entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

16 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

17 **VIOLATION OF LABOR CODE SECTION 2802**

18 131. At all times herein set forth, California Labor Code section 2802 provides that
19 an employer must reimburse employees for all necessary expenditures and losses incurred by
20 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
21 to prevent employers from passing off their cost of doing business and operating expenses on
22 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
23 (2014). The applicable wage order, IWC Wage Order No. 7-2001, provides that: "[w]hen
24 tools or equipment are required by the employer or are necessary to the performance of a job,
25 such tools and equipment shall be provided and maintained by the employer, except that an
26 employee whose wages are at least two (2) times the minimum wage provided herein may be
27 required to provide and maintain hand tools and equipment customarily required by the trade
28 or craft."

1 132. First, during the relevant time period, Defendants, on a company-wide basis,
2 required that Plaintiff King and other non-party Aggrieved Employees use their own personal
3 vehicles for work purposes, but failed to reimburse them for all costs of travel, including
4 mileage. For example, Plaintiff King was required to use her personal vehicle to run work-
5 related errands such as driving to the bank to obtain change and picking up supplies at
6 Defendants' other locations(s), but was not compensated for her travel expenses or mileage.
7 Although Defendants required Plaintiff King and other non-party Aggrieved Employees to
8 utilize their personal vehicles to carry out their work-related responsibilities, Defendants
9 failed to reimburse them for their mileage or travel expenses.

10 133. Second, during the relevant time period, on information and belief, Defendants
11 required other non-party Aggrieved Employees to purchase equipment and supplies necessary
12 for the performance of their duties, but failed to reimburse them for their out-of-pocket costs.
13 Although Defendants required other non-party Aggrieved Employees purchase equipment and
14 supplies to carry out their work-related responsibilities, Defendants failed to reimburse them
15 for their out-of-pocket costs to purchase necessary supplies and equipment.

16 134. Defendants could have provided Plaintiff King and other non-party Aggrieved
17 Employees with the actual equipment for use on the job, such as company vehicles and
18 equipment/supplies. Or, Defendants could have reimbursed employees for the costs of their
19 travel expenses, mileage, and equipment/supplies. Instead, Defendants passed these operating
20 costs off onto Plaintiff King and other non-party Aggrieved Employees. At all relevant times,
21 Plaintiff King did not earn at least two (2) times the minimum wage.

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

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1 **FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF**
2 **EMPLOYMENT**

3 **VIOLATION OF LABOR CODE SECTION 2810.5(a)(1)(A)-(C)**

4 129. California's Wage Theft Prevention Act was enacted to ensure that employers
5 provide employees with basic information material to their employment relationship at the
6 time of hiring, and to ensure that employees are given written and timely notice of any
7 changes to basic information material to their employment. Codified at California Labor
8 Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an
9 employer must provide written notice to employees containing basic and material payroll
10 information, including, among other things, the rate(s) of pay and basis thereof, whether paid
11 by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for
12 overtime, the regular payday designated by the employer, and any allowances claims as part
13 of the minimum wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-
14 (C).

15 130. During the relevant time period, Defendants failed to provide Plaintiffs and
16 other non-party Aggrieved Employees with written notice that lists all the requisite
17 information set forth in Labor Code section 2810.5(a)(1)(A)-(C).

18 131. Defendants' failure to provide Plaintiffs and other non-party Aggrieved
19 Employees with written notice of basic information regarding their employment with
20 Defendants is in violation of California Labor Code section 2810.5. Plaintiffs and other non-
21 party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor
22 Code sections 2699(a), (f), and (g).

23 **REQUEST FOR JURY TRIAL**

24 Plaintiffs request a trial by jury.

25 **PRAYER FOR RELIEF**

26 Plaintiffs, on behalf of all other non-party Aggrieved Employees, pray for relief and
27 judgment against Defendants, jointly and severally, as follows:

- 28 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars

1 (\$25,000). Plaintiffs reserve the right to amend their prayer for relief to seek a different
2 amount.

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

4 2. That the Court declare, adjudge and decree that Defendants violated the
5 following California Labor Code provisions as to Plaintiffs and/or other non-party Aggrieved
6 Employees: 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198
7 (by failing to include all forms of remuneration in the regular rate of pay for purposes of
8 paying overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, and
9 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
10 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
11 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
12 statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all
13 earned wages upon termination); 204 (by failing to timely pay all earned wages during
14 employment); 246 (by failing to properly calculate sick leave pay); 1198 and the applicable
15 IWC Wage Order (by failing to provide suitable seating); 2802 (by failing to reimburse
16 business expenses); and 2810.5 (by failing to provide written notice of information material to
17 employment);

18 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3,
19 248.5, 256, 558, 1174.5, and 2699(a), (f), and (g), for violations of California Labor Code
20 sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197,
21 1198, 2802, and 2810.5;

22 4. For attorneys' fees and costs pursuant to California Labor Code section
23 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
24 Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12,
25 1194, 1197, 1198, 2802, and 2810.5;

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

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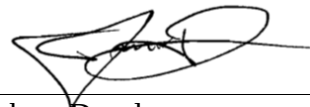
1 6. For such other and further relief as the Court may deem equitable and
2 appropriate.

3
4 Dated: March 19, 2024

Respectfully submitted,

Capstone Law APC

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7 By: _____


Robert Drexler
Molly DeSario
Jonathan Lee

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10 Attorneys for Shasta King, Carlos Calleros, and
Carmen Toribio
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EXHIBIT “1”

NINEL KOCHARYAN
310.712.8146 Direct
Ninel.Kocharyan@capstonelawyers.com

January 11, 2024

VIA ONLINE SUBMISSION

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

Subject: *Shasta King v. Smart & Final Stores LLC, et al.*

Dear PAGA Administrator:

This office represents Shasta King in connection with her claims under the California Labor Code. Ms. King was an employee of SMART & FINAL STORES LLC, SMART & FINAL LOGISTICS LLC, and/or CHEDRAUI USA, INC. For the purpose of this letter, Ms. King collectively refers to these entities as “SMART & FINAL.”

The employers may be contacted directly at the addresses below:

SMART & FINAL STORES LLC
600 CITADEL DR
COMMERCE, CA 90040

SMART & FINAL LOGISTICS LLC
600 CITADEL DRIVE
COMMERCE, CA 90040

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

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

SMART & FINAL employed Ms. King as an hourly paid, non-exempt employee from approximately March 2021 to February 2023. Ms. King worked for SMART & FINAL as a Shift Supervisor at its location in Sacramento, California. During her employment, Ms. King typically worked eight (8) or more hours per day and five (5) or more days per week. Ms. King was compensated approximately \$22.50 per hour at the time her employment ended with SMART & FINAL. Her job duties included,

without limitation, cashiering, restocking store inventory, balancing the registers, stocking and cleaning the warehouse, and handling deliveries.

SMART & FINAL committed one or more of the following Labor Code violations against Ms. King the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

SMART & FINAL’s Company-Wide and Uniform Payroll and HR Practices

SMART & FINAL STORES LLC is a California limited liability company; SMART & FINAL LOGISTICS LLC is a Delaware limited liability company; and CHEDRAUI USA, INC. is a Delaware corporation. Together, they operate approximately 240 warehouse-style food and supply store locations in California. Upon information and belief, SMART & FINAL maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Commerce, California, for all non-exempt, hourly paid employees working for SMART & FINAL in California, including Ms. King and other aggrieved employees. At all relevant times, SMART & FINAL issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. King and other aggrieved employees, regardless of their location or position.

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

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

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

¹ These facts, theories, and claims are based on Ms. King’s experience and counsel’s review of those records currently available relating to Ms. King’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. King 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.

SMART & FINAL willfully failed to pay all overtime wages owed to Ms. King and other aggrieved employees. During the relevant time period, Ms. King and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant time period, SMART & FINAL had, and continues to have, a company-wide policy and/or practice of requiring Ms. King and other aggrieved employees to perform work while off-the-clock before and after their scheduled shifts. For example, SMART & FINAL prohibited Ms. King and other aggrieved employees from clocking in no more than two (2) minutes prior to their scheduled shift time. As a result, before she had an opportunity to clock in for her shift, SMART & FINAL would require Ms. King to perform work-related tasks off-the-clock, such as obtaining change from the bank, picking up supplies from another SMART & FINAL store, unloading delivery trucks, and providing coverage at the cash registers while cashiers were on their breaks. Other aggrieved employees worked off-the-clock prior to the start of the shifts including, waiting in line to clock in for their shifts, assisting customers, and/or receiving assignments for the day from SMART & FINAL's management. As a further example, after her scheduled shift and approximately twice a month, Ms. King was required to work off-the-clock up to one (1) hour to complete closing duties, such as restocking the store and balancing the registers to prepare the store for opening the next day. Ms. King and other aggrieved employees were unable to complete all of their assigned tasks during their scheduled shifts and would instead work off-the-clock at SMART & FINAL's direction. SMART & FINAL could have allowed Ms. King and other aggrieved employees to record this off-the-clock work, but refused to do so to avoid paying Ms. King and other aggrieved employees overtime wages.

Second, on information and belief, SMART & FINAL had, and continues to have, a company-wide policy and/or practice of strictly staffing its locations based on the labor hours allocated by each location's labor or payroll budget set by corporate. SMART & FINAL's use of labor budgets resulted in a policy of understaffing, including adopting a single-staffing model for some of its positions, such as Shift Supervisors, resulting in a failure to provide Ms. King and other aggrieved employees with adequate meal period coverage, because there were too few employees on duty to handle the workload and attend to customers. Because SMART & FINAL did not employ or staff a sufficient number of employees to meet customer demand and productivity requirements, there was no one available to relieve employees needing meal period coverage, and thus, Ms. King and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Additionally, SMART & FINAL had a practice of failing to adhere to a schedule for meal periods which, coupled with the lack of adequate meal period coverage, further led Ms. King and other aggrieved employees to not be relieved of their duties to take compliant meal periods. As a result, Ms. King and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Consequently, Ms. King and other aggrieved employees were required to work through and/or had their unpaid meal periods interrupted in order to complete their assigned duties and handle customer demand, time for which they were not paid.

Third, on information and belief, SMART & FINAL's timekeeping system prevented Ms. King and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Ms. King and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period until 30 minutes had elapsed. Thus, SMART & FINAL's timekeeping system further prevented Ms. King

and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted.

Furthermore, on information and belief, because SMART & FINAL frowned upon employees accruing meal period penalties, SMART & FINAL's management adjusted Ms. King's and other aggrieved employees' time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that SMART & FINAL would otherwise owe. Thus, SMART & FINAL did not record all hours worked during meal periods and Ms. King and other aggrieved employees performed work during meal periods for which they were not paid.

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

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

SMART & FINAL's failure to pay Ms. King and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Ms. King and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 7-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11070(2)(G) (defining "Hours Worked").

First, during the relevant time period, SMART & FINAL had, and continues to have, a company-wide policy and/or practice of requiring Ms. King and other aggrieved employees to perform various work-related tasks while off-the-clock, before and after their scheduled shifts, including obtaining change from the bank, picking up supplies from other SMART & FINAL store locations, unloading

delivery trucks, providing coverage at the cash registers, assisting customers, discussing work-related matters with management, and waiting in line to clock in. Thus, SMART & FINAL failed to track this time Ms. King and other aggrieved employees spent working off-the-clock, and Ms. King and other aggrieved employees received no compensation for this time.

Second, as set forth above, due to SMART & FINAL's uniform practices of utilizing labor budgets, understaffing and/or single-staffing, assigning heavy workloads and productivity requirements, failing to adhere to a schedule for meal periods, and resultant lack of meal period coverage, Ms. King and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods. Furthermore, as set forth above, SMART & FINAL systematically failed to pay Ms. King and other aggrieved employees for actual hours worked during unpaid meal periods, because SMART & FINAL's timekeeping system locked out Ms. King and other aggrieved employees for 30 minutes when they clocked out for a meal period. Moreover, as stated, to limit the meal penalties that SMART & FINAL would otherwise owe, SMART & FINAL's management pressured employees to record compliant meal periods when meal periods were missed, short, and/or interrupted. As a result, SMART & FINAL systematically failed to pay Ms. King and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, SMART & FINAL did not pay at least minimum wages for all hours worked by Ms. King and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, SMART & FINAL did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

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

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

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

During the relevant time period, as stated, SMART & FINAL had, and continues to have, company-wide policies and/or practices of utilizing labor budgets and understaffing its locations by adopting a single-staffing model for certain positions, which, combined with the assignment of heavy workloads, and failure to adhere to a schedule for meal periods, resulted in lack of meal period coverage and prevented Ms. King and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, Ms. King and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, approximately once per month, Ms. King missed her meal periods entirely due to the lack of coverage. On some days when Ms. King was able to take her meal periods, she took them late, after five (5) hours into her shifts, and often had her meal periods interrupted and/or cut short in order to accept incoming deliveries. Thus, SMART & FINAL failed to provide Ms. King and other aggrieved employees with compliant, 30-minute meal periods.

Also, as stated, SMART & FINAL's company-wide timekeeping system prevented Ms. King and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Ms. King and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed.

Furthermore, as stated, on information and belief, because SMART & FINAL frowned upon employees accruing meal period penalties, SMART & FINAL's management adjusted employee time records, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by SMART & FINAL. For example, SMART & FINAL's management changed Ms. King's time sheets to record that she had received compliant meal periods on shifts when she had not, in fact, received these timely meal periods.

Moreover, SMART & FINAL did not provide Ms. King and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During her employment, Ms. King worked shifts in excess of ten (10) or more hours per day but was not provided a second 30-minute meal period. Ms. King and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times mentioned herein, SMART & FINAL knew or should have known that as a result of its company-wide policies and/or practices, Ms. King and other aggrieved employees were prevented from being relieved of all duties and were required to perform some of their assigned duties during meal periods. SMART & FINAL further knew or should have known that it did not pay Ms. King and other aggrieved employees all meal period premiums when meal periods were missed, late, interrupted, and/or shortened.

Furthermore, SMART & FINAL engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods were not provided. Because of this practice and/or policy, Ms. King and other aggrieved employees have not received all premium pay for missed, interrupted, late and/or shortened meal periods. Alternatively, to the extent that SMART & FINAL did pay other aggrieved employees premium pay for missed, late, interrupted, and/or shortened meal periods, SMART & FINAL did not pay other aggrieved employees at the correct rate of pay for premiums because SMART & FINAL systematically failed to include all forms of

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

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

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

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

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

During the relevant time period, SMART & FINAL regularly failed to authorize and permit Ms. King and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, SMART & FINAL's company-wide practices of labor budgeting, understaffing and/or single-staffing, and assigning heavy workloads resulted in a lack of rest period coverage and prevented Ms. King and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. SMART & FINAL also failed to schedule rest periods or adhere to a schedule for rest periods, which, coupled with SMART & FINAL's failure to provide adequate rest period coverage, further led to Ms. King and other aggrieved employees not being authorized and permitted to take rest periods.

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

As a result of SMART & FINAL's practices and policies, Ms. King and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,

throughout her employment, Ms. King had to regularly forego her rest periods entirely due to the heavy workload and lack of coverage.

SMART & FINAL also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. King and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that SMART & FINAL did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, SMART & FINAL did not pay other aggrieved employees at the correct rate of pay for premiums because SMART & FINAL failed to include all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

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

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

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

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

Because SMART & FINAL did not record the time Ms. King and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), SMART & FINAL did not list the correct amount of gross wages and net wages earned by Ms. King and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, SMART & FINAL failed to accurately list the total number of hours worked by Ms. King and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable

hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

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

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

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments" Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), SMART & FINAL willfully failed to maintain accurate payroll records for Ms. King and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, SMART & FINAL engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Ms. King and other aggrieved employees in violation of section 1198. Furthermore, in light of SMART & FINAL's failure to provide Ms. King and other aggrieved employees with second 30-minute meal periods to which they were entitled, SMART & FINAL kept no records of meal start and end times for second meal periods.

Because SMART & FINAL failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. King and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Ms. King and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct

time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

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

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

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, SMART & FINAL failed to pay Ms. King and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, within any time period specified by California Labor Code section 204.

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

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

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

During the relevant time period, SMART & FINAL willfully failed to pay Ms. King and other aggrieved employees who are no longer employed by SMART & FINAL all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, either at the time of discharge, or within seventy-two (72) hours of their leaving SMART & FINAL's employ.

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

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

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4), employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee’s employment. Effective January 1, 2024, employers must provide no less than 40 hours or five (5) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee’s employment. Further, Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) “[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]” or 2) “[p]aid sick time for nonexempt employees shall be calculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.”

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

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

Violation of California Labor Code § 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 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.*

SMART & FINAL’s California locations are generally similar in their layout and design and there was, and continues to be, space behind cash wraps to allow for the presence and use of a seat or stool by other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. SMART & FINAL could provide other aggrieved employees with a seat or stool at its cash wraps, but instead denies employees seating and forces other aggrieved employees to stand throughout the day.

Other aggrieved employees spent a substantial portion of their day behind or at these cash wraps. The nature of the work of an employee performing cashier duties in these work areas can reasonably be accomplished from a seated position. However, as set forth herein, SMART & FINAL systematically, and on a company-wide basis, does not provide seats or stools at or near the cash wraps, forcing other aggrieved employees to stand throughout their work shifts.

SMART & FINAL violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because other aggrieved employees were not allowed to sit, even when the nature of the work would reasonably permit the use of seats, nor were they provided with suitable seats. SMART & FINAL’s management did not inform other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of SMART & FINAL’s company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, other aggrieved employees were forced to stand during shifts and denied seats. SMART & FINAL’s failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(A).

Other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring SMART & FINAL into compliance with California’s seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

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 under subdivision 14(B) during “lulls in operation.” *Id.*

SMART & FINAL’s California locations are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by other aggrieved employees during lulls in operation. SMART & FINAL could have provided other aggrieved employees with a seat or stool in its work areas, but instead denied, and continues to deny, employees seating, forcing them to stand throughout the day.

SMART & FINAL did not provide other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent other aggrieved employees engaged in duties in which the nature of the work required standing, SMART & FINAL denied them the use of seats nearby during lulls in their work duties. Moreover, SMART & FINAL did not inform other aggrieved employees of their rights to a seat or stool under California law.

As a result of SMART & FINAL’s company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, other aggrieved employees were forced to stand during shifts and denied seats. SMART & FINAL’s failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

Other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring SMART & FINAL into compliance with California’s seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 7-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

First, during the relevant time period, SMART & FINAL, on a company-wide basis, required that Ms. King and other aggrieved employees use their own personal vehicles for work purposes, but failed to reimburse them for all costs of travel, including mileage. For example, Ms. King was required to use her personal vehicle to run work-related errands such as driving to the bank to obtain change and picking up supplies at SMART & FINAL's other locations(s), but was not compensated for her travel expenses or mileage. Although SMART & FINAL required Ms. King and other aggrieved employees to utilize their personal vehicles to carry out their work-related responsibilities, SMART & FINAL failed to reimburse them for their mileage or travel expenses.

Second, during the relevant time period, on information and belief, SMART & FINAL required other aggrieved employees to purchase equipment and supplies necessary for the performance of their duties, but failed to reimburse them for their out-of-pocket costs. Although SMART & FINAL required other aggrieved employees purchase equipment and supplies to carry out their work-related responsibilities, SMART & FINAL failed to reimburse them for their out-of-pocket costs to purchase necessary supplies and equipment.

SMART & FINAL could have provided Ms. King and other aggrieved employees with the actual equipment for use on the job, such as company vehicles and equipment/supplies. Or, SMART & FINAL could have reimbursed employees for the costs of their travel expenses, mileage, and equipment/supplies. Instead, SMART & FINAL passed these operating costs off onto Ms. King and other aggrieved employees. At all relevant times, Ms. King did not earn at least two (2) times the minimum wage.

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

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

SMART & FINAL failed to provide Ms. King and other aggrieved employees written notice that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). SMART & FINAL's failure to provide Ms. King and other aggrieved employees with written notice of basic information regarding their employment with SMART & FINAL is in violation of Labor Code section 2810.5.

Ms. King and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

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

Accordingly, Ms. King seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. King, 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 SMART & FINAL for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

Pre-Litigation Demand

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

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

1. SMART & FINAL shall pay Ms. King and all other aggrieved employees employed by SMART & FINAL at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. SMART & FINAL shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, and provided lawful meal and rest periods.

3. SMART & FINAL shall conduct a survey or interview all current and former aggrieved employees in California who worked for SMART & FINAL in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for travel expenses, mileage, and equipment expenses or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. SMART & FINAL shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. SMART & FINAL also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. SMART & FINAL shall properly calculate aggrieved employees' rates of pay for overtime, meal and rest period premiums, and/or paid sick leave based on all remuneration paid, pursuant to Labor Code sections 226.7, 510, and/or 246(l).
6. SMART & FINAL shall pay accrued legal interest to Ms. King and all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. SMART & FINAL shall provide Ms. King and all aggrieved employees employed by SMART & FINAL at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. SMART & FINAL shall pay waiting time penalties, equal to 30 days of pay, to Ms. King and each former aggrieved employee who was not paid all wages due as described herein.
9. SMART & FINAL shall implement and provide suitable seating to all aggrieved employees.
10. SMART & FINAL shall reimburse Ms. King and all aggrieved employees who were required to pay for any business expenses incurred for SMART & FINAL's benefit, including, but not limited to, travel expenses, mileage, equipment expenses, and other expenditures, as required by Labor Code section 2802.
11. SMART & FINAL shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
12. SMART & FINAL shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 248.5, 256, 558, 1174.5, 1197.1, and 2699, and IWC Wage Order No. 7-2001, section 20.

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

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

Best Regards,

A handwritten signature in cursive script, appearing to read "Ninel".

Ninel Kocharyan

Copy: SMART & FINAL STORES LLC (via U.S. Certified Mail); SMART & FINAL LOGISTICS LLC (via U.S. Certified Mail); CHEDRAUI USA, INC. (via U.S. Certified Mail)

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

CERTIFIED MAIL



7022 2410 0000 2406 1474

SMART & FINAL
STORES LLC
600 CITADEL DR
COMMERCE, CA 90040

7022 2410 0000 2406 1474

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SMART & FINAL
STORES LLC
600 CITADEL DR
COMMERCE, CA 90040

PS Form 3811, April 2013 PSN 7530-02-000-9003

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Received by (Printed Name)

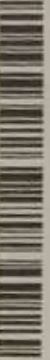
□ Agent
□ Addressee

C. Date of Delivery

Is delivery address different from item 1? ☐ Yes

☐ No

SMART & FINAL
STORES LLC
600 CITADEL DR
COMMERCE, CA 90040



9590 9402 7690 2122 7192 77

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

3. Service Type

- ☐ Adult Signature Restricted Delivery
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail[®]
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- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

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



7022 2410 0000 2406 1450

SMART & FINAL
LOGISTICS LLC
600 CITADEL DRIVE
COMMERCE, CA 90040

7022 2410 0000 2406 1450

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PSN 536
Postmark
Date

SMART & FINAL
LOGISTICS LLC
600 CITADEL DRIVE
COMMERCE, CA 90040

SENDER: COMPLETE THIS SECTION

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

SMART & FINAL
LOGISTICS LLC
600 CITADEL DRIVE
COMMERCE, CA 90040



9590 9402 7690 2122 7193 52

2. *Indicate Number Transferred from service label(s)*

7022 2410 0000 2406 1450

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒ X

B. Received by (Printed Name)

☐ Agent
☐ Addressee

C. Date of Delivery

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

If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Priority Mail Express[®]
- ☐ Registered Mail[™]
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- ☐ Signature Confirmation Restricted Delivery

Indicated Delivery

Domestic Return Receipt

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



7022 2410 0000 2406 1467

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

SENDER: COMPLETE THIS SECTION

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

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



9590 9402 7690 2122 7193 45

2. Article Number (Transfer from service label)

7022 2410 0000 2406 1467

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
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- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
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Attached Delivery

Domestic Return Receipt

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U.S. Postal Service™
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KAUK V.

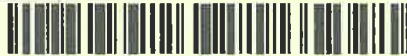
5710

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

SENDER: COMPLETE THIS SECTION

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

SMART & FINAL
LOGISTICS LLC
600 CITADEL DRIVE
COMMERCE, CA 90040



9590 9402 7690 2122 7193 52

2. Article Number (Transfer from service label)

7022 2410 0000 2406 1450

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

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Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

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

SMART & FINAL
STORES LLC
600 CITADEL DR
COMMERCE, CA 90040



9590 9402 7690 2122 7192 77

2. Article Number (Transfer from service label)

7022 2410 0000 2406 1474

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Insured Mail☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

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

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



9590 9402 7690 2122 7193 45

2. Article Number (Transfer from service label)

7022 2410 0000 2406 1467

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Insured Mail☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

Restricted Delivery

Domestic Return Receipt

EXHIBIT “2”



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

NINEL KOCHARYAN
310.712.8146 Direct
Ninel.Kocharyan@capstonelawyers.com

January 11, 2024

VIA ONLINE SUBMISSION

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

Subject: *Carlos Calleros v. Smart & Final Logistics LLC, et al.*

Dear PAGA Administrator:

This office represents Carlos Calleros in connection with his claims under the California Labor Code. Mr. Calleros is an employee of SMART & FINAL LOGISTICS LLC, SMART & FINAL STORES LLC, and/or CHEDRAUI USA, INC. For the purpose of this letter, Mr. Calleros collectively refers to these entities as "SMART & FINAL."

The employers may be contacted directly at the addresses below:

SMART & FINAL LOGISTICS LLC
600 CITADEL DR
COMMERCE, CA 90040

SMART & FINAL STORES LLC
600 CITADEL DRIVE
COMMERCE, CA 90040

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

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

SMART & FINAL has employed Mr. Calleros as an hourly paid, non-exempt employee since approximately April 2012. Mr. Calleros works for SMART & FINAL as a Loader at its warehouse in Riverside, California. Mr. Calleros typically works nine (9) hours per day and five (5) days per week. His primary job duties include, without limitation, consolidating and loading orders onto trailers.

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

SMART & FINAL’s Company-Wide and Uniform Payroll and HR Practices

SMART & FINAL LOGISTICS LLC is a Delaware limited liability company; SMART & FINAL STORES LLC is a California limited liability company; and CHEDRAUI USA, INC. is a Delaware corporation. Together, they operate approximately 240 warehouse-style food and supply store locations in California. Upon information and belief, SMART & FINAL maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Commerce, California, for all non-exempt, hourly paid employees working for SMART & FINAL in California, including Mr. Calleros and other aggrieved employees. At all relevant times, SMART & FINAL issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Calleros and other aggrieved employees, regardless of their location or position.

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

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

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

SMART & FINAL has willfully failed to pay all overtime wages owed to Mr. Calleros and other aggrieved employees. During the relevant time period, Mr. Calleros and other aggrieved employees

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

have not been paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they work are not recorded.

First, during the relevant time period, SMART & FINAL had, and continues to have, a company-wide policy and/or practice of requiring Mr. Calleros and other aggrieved employees to perform work while off-the-clock before and after their scheduled shifts. For example, SMART & FINAL prohibits Mr. Calleros and other aggrieved employees from clocking in no more than two (2) minutes prior to their scheduled shift time. As a result, before he had an opportunity to clock in for his shift, SMART & FINAL has required Mr. Calleros to wait in line off-the-clock and under SMART & FINAL's control to clock in for his shifts. Other aggrieved employees have worked off-the-clock prior to the start of their shifts including, obtaining change from the bank, picking up supplies from another SMART & FINAL store, unloading delivery trucks, providing coverage at the cash registers while cashiers were on their breaks, assisting customers, and/or receiving assignments for the day from SMART & FINAL's management. As a further example, other aggrieved employees are required to work off-the-clock up to one (1) hour to complete closing duties, such as restocking the store and balancing the registers to prepare the store for opening the next day. Mr. Calleros and other aggrieved employees are unable to complete all of their assigned tasks during their scheduled shifts and instead work off-the-clock at SMART & FINAL's direction. SMART & FINAL could have allowed Mr. Calleros and other aggrieved employees to record this off-the-clock work, but has refused to do so to avoid paying Mr. Calleros and other aggrieved employees overtime wages.

Second, on information and belief, SMART & FINAL had, and continues to have, a company-wide policy and/or practice of strictly staffing its locations based on the labor hours allocated by each location's labor or payroll budget set by corporate. SMART & FINAL's use of labor budgets has resulted in a policy of understaffing, including adopting a single-staffing model for some of its positions, such as Shift Supervisors, resulting in a failure to provide other aggrieved employees with adequate meal period coverage, because there are too few employees on duty to handle the workload and attend to customers. Because SMART & FINAL has not employed or staffed a sufficient number of employees to meet customer demand and productivity requirements, there is no one available to relieve employees needing meal period coverage, and thus, other aggrieved employees have not always been afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Additionally, SMART & FINAL has a practice of failing to adhere to a schedule for meal periods which, coupled with the lack of adequate meal period coverage, has further led other aggrieved employees to not be relieved of their duties to take compliant meal periods. As a result, other aggrieved employees have not always been afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Consequently, other aggrieved employees have been required to work through and/or had their unpaid meal periods interrupted in order to complete their assigned duties and handle customer demand, time for which they were not paid.

Third, on information and belief, SMART & FINAL's timekeeping system prevents other aggrieved employees from recording all hours worked when their meal periods are shortened or interrupted, because the system locks out other aggrieved employees once they clock out for a meal period, and does not permit them to clock back in from a meal period until 30 minutes have elapsed. Thus, SMART & FINAL's timekeeping system has further prevented other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted.

Furthermore, on information and belief, because SMART & FINAL frowns upon employees accruing meal period penalties, SMART & FINAL's management has adjusted other aggrieved employees' time records to reflect compliant meal periods, regardless of whether they have received a compliant meal period or not, in order to strictly limit meal penalties that SMART & FINAL would otherwise owe. Thus, SMART & FINAL does not record all hours worked during meal periods and other aggrieved employees perform work during meal periods for which they are not paid.

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

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

SMART & FINAL's failure to pay Mr. Calleros and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Calleros and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 7-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11070(2)(G) (defining "Hours Worked").

First, during the relevant time period, SMART & FINAL had, and continues to have, a company-wide policy and/or practice of requiring Mr. Calleros and other aggrieved employees to perform various work-related tasks while off-the-clock, before and/or after their scheduled shifts, including waiting in line to clock in, obtaining change from the bank, picking up supplies from other SMART & FINAL store locations, unloading delivery trucks, providing coverage at the cash registers, assisting customers, and discussing work-related matters with management. Thus, SMART &

FINAL has failed to track this time Mr. Calleros and other aggrieved employees spent working off-the-clock, and Mr. Calleros and other aggrieved employees have received no compensation for this time.

Second, as set forth above, due to SMART & FINAL's uniform practices of utilizing labor budgets, understaffing and/or single-staffing, assigning heavy workloads and productivity requirements, failing to adhere to a schedule for meal periods, and resultant lack of meal period coverage, other aggrieved employees have been impeded from taking all uninterrupted meal periods to which they were entitled and have been required to work off-the-clock during meal periods. Furthermore, as set forth above, SMART & FINAL systematically has failed to pay other aggrieved employees for actual hours worked during unpaid meal periods, because SMART & FINAL's timekeeping system locks out other aggrieved employees for 30 minutes when they clock out for a meal period. Moreover, as stated, to limit the meal penalties that SMART & FINAL would otherwise owe, SMART & FINAL's management has pressured employees to record compliant meal periods when meal periods were missed, short, and/or interrupted. As a result, SMART & FINAL has systematically failed to pay other aggrieved employees for actual hours worked during unpaid meal periods because these hours have not always been correctly recorded.

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

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

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

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

During the relevant time period, as stated, SMART & FINAL had, and continues to have, company-wide policies and/or practices of utilizing labor budgets and understaffing its locations by adopting a single-staffing model for certain positions, which, combined with the assignment of heavy workloads, and failure to adhere to a schedule for meal periods, have resulted in lack of meal period coverage and have prevented Mr. Calleros and other aggrieved employees from taking all timely, uninterrupted meal periods to which they are entitled. As a result, Mr. Calleros and other aggrieved employees have had to work through all or part of their meal periods, have had their meal periods interrupted, and/or have had to wait extended periods of time before taking meal periods. For example, Mr. Calleros has to sometimes take his meal periods late, after give (5) hours into his shifts. Other aggrieved employees have missed their meal periods entirely due to the lack of coverage, and often have had their meal periods interrupted and/or cut short in order to accept incoming deliveries. Thus, SMART & FINAL has failed to provide Mr. Calleros and other aggrieved employees with compliant, 30-minute meal periods.

Also, as stated, SMART & FINAL's company-wide timekeeping system prevents other aggrieved employees from recording all hours worked when their meal periods are shortened or interrupted, because the system locks out other aggrieved employees once they clock out for a meal period, and does not permit them to clock back in from a meal period before 30 minutes have elapsed.

Furthermore, as stated, on information and belief, because SMART & FINAL frowns upon employees accruing meal period penalties, SMART & FINAL's management has adjusted employee time records, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by SMART & FINAL. For example, SMART & FINAL's management has changed other aggrieved employees' time sheets to record that they had received compliant meal periods on shifts when they had not, in fact, received these timely meal periods.

Moreover, SMART & FINAL does not provide Mr. Calleros and other aggrieved employees with second 30-minute meal periods on days that they work in excess of ten (10) hours in one day. During his employment, Mr. Calleros has worked shifts in excess of ten (10) or more hours per day but was not provided a second 30-minute meal period. Mr. Calleros and other aggrieved employees have not signed valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times mentioned herein, SMART & FINAL knew or should have known that as a result of its company-wide policies and/or practices, Mr. Calleros and other aggrieved employees have been prevented from being relieved of all duties and have been required to perform some of their assigned duties during meal periods. SMART & FINAL further knew or should have known that it does not pay Mr. Calleros and other aggrieved employees all meal period premiums when meal periods are missed, late, interrupted, and/or shortened.

Furthermore, SMART & FINAL has engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods were not provided. Because of this practice and/or policy, Mr. Calleros and other aggrieved employees have not received all premium pay for missed, interrupted, late and/or shortened meal periods. Alternatively, to the extent that SMART & FINAL does pay Mr. Calleros and other aggrieved employees premium pay for missed, late, interrupted, and/or shortened meal periods, SMART & FINAL has not paid Mr. Calleros and/or other aggrieved employees at the correct rate of pay for premiums because SMART & FINAL has systematically failed to include all forms of compensation, such as shift differential

pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

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

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

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

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

During the relevant time period, SMART & FINAL has regularly failed to authorize and permit Mr. Calleros and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, SMART & FINAL's company-wide practices of labor budgeting, understaffing and/or single-staffing, and assigning heavy workloads have resulted in a lack of rest period coverage and have prevented Mr. Calleros and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. SMART & FINAL has also failed to schedule rest periods or adhere to a schedule for rest periods, which, coupled with SMART & FINAL's failure to provide adequate rest period coverage, has further led to Mr. Calleros and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, on information and belief, during the relevant time period, SMART & FINAL has maintained a company-wide on-premises rest period policy, which effectively requires that other aggrieved employees remain on SMART & FINAL's premises during their rest periods. Because other aggrieved employees are restricted from leaving the premises during rest periods, they have been denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, SMART & FINAL has effectively maintained control over other aggrieved employees during rest periods.

As a result of SMART & FINAL's practices and policies, Mr. Calleros and other aggrieved employees have worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For

example, throughout his employment, Mr. Calleros has to sometimes forego his rest periods due to the heavy workload. Further, SMART & FINAL's management have sometimes interrupted Mr. Calleros's rest breaks by discussing work-related matters, such as inquiring about an assignment completion status.

SMART & FINAL also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Calleros and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that SMART & FINAL has paid Mr. Calleros and/or other aggrieved employees one (1) additional hour of premium pay for missed rest periods, SMART & FINAL has not paid Mr. Calleros and other aggrieved employees at the correct rate of pay for premiums because SMART & FINAL has failed to include all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

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

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

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

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

Because SMART & FINAL does not record the time Mr. Calleros and other aggrieved employees spent working off-the-clock and deducts time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), SMART & FINAL has not listed the correct amount of gross wages and net wages earned by Mr. Calleros and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively.

For the same reason, SMART & FINAL has failed to accurately list the total number of hours worked by Mr. Calleros and other aggrieved employees, in violation of section 226(a)(2), and has failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

In addition, because SMART & FINAL has not calculated Mr. Calleros's and/or other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, and/or paid sick leave, SMART & FINAL has not listed the correct amount of gross wages in compliance with section 226(a)(1) and has not listed the correct amount of net wages in violation of section 226(a)(5). SMART & FINAL has also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, in violation of section 226(a)(9).

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

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments" Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), SMART & FINAL has willfully failed to maintain accurate payroll records for Mr. Calleros and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

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

Because SMART & FINAL has failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Calleros and other aggrieved employees have been prevented from verifying, solely from information on the wage statements

themselves, that they were paid correctly and in full. Instead, Mr. Calleros and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

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

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

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, SMART & FINAL has failed to pay Mr. Calleros and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, within any time period specified by California Labor Code section 204.

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

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

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

During the relevant time period, SMART & FINAL has willfully failed to pay other aggrieved employees who are no longer employed by SMART & FINAL all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, either at the time of discharge, or within seventy-two (72) hours of their leaving SMART & FINAL's employ.

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

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

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4), employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee’s employment. Effective January 1, 2024, employers must provide no less than 40 hours or five (5) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee’s employment. Further, Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) “[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]” or 2) “[p]aid sick time for nonexempt employees shall be calculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.”

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

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

Violation of California Labor Code § 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 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.*

SMART & FINAL’s California locations are generally similar in their layout and design and there was, and continues to be, space behind cash wraps to allow for the presence and use of a seat or stool by other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. SMART & FINAL could provide other aggrieved employees with a seat or stool at its cash wraps, but instead denies employees seating and forces other aggrieved employees to stand throughout the day.

Other aggrieved employees spend a substantial portion of their day behind or at these cash wraps. The nature of the work of an employee performing cashier duties in these work areas can reasonably be accomplished from a seated position. However, as set forth herein, SMART & FINAL systematically, and on a company-wide basis, does not provide seats or stools at or near the cash wraps, forcing other aggrieved employees to stand throughout their work shifts.

SMART & FINAL has violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because other aggrieved employees are not allowed to sit, even when the nature of the work would reasonably permit the use of seats, nor are they provided with suitable seats. SMART & FINAL’s management has not informed other aggrieved employees that they are allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of SMART & FINAL’s company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, other aggrieved employees are forced to stand during shifts and denied seats. SMART & FINAL’s failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(A).

Other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring SMART & FINAL into compliance with California’s seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

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 under subdivision 14(B) during “lulls in operation.” *Id.*

SMART & FINAL’s California locations are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by other aggrieved employees during lulls in operation. SMART & FINAL could have provided other aggrieved employees with a seat or stool in its work areas, but instead denies employees seating, forcing them to stand throughout the day.

SMART & FINAL does not provide other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they are not engaged in active duties that require standing. In other words, to the extent other aggrieved employees engage in duties in which the nature of the work required standing, SMART & FINAL denies them the use of seats nearby during lulls in their work duties. Moreover, SMART & FINAL has not informed other aggrieved employees of their rights to a seat or stool under California law.

As a result of SMART & FINAL’s company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they are not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, other aggrieved employees are forced to stand during shifts and denied seats. SMART & FINAL’s failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

Other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring SMART & FINAL into compliance with California’s seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 7-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

First, during the relevant time period, SMART & FINAL, on a company-wide basis, has required that other aggrieved employees use their own personal vehicles for work purposes, but failed to reimburse them for all costs of travel, including mileage. Although SMART & FINAL has required other aggrieved employees to utilize their personal vehicles to carry out their work-related responsibilities, SMART & FINAL failed to reimburse them for their mileage or travel expenses.

Second, during the relevant time period, on information and belief, SMART & FINAL has required other aggrieved employees to purchase equipment and supplies necessary for the performance of their duties, but failed to reimburse them for their out-of-pocket costs. Although SMART & FINAL has required other aggrieved employees purchase equipment and supplies to carry out their work-related responsibilities, SMART & FINAL failed to reimburse them for their out-of-pocket costs to purchase necessary supplies and equipment.

SMART & FINAL could have provided other aggrieved employees with the actual equipment for use on the job, such as company vehicles and equipment/supplies. Or, SMART & FINAL could have reimbursed employees for the costs of their travel expenses, mileage, and equipment/supplies. Instead, SMART & FINAL has passed these operating costs off onto other aggrieved employees.

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

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

SMART & FINAL has failed to provide Mr. Calleros and other aggrieved employees written notice that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). SMART & FINAL's failure to provide Mr. Calleros and other aggrieved employees with written notice of basic information regarding their employment with SMART & FINAL is in violation of Labor Code section 2810.5.

Mr. Calleros and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

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

Accordingly, Mr. Calleros seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Calleros, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against SMART & FINAL for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

Pre-Litigation Demand

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

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

1. SMART & FINAL shall pay Mr. Calleros and all other aggrieved employees employed by SMART & FINAL at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. SMART & FINAL shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, and provided lawful meal and rest periods.
3. SMART & FINAL shall conduct a survey or interview all current and former aggrieved employees in California who worked for SMART & FINAL in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited

to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for travel expenses, mileage, and equipment expenses or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.

4. SMART & FINAL shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. SMART & FINAL also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. SMART & FINAL shall properly calculate aggrieved employees' rates of pay for overtime, meal and rest period premiums, and/or paid sick leave based on all remuneration paid, pursuant to Labor Code sections 226.7, 510, and/or 246(l).
6. SMART & FINAL shall pay accrued legal interest to Mr. Calleros and all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. SMART & FINAL shall provide Mr. Calleros and all aggrieved employees employed by SMART & FINAL at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. SMART & FINAL shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
9. SMART & FINAL shall implement and provide suitable seating to all aggrieved employees.
10. SMART & FINAL shall reimburse all aggrieved employees who were required to pay for any business expenses incurred for SMART & FINAL's benefit, including, but not limited to, travel expenses, mileage, equipment expenses, and other expenditures, as required by Labor Code section 2802.
11. SMART & FINAL shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
12. SMART & FINAL shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 248.5, 256, 558, 1174.5, 1197.1, and 2699, and IWC Wage Order No. 7-2001, section 20.

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

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

Best Regards,

A handwritten signature in cursive script, appearing to read "Ninel".

Ninel Kocharyan

Copy: SMART & FINAL LOGISTICS LLC (via U.S. Certified Mail); SMART & FINAL STORES LLC (via U.S. Certified Mail); CHEDRAUI USA, INC. (via U.S. Certified Mail)

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



7022 2410 0000 2406 1436

CERTIFIED MAIL

SMART & FINAL
LOGISTICS LLC
600 CITADEL DRIVE
COMMERCE, CA 90040

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53 #

SMART & FINAL
LOGISTICS LLC
600 CITADEL DRIVE
COMMERCE, CA 90040

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- Print your name and address on the reverse

SMART & FINAL
LOGISTICS LLC
600 CITADEL DRIVE
COMMERCE, CA 90040



9590 9402 7690 2122 7192 91

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

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SMART & FINAL
STORES LLC
600 CITADEL DR
COMMERCE, CA 90040

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535

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Signature of Agent
Signature of Postmaster

SMART & FINAL
STORES LLC
600 CITADEL DR
COMMERCE, CA 90040

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SMART & FINAL
STORES LLC
600 CITADEL DR
COMMERCE, CA 90040



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☐ Addressee

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- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail[®]
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- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery
- ☐ Priority Mail Express[®]
- ☐ Registered Mail[™]
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1875 Century Park, East, 1000
Los Angeles, CA. 90067

CERTIFIED MAIL



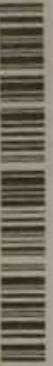
7022 2410 0000 2406 1429

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

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse

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



9590 9402 7690 2122 7193 14

2. Article Number (Transfer from service label)

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600 CITADEL DRIVE
COMMERCE, CA 90040

SENDER: COMPLETE THIS SECTION

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1.

SMART & FINAL
STORES LLC
600 CITADEL DR
COMMERCE, CA 90040



9590 9402 7690 2122 7192 84

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X

☐ Agent☐ Addressee

Received by (Printed Name)

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If YES, enter delivery address below: ☐ No

3. Service Type

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SENDER: COMPLETE THIS SECTION

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1.

SMART & FINAL
LOGISTICS LLC
600 CITADEL DRIVE
COMMERCE, CA 90040



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2. Article Number (Transfer from service label)

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Received by (Printed Name)

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3. Service Type

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- ☐ Adult Signature Restricted Delivery
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- ☐ Signature Confirmation™
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Mail Restricted Delivery

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SENDER: COMPLETE THIS SECTION

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1.

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



9590 9402 7690 2122 7193 14

2. Article Number (Transfer from service label)

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A. Signature

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Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

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

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

Mail Restricted Delivery
(over \$500)

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EXHIBIT “3”



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

NINEL KOCHARYAN
310.712.8146 Direct
Ninel.Kocharyan@capstonelawyers.com

January 11, 2024

VIA ONLINE SUBMISSION

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

Subject: *Carmen Toribio v. Smart & Final Stores LLC, et al.*

Dear PAGA Administrator:

This office represents Carmen Toribio in connection with her claims under the California Labor Code. Ms. Toribio is an employee of SMART & FINAL STORES LLC, SMART & FINAL LOGISTICS LLC, and/or CHEDRAUI USA, INC. For the purpose of this letter, Ms. Toribio collectively refers to these entities as "SMART & FINAL."

The employers may be contacted directly at the addresses below:

SMART & FINAL STORES LLC
600 CITADEL DR
COMMERCE, CA 90040

SMART & FINAL LOGISTICS LLC
600 CITADEL DRIVE
COMMERCE, CA 90040

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

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

SMART & FINAL has employed Ms. Toribio as an hourly paid, non-exempt employee since approximately June 2013. Ms. Toribio works for SMART & FINAL as a Cashier and Bulk Lead at its location in Winnetka, California. Ms. Toribio typically works seven (7) or more hours per day and four (4) days per week. Her job duties include, without limitation, checking out customers, stocking, organizing, and restocking cashiers' areas.

SMART & FINAL committed one or more of the following Labor Code violations against Ms. Toribio the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

SMART & FINAL’s Company-Wide and Uniform Payroll and HR Practices

SMART & FINAL STORES LLC is a California limited liability company; SMART & FINAL LOGISTICS LLC is a Delaware limited liability company; and CHEDRAUI USA, INC. is a Delaware corporation. Together, they operate approximately 240 warehouse-style food and supply store locations in California. Upon information and belief, SMART & FINAL maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Commerce, California, for all non-exempt, hourly paid employees working for SMART & FINAL in California, including Ms. Toribio and other aggrieved employees. At all relevant times, SMART & FINAL issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Toribio and other aggrieved employees, regardless of their location or position.

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

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

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

SMART & FINAL has willfully failed to pay all overtime wages owed to Ms. Toribio and other aggrieved employees. During the relevant time period, Ms. Toribio and other aggrieved employees

¹ These facts, theories, and claims are based on Ms. Toribio’s experience and counsel’s review of those records currently available relating to Ms. Toribio’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. Toribio 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.

have not been paid overtime premiums for all of the hours they work in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they work are not recorded.

First, during the relevant time period, SMART & FINAL had, and continues to have, a company-wide policy and/or practice of requiring Ms. Toribio and other aggrieved employees to perform work while off-the-clock before and after their scheduled shifts. For example, SMART & FINAL prohibits Ms. Toribio and other aggrieved employees from clocking in no more than two (2) minutes prior to their scheduled shift time. As a result, before she has had an opportunity to clock in for her shifts, SMART & FINAL has required Ms. Toribio to assist customers, receive assignments for the day from SMART & FINAL's management, and wait in line off-the-clock and under SMART & FINAL's control to clock in for her shifts. Other aggrieved employees have been required to perform work-related tasks off-the-clock, such as obtaining change from the bank, picking up supplies from another SMART & FINAL store, unloading delivery trucks, and providing coverage at the cash registers while cashiers were on their breaks. As a further example, other aggrieved employees are required to work off-the-clock up to one (1) hour to complete closing duties, such as restocking the store and balancing the registers to prepare the store for opening the next day. Ms. Toribio and other aggrieved employees are unable to complete all of their assigned tasks during their scheduled shifts and instead work off-the-clock at SMART & FINAL's direction. SMART & FINAL could have allowed Ms. Toribio and other aggrieved employees to record this off-the-clock work, but has refused to do so to avoid paying Ms. Toribio and other aggrieved employees overtime wages.

Second, on information and belief, SMART & FINAL had, and continues to have, a company-wide policy and/or practice of strictly staffing its locations based on the labor hours allocated by each location's labor or payroll budget set by corporate. SMART & FINAL's use of labor budgets has resulted in a policy of understaffing, including adopting a single-staffing model for some of its positions, such as Shift Supervisors, resulting in a failure to provide other aggrieved employees with adequate meal period coverage, because there are too few employees on duty to handle the workload and attend to customers. Because SMART & FINAL has not employed or staffed a sufficient number of employees to meet customer demand and productivity requirements, there is no one available to relieve employees needing meal period coverage, and thus, other aggrieved employees have not always been afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Additionally, SMART & FINAL has a practice of failing to adhere to a schedule for meal periods which, coupled with the lack of adequate meal period coverage, has further led other aggrieved employees to not be relieved of their duties to take compliant meal periods. As a result, other aggrieved employees have not always been afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Consequently, other aggrieved employees have been required to work through and/or had their unpaid meal periods interrupted in order to complete their assigned duties and handle customer demand, time for which they were not paid.

Third, on information and belief, SMART & FINAL's timekeeping system prevents other aggrieved employees from recording all hours worked when their meal periods are shortened or interrupted, because the system locks out other aggrieved employees once they clock out for a meal period, and does not permit them to clock back in from a meal period until 30 minutes have elapsed. Thus, SMART & FINAL's timekeeping system has further prevented other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted.

Furthermore, on information and belief, because SMART & FINAL frowns upon employees accruing meal period penalties, SMART & FINAL's management has adjusted other aggrieved employees' time records to reflect compliant meal periods, regardless of whether they have received a compliant meal period or not, in order to strictly limit meal penalties that SMART & FINAL would otherwise owe. Thus, SMART & FINAL does not record all hours worked during meal periods and other aggrieved employees perform work during meal periods for which they are not paid.

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

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

SMART & FINAL's failure to pay Ms. Toribio and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Ms. Toribio and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 7-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11070(2)(G) (defining "Hours Worked").

First, during the relevant time period, SMART & FINAL had, and continues to have, a company-wide policy and/or practice of requiring Ms. Toribio and other aggrieved employees to perform various work-related tasks while off-the-clock, before and/or after their scheduled shifts, including assisting customers, discussing work-related matters with management, waiting in line to clock in, obtaining change from the bank, picking up supplies from other SMART & FINAL store locations, unloading delivery trucks, and providing coverage at the cash registers. Thus, SMART & FINAL

has failed to track this time Ms. Toribio and other aggrieved employees spent working off-the-clock, and Ms. Toribio and other aggrieved employees have received no compensation for this time.

Second, as set forth above, due to SMART & FINAL's uniform practices of utilizing labor budgets, understaffing and/or single-staffing, assigning heavy workloads and productivity requirements, failing to adhere to a schedule for meal periods, and resultant lack of meal period coverage, other aggrieved employees have been impeded from taking all uninterrupted meal periods to which they were entitled and have been required to work off-the-clock during meal periods. Furthermore, as set forth above, SMART & FINAL has systematically failed to pay other aggrieved employees for actual hours worked during unpaid meal periods, because SMART & FINAL's timekeeping system locks out other aggrieved employees for 30 minutes when they clock out for a meal period. Moreover, as stated, to limit the meal penalties that SMART & FINAL would otherwise owe, SMART & FINAL's management has pressured employees to record compliant meal periods when meal periods were missed, short, and/or interrupted. As a result, SMART & FINAL systematically has failed to pay other aggrieved employees for actual hours worked during unpaid meal periods because these hours have not always been correctly recorded.

Thus, SMART & FINAL does not pay at least minimum wages for all hours worked by Ms. Toribio and other aggrieved employees. To the extent that these off-the-clock hours do not qualify for overtime premium payment, SMART & FINAL does not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

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

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

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

During the relevant time period, as stated, SMART & FINAL had, and continues to have, company-wide policies and/or practices of utilizing labor budgets and understaffing its locations by adopting a single-staffing model for certain positions, which, combined with the assignment of heavy workloads, and failure to adhere to a schedule for meal periods, have resulted in lack of meal period coverage and have prevented Ms. Toribio and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, Ms. Toribio and other aggrieved employees have had to work through all or part of their meal periods, have had their meal periods interrupted, and/or have had to wait extended periods of time before taking meal periods. For example, Ms. Toribio has to sometimes take her meal periods late, after give (5) hours into her shifts. Other aggrieved employees have missed their meal periods entirely due to the lack of coverage, and have often had their meal periods interrupted and/or cut short in order to accept incoming deliveries. Thus, SMART & FINAL has failed to provide Ms. Toribio and other aggrieved employees with compliant, 30-minute meal periods.

Also, as stated, SMART & FINAL's company-wide timekeeping system prevents other aggrieved employees from recording all hours worked when their meal periods are shortened or interrupted, because the system locks out other aggrieved employees once they clock out for a meal period, and does not permit them to clock back in from a meal period before 30 minutes have elapsed.

Furthermore, as stated, on information and belief, because SMART & FINAL frowns upon employees accruing meal period penalties, SMART & FINAL's management has adjusted employee time records, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by SMART & FINAL. For example, SMART & FINAL's management has changed other aggrieved employees' time sheets to record that they had received compliant meal periods on shifts when they had not, in fact, received these timely meal periods.

Moreover, SMART & FINAL has not provided other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Ms. Toribio and other aggrieved employees have not signed valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times mentioned herein, SMART & FINAL knew or should have known that as a result of its company-wide policies and/or practices, Ms. Toribio and other aggrieved employees have been prevented from being relieved of all duties and have been required to perform some of their assigned duties during meal periods. SMART & FINAL further knew or should have known that it does not pay Ms. Toribio and other aggrieved employees all meal period premiums when meal periods are missed, late, interrupted, and/or shortened.

Furthermore, SMART & FINAL has engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods were not provided. Because of this practice and/or policy, Ms. Toribio and other aggrieved employees have not received all premium pay for missed, interrupted, late and/or shortened meal periods. Alternatively, to the extent that SMART & FINAL does pay other aggrieved employees premium pay for missed, late, interrupted, and/or shortened meal periods, SMART & FINAL has not paid other aggrieved employees at the correct rate of pay for premiums because SMART & FINAL has systematically failed to include all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

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

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

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

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

During the relevant time period, SMART & FINAL has regularly failed to authorize and permit Ms. Toribio and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, SMART & FINAL's company-wide practices of labor budgeting, understaffing and/or single-staffing, and assigning heavy workloads have resulted in a lack of rest period coverage and have prevented Ms. Toribio and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. SMART & FINAL has also failed to schedule rest periods or adhere to a schedule for rest periods, which, coupled with SMART & FINAL's failure to provide adequate rest period coverage, has further led to Ms. Toribio and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, on information and belief, during the relevant time period, SMART & FINAL has maintained a company-wide on-premises rest period policy, which effectively requires that Ms. Toribio and other aggrieved employees remain on SMART & FINAL's premises during their rest periods. Because Ms. Toribio and other aggrieved employees are restricted from leaving the premises during rest periods, they have been denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, SMART & FINAL has effectively maintained control over Ms. Toribio and other aggrieved employees during rest periods.

As a result of SMART & FINAL's practices and policies, Ms. Toribio and other aggrieved employees have worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, throughout her employment, Ms. Toribio has had to sometimes forego her rest periods due to the heavy workload.

SMART & FINAL also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Toribio and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that SMART & FINAL has paid other aggrieved employees one (1) additional hour of premium pay for missed rest periods, SMART & FINAL has not paid other aggrieved employees at the correct rate of pay for premiums because SMART & FINAL has failed to include all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

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

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

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

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

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

In addition, because SMART & FINAL has not calculated other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, and/or paid sick leave, SMART & FINAL has not listed the correct amount of gross wages in compliance with section 226(a)(1) and has not listed the correct amount of net wages in violation of section 226(a)(5). SMART & FINAL has also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, in violation of section 226(a)(9).

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

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), SMART & FINAL has willfully failed to maintain accurate payroll records for Ms. Toribio and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

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

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

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

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

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, SMART & FINAL has failed to pay Ms. Toribio and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, within any time period specified by California Labor Code section 204.

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

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

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

During the relevant time period, SMART & FINAL has willfully failed to pay other aggrieved employees who are no longer employed by SMART & FINAL all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, either at the time of discharge, or within seventy-two (72) hours of their leaving SMART & FINAL's employ.

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

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

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked.

Pursuant to California Labor Code section 246(b)(4), employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Effective January 1, 2024, employers must provide no less than 40 hours or five (5) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Further, Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

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

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

Violation of California Labor Code § 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 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.*

SMART & FINAL’s California locations are generally similar in their layout and design and there was, and continues to be, space behind cash wraps to allow for the presence and use of a seat or stool by Ms. Toribio and other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. SMART & FINAL could provide Ms. Toribio and other aggrieved employees with a seat or stool at its cash wraps, but instead denies employees seating and forces Ms. Toribio and other aggrieved employees to stand throughout the day.

Ms. Toribio and other aggrieved employees spent a substantial portion of their day behind or at these cash wraps. The nature of the work of an employee performing cashier duties in these work areas can reasonably be accomplished from a seated position. However, as set forth herein, SMART & FINAL systematically, and on a company-wide basis, does not provide seats or stools at or near the cash wraps, forcing Ms. Toribio and other aggrieved employees to stand throughout their work shifts.

SMART & FINAL has violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because Ms. Toribio and other aggrieved employees are not allowed to sit, even when the nature of the work would reasonably permit the use of seats, nor are they provided with suitable seats. SMART & FINAL’s management has not informed Ms. Toribio and other aggrieved employees that they are allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of SMART & FINAL’s company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Ms. Toribio and other aggrieved employees are forced to stand during shifts and denied seats. SMART & FINAL’s failure to provide suitable seating to Ms. Toribio and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(A).

Ms. Toribio and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring SMART & FINAL into compliance with California’s seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

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 under subdivision 14(B) during “lulls in operation.” *Id.*

SMART & FINAL’s California locations are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Ms. Toribio and other aggrieved employees during lulls in operation. SMART & FINAL could have provided Ms. Toribio and other aggrieved employees with a seat or stool in its work areas, but instead denies employees seating, forcing them to stand throughout the day.

SMART & FINAL does not provide Ms. Toribio and other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they are not engaged in active duties that require standing. In other words, to the extent Ms. Toribio and other aggrieved employees engage in duties in which the nature of the work required standing, SMART & FINAL denies them the use of seats nearby during lulls in their work duties. Moreover, SMART & FINAL has not informed Ms. Toribio and other aggrieved employees of their rights to a seat or stool under California law.

As a result of SMART & FINAL’s company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they are not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Ms. Toribio and other aggrieved employees are forced to stand during shifts and denied seats. SMART & FINAL’s failure to provide suitable seating to Ms. Toribio and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

Ms. Toribio and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring SMART & FINAL into compliance with California’s seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 7-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

First, during the relevant time period, SMART & FINAL, on a company-wide basis, has required that other aggrieved employees use their own personal vehicles for work purposes, but failed to reimburse

them for all costs of travel, including mileage. Although SMART & FINAL has required other aggrieved employees to utilize their personal vehicles to carry out their work-related responsibilities, SMART & FINAL failed to reimburse them for their mileage or travel expenses.

Second, during the relevant time period, on information and belief, SMART & FINAL has required other aggrieved employees to purchase equipment and supplies necessary for the performance of their duties, but failed to reimburse them for their out-of-pocket costs. Although SMART & FINAL has required other aggrieved employees purchase equipment and supplies to carry out their work-related responsibilities, SMART & FINAL failed to reimburse them for their out-of-pocket costs to purchase necessary supplies and equipment.

SMART & FINAL could have provided other aggrieved employees with the actual equipment for use on the job, such as company vehicles and equipment/supplies. Or, SMART & FINAL could have reimbursed employees for the costs of their travel expenses, mileage, and equipment/supplies. Instead, SMART & FINAL has passed these operating costs off onto other aggrieved employees.

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

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

SMART & FINAL has failed to provide Ms. Toribio and other aggrieved employees written notice that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). SMART & FINAL's failure to provide Ms. Toribio and other aggrieved employees with written notice of basic information regarding their employment with SMART & FINAL is in violation of Labor Code section 2810.5.

Ms. Toribio and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

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

Accordingly, Ms. Toribio seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Toribio, 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 SMART & FINAL for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

Pre-Litigation Demand

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

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

1. SMART & FINAL shall pay Ms. Toribio and all other aggrieved employees employed by SMART & FINAL at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. SMART & FINAL shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, and provided lawful meal and rest periods.
3. SMART & FINAL shall conduct a survey or interview all current and former aggrieved employees in California who worked for SMART & FINAL in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which

were not authorized and permitted; and the number of employees who were required to pay for travel expenses, mileage, and equipment expenses or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.

4. SMART & FINAL shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. SMART & FINAL also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. SMART & FINAL shall properly calculate aggrieved employees' rates of pay for overtime, meal and rest period premiums, and/or paid sick leave based on all remuneration paid, pursuant to Labor Code sections 226.7, 510, and/or 246(l).
6. SMART & FINAL shall pay accrued legal interest to Ms. Toribio and all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. SMART & FINAL shall provide Ms. Toribio and all aggrieved employees employed by SMART & FINAL at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. SMART & FINAL shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
9. SMART & FINAL shall implement and provide suitable seating to all aggrieved employees.
10. SMART & FINAL shall reimburse Ms. Toribio and all aggrieved employees who were required to pay for any business expenses incurred for SMART & FINAL's benefit, including, but not limited to, travel expenses, mileage, equipment expenses, and other expenditures, as required by Labor Code section 2802.
11. SMART & FINAL shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
12. SMART & FINAL shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 248.5, 256, 558, 1174.5, 1197.1, and 2699, and IWC Wage Order No. 7-2001, section 20.

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

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

Best Regards,

A handwritten signature in cursive script, appearing to read "Ninel".

Ninel Kocharyan

Copy: SMART & FINAL STORES LLC (via U.S. Certified Mail); SMART & FINAL LOGISTICS LLC (via U.S. Certified Mail); CHEDRAUI USA, INC. (via U.S. Certified Mail)

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



7022 2410 0000 2406 1283

CERTIFIED MAIL

SMART & FINAL
STORES LLC
600 CITADEL DR
COMMERCE, CA 90040

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse

SMART & FINAL
STORES LLC
600 CITADEL DR
COMMERCE, CA 90040



9590 9402 7690 2122 7193 21

7022 2410 0000 2406 1283

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

Received by (Printed Name)

C. Date of Delivery

Is delivery address different from item 17
If YES, enter delivery address below:

☐ Yes
☐ No

3. Service Type

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

1. Article Number (Transit Only) PSN 7530-02-000-9053

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

Domestic Return Receipt

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U.S. Postal Service®
CERTIFIED MAIL® RECEIPT
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For delivery information, visit our website at www.usps.com

Certified Mail fee: _____

Delivery date: _____

Signature of addressee: _____

Signature of sender: _____

SMART & FINAL
STORES LLC
600 CITADEL DR
COMMERCE, CA 90040

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



7022 2410 0000 2406 1368

CERTIFIED MAIL

SMART & FINAL
LOGISTICS LLC
600 CITADEL DRIVE
COMMERCE, CA 90040

7022 2410 0000 2406 1368

SMART & FINAL
LOGISTICS LLC
600 CITADEL DRIVE
COMMERCE, CA 90040

U.S. Postal Service[™]
CERTIFIED MAIL[®] RECEIPT
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For delivery information, visit our website at www.usps.com

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Certified Mail Fee

TOTAL \$ 5.45

Signature Required ☐ Signature Confirmation ☐ Signature Restricted Delivery ☐ Signature Confirmation Restricted Delivery ☐

Postmark
Date

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COMPLETE THIS SECTION ON DELIVERY

A. Signature
X

Received by (Printed Name)

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

2. Article Number (Transfer from service label) 9590 9402 7690 2122 7193 07
3. Service Type
- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express [®] |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail [™] |
| ☐ Certified Mail [®] | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Signature Confirmation [™] |
| ☐ Collect on Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |

7022 2410 0000 2406 1368

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

Domestic Return Receipt

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

CERTIFIED MAIL®



7022 2410 0000 2406 1412

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

7022 2410 0000 2406 1412

U.S. Postal Service®
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For delivery information, visit our website at www.usps.com

Check all that apply to this mail piece. Add fee as appropriate.

☒ Registered Mail™	1	5
☐ Return Receipt (hardcopy)	2	3
☐ Restricted Mail (insurance)	3	4

Postmark: 5 2 1 2

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

SENDER: COMPLETE THIS SECTION

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

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

9590 9402 7690 2122 7193 38

2. Article Number (Transfer from service label)

7022 2410 0000 2406 1412

PS Form 3811, July 2020 PSN 7550-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

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

Service Type

☐ Adult Signature	☐ Priority Mail Express®
☐ Adult Signature Restricted Delivery	☐ Registered Mail™
☒ Certified Mail	☐ Registered Mail Restricted Delivery
☐ Certified Mail Restricted Delivery	☐ Signature Confirmation™
☐ Collect on Delivery	☐ Signature Confirmation Restricted Delivery
☐ Collect on Delivery Restricted Delivery	

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse

**SMART & FINAL
LOGISTICS LLC
600 CITADEL DRIVE
COMMERCE, CA 90040**



9590 9402 7690 2122 7193 07

2. Article Number (Transfer from service label)

7022 2410 0000 2406 1368

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

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

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

Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

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

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



9590,9402 7690 2122 7193 38

2. Article Number (Transfer from service label)

7022 2410 0000 2406 1412

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Collect on Delivery Restricted Delivery | |
| all Restricted Delivery | |

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
☐ Complete items 1, 2, and 3. ☐ Print your name and address on the reverse		A. Signature  ☐ Agent ☐ Addressee	
1 SMART & FINAL STORES LLC 600 CITADEL DR COMMERCE, CA 90040		Received by (Printed Name)	C. Date of Delivery
		Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
 9590 9402 7690 2122 7193 21		3. Service Type ☐ Adult Signature ☐ Adult Signature Restricted Delivery ☒ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Mail ☐ Mail Restricted Delivery (over \$500)	
2. Article Number (Transfer from service label) 7022 2410 0000 2406 1283		☐ Priority Mail Express® ☐ Registered Mail™ ☐ Registered Mail Restricted Delivery ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery	
PS Form 3811, July 2020 PSN 7530-02-000-9053		Domestic Return Receipt	