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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

GUSTAVO ENRIQUEZ GASPAR,
individually, and on behalf of all others
similarly situated,

Plaintiff,

v.

BIG T SUPERMARKET, INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.: **24CV433252**

CLASS ACTION COMPLAINT:

1. Failure to Provide Required Meal Periods
2. Failure to Provide Required Rest Breaks
3. Failure to Pay Overtime Wages
4. Failure to Pay Minimum Wages
5. Failure to Pay Timely Wages
6. Failure to Pay All Wages Due to Discharged and Quitting Employees
7. Failure to Maintain Required Records
8. Failure to Furnish Accurate Itemized Statements
9. Failure to Provide and Properly Calculate Mandatory California Sick Leave
10. Failure to Provide and Properly Calculate Supplemental COVID-19 Sick Pay
11. Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties
12. Unfair and Unlawful Business Practices

REPRESENTATIVE ACTION

13. Penalties Under the Labor Code Private Attorneys General Act

DEMAND FOR JURY TRIAL

INTRODUCTION

This is a class and representative action brought by Gustavo Enriquez Gaspar (“Plaintiff”), on behalf of himself and all other similarly situated individuals, against Big T Supermarket, Inc. (“Defendant”), in order to hold Defendant accountable for its wage theft and other violations of California wage and hour laws. Plaintiff makes the following allegations on information and belief, except as to allegations pertaining to Plaintiff individually, which are based on his respective personal knowledge

1. Defendant owns and manages one or more grocery stores located in San Jose, California.

2. In order to minimize labor costs and thereby maximize profits, Defendant has implemented unlawful policies with respect to meal and rest breaks. Defendant also requires its non-exempt employees, who are informed that customer service is always the top priority, to work through meal and rest breaks, and to remain on call during such breaks. Moreover, Employees of Defendant are unable to take meal and rest breaks based upon the scheduling and demands of Defendant, as the needs of its customers come first. As a result, Plaintiff and other non-exempt employees have been denied the ability to take the meal and rest breaks that they were and are legally entitled to take.

3. Defendant has implemented an unlawful rounding practice, which in conjunction with its strict attendance policy, results in the systematic underpayment of both regular and overtime wages to Plaintiff and other non-exempt employees.

4. Moreover, Defendant has uniformly failed to pay Plaintiff and other non-exempt employees proper overtime wages due to the fact that it willfully turns a blind eye to off-the-clock work that Plaintiff and other non-exempt employees perform as a direct consequence of Defendant’s understaffing and imposition of an unreasonable workload.

5. Plaintiff and other non-exempt employees similarly do not receive reimbursements for the expenses they incur in the discharge of their job duties. These expenses include cellular phone usage and personal protective equipment during the COVID-19 pandemic.

6. Plaintiff seeks declaratory, compensatory and other statutorily available relief for himself and a Class of all current and former non-exempt employees of Defendant during the applicable limitations period to compensate these workers for the wages Defendant has stolen from them and to protect current and future workers from being subjected to similar unlawful working conditions perpetrated by Defendant.

JURISDICTION AND VENUE

7. The Superior Court of the State of California has jurisdiction in this matter because Defendant is a California corporation that is qualified to do business in California and regularly conducts business in California. All putative class members and aggrieved employees are also residents of California. No federal question is at issue because Plaintiff's claims are based solely on California law.

8. Venue is proper in this judicial district and the County of Santa Clara because Plaintiff, and other persons similarly situated, performed work for Defendant in the County of Santa Clara, and Defendant's illegal payroll policies and practices, which are the subject of this action were applied to Plaintiff, and other persons similarly situated, in the County of Santa Clara.

THE PARTIES

9. Plaintiff is a former employee of Defendant. At all relevant times herein, Plaintiff was employed by Defendant as a Clerk, a non-exempt position, at Defendant's market located in San Jose, California.

10. Plaintiff, on behalf of himself and all other similarly situated individuals, brings this class action to recover, among other things, wages and penalties from unpaid wages earned and due, including but not limited to, Defendant's failure to provide legally compliant meal and rest breaks and failure to provide proper compensation for missed and otherwise unlawful meal and rest breaks, unpaid and illegally calculated regular and overtime compensation, failure to pay minimum wages, failure to pay all wages earned, failure to pay all wages due to discharged or quitting non-exempt employees, failure to maintain required records, failure to provide accurate itemized wage statements, failure to comply with California Labor Code § 246, failure to provide

1 California COVID-19 supplemental paid sick leave, failure to provide suitable resting facilities,
2 and failure to provide suitable seating.

3 11. During the statute of limitations period, Defendant has been a corporation existing
4 under the laws of the State of California and it has conducted business in the State of California.

5 12. Defendant conducts business as the Big T Supermarket and employs individuals to
6 work in its grocery stores and markets throughout Northern California.

7 13. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
8 Plaintiff at this time, and Plaintiff therefore sues such DOE defendants under fictitious names.
9 Upon information and belief, each Defendant designated as a DOE is in some manner highly
10 responsible for the occurrences alleged herein, and Plaintiff and Class members' injuries and
11 damages, as alleged herein, were proximately caused by the conduct of such DOE defendants.
12 Plaintiff will seek leave of the Court to amend this Complaint to allege the true names and
13 capacities of such DOE defendants when ascertained.

14 14. As a direct and proximate result of the unlawful actions of Defendant, Plaintiff and
15 Class members have suffered, and continue to suffer, from loss of earnings in amounts as yet
16 unascertained, but subject to proof at trial, and within the jurisdiction of this Court.

17 **CLASS ACTION ALLEGATIONS**

18 15. Plaintiff brings this action on behalf of himself and the following similarly situated
19 Class of individuals ("Class members"):

20 All non-exempt employees who have performed work for Defendant in the state of
21 California at any time during the relevant statute of limitations period.

22 16. Plaintiff reserves the right to name additional Class representatives as may be
23 necessary and appropriate. Plaintiff also reserves the right to modify or amend the definition of
24 the proposed Class and/or add subclasses before the Court determines whether certification is
25 appropriate

26 17. This action is appropriately suited for a class action because:

27 A. The proposed Class is a significant number. Plaintiff is informed and believes that
28 the proposed Class consists of at least 75 current and former non-exempt employees. Joinder of

1 all current and former non-exempt employees individually would be impractical.

2 B. This action involves common questions of law and fact to the proposed Class
3 because the action focuses on the Defendant's systematic course of illegal payroll practices and
4 policies, which was applied to all non-exempt employees in uniform violation of the California
5 Labor Code, IWC Wage Orders, and the California Business and Professions Code, which
6 prohibits unfair business practices arising from such violations. Here are a few common questions
7 of law and fact that can be answered on a classwide basis:

- 8 • Whether Defendant failed to provide non-exempt employees with legally
9 compliant meal periods and rest breaks;
- 10 • Whether Defendant failed to maintain records of when meal periods were
11 taken;
- 12 • Whether Defendant failed to pay overtime to non-exempt employees in
13 compliance with California law;
- 14 • Whether Defendant failed to pay minimum wages to non-exempt employees in
15 compliance with California law;
- 16 • Whether Defendant failed to timely pay wages to non-exempt employees in
17 compliance with California law;
- 18 • Whether Defendant failed to maintain required records and accurate wage
19 statements for non-exempt employees;
- 20 • Whether Defendant failed to provide and properly calculate mandatory
21 California sick leave;
- 22 • Whether Defendant failed to provide and properly calculate California
23 Supplemental COVID-19 sick leave;
- 24 • Whether Defendant failed to reimburse employees for business expenses
25 incurred; and
- 26 • Whether Defendant engaged in unfair and/or unlawful business practices.

1 C. Plaintiff's claims are typical of the proposed Class because Defendant subjected all
2 of its non-exempt employees to the similar and overlapping violations of the California Labor
3 Code, the applicable IWC wage order, and the California Business and Professions Code.

4 D. Plaintiff is able to fairly and adequately protect the interests of all members of the
5 proposed Class because it is in his best interests to prosecute the claims alleged herein to obtain
6 full compensation due to the proposed Class for all services rendered and hours worked. Plaintiff
7 has also retained counsel that is experienced in wage and hour class action litigation.

8 **FIRST CAUSE OF ACTION**

9 **Failure to Provide Required Meal Periods**

10 **[Cal. Lab. Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 7-2001, § 11]**

11 **(On Behalf of Plaintiff and the Class Against all Defendants)**

12 18. Plaintiff incorporates herein by specific reference, as though fully set forth, the
13 allegations in paragraphs 1 through 17.

14 19. During the statute of limitations period, as part of Defendant's unlawful policies
15 and practices to deprive its non-exempt employees of all wages earned and due, Defendant
16 required, permitted or otherwise suffered Plaintiff and Class members to perform work during
17 their meal periods, to completely skip their meal periods, to take late and short meal periods, and
18 Defendant has otherwise failed to provide the required meal periods to Plaintiff and Class
19 members as required under California Labor Code §§ 226.7, 512, and § 11 of the applicable IWC
20 Order.

21 20. Defendant has implemented several common policies and practices that have
22 caused Plaintiff and Class members to systematically miss and otherwise take non-compliant meal
23 periods.

24 21. Defendant grossly understaffs its stores such that Class members regularly miss or
25 take non-compliant meal periods. As a direct consequence of this understaffing, Plaintiff and
26 Class members have so much work to complete within their scheduled shifts that they are forced
27 to skip their meal periods altogether, to take them after working longer than five (5) hours, to
28

1 perform work during their meal periods, or return to work after taking less than a thirty (30)
2 minute meal period.

3 22. Moreover, Defendant failed to implement adequate policies or procedures to
4 provide meal periods to its non-exempt employees. Among other things, Defendant overworked
5 Plaintiff and Class members and did not adequately advise them of their rights to take meal
6 periods, and systematically denied them the opportunity to take meal periods, including second
7 meal periods during shifts of ten (10) hours or longer. Defendant also failed to maintain records
8 of when meal periods were taken by Plaintiff and the other non-exempt employees.

9 23. Defendant has also violated California Labor Code §§ 226.7, IWC Wage Order No.
10 7-2001, § 11, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et*.
11 *seq.*, by failing to compensate Plaintiff and Class members who were not authorized and permitted
12 to take a complete, timely, uninterrupted meal period, in accordance with the applicable wage
13 order, one additional hour of compensation at the proper regular rate of pay for each workday that
14 such a meal period was not authorized or permitted.

15 24. Defendant further violated California Labor Code sections 226.7, 510, 1194, 1197,
16 and IWC Wage Order No. 7-2001 by failing to compensate Plaintiff and Class members for all
17 hours worked during their meal periods.

18 25. As a proximate result of the aforementioned violations, Plaintiff and Class
19 members have been damaged in an amount according to proof at trial, and seek all wages earned
20 and due, interest, penalties, expenses, and costs of suit.

21 **SECOND CAUSE OF ACTION**

22 **Failure to Provide Required Rest Breaks**

23 **[Cal. Lab. Code §§ 226.7, 512; IWC Wage Order No. 7-2001, § 12]**

24 **(On Behalf of Plaintiff and the Class Against all Defendants)**

25 26. Plaintiff incorporates herein by specific reference, as though fully set forth, the
26 allegations in paragraphs 1 through 25.

27 27. At all times relevant herein, as part of Defendant's illegal policies and practices to
28 deprive its non-exempt employees of all wages earned and due, Defendant failed to permit

1 Plaintiff and Class members to take rest breaks as required under California Labor Code §§ 226.7
2 and 512, and § 12 of the applicable IWC Wage Order.

3 28. As with meal periods, Defendant's policies and practices caused Plaintiff and Class
4 members to miss or otherwise take non-compliant rest periods by, among other things, giving
5 them unreasonable amounts of work that had to be completed within their shift such that rest
6 periods simply could not be taken. This was the result of systematic understaffing. In addition,
7 Defendant did not adequately notify Plaintiff and Class members of their right to take rest periods,
8 and systematically denied them the opportunity to take rest periods.

9 29. Defendant further violated California Labor Code § 226.7, IWC Wage Order No. 7-
10 2001, § 12, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et. seq.*,
11 by failing to pay Plaintiff and Class members who were not provided with a rest break, in
12 accordance with the applicable wage order, one additional hour of compensation at the proper
13 regular rate of pay for each workday that a rest break was not provided.

14 30. As a proximate result of the aforementioned violations, Plaintiff and Class
15 members have been damaged in an amount according to proof at trial, and seek all wages earned
16 and due, interest, penalties, expenses, and costs of suit.

17 **THIRD CAUSE OF ACTION**

18 **Failure to Pay Overtime Wages**

19 **[Cal. Lab. Code §§ 510, 1194, 1198; IWC Wage Order No. 7-2001, § 3]**

20 **(On Behalf of Plaintiff and the Class against all Defendants)**

21 31. Plaintiff incorporates herein by specific reference, as though fully set forth, the
22 allegations in paragraphs 1 through 30.

23 32. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Order No. 7-
24 2001, § 3, Defendant is required to compensate Plaintiff and Class members for all overtime,
25 which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in
26 excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours
27 on the seventh consecutive workday, with double time for all hours worked in excess of twelve
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1 (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh
2 consecutive day of work in any workweek.

3 33. Plaintiff and Class members are current and former non-exempt employees entitled
4 to the protections of California Labor Code §§ 510, 1194, and IWC Wage Order No. 7-2001.
5 During the Class period, Defendant failed to compensate Plaintiff and Class members for all
6 overtime hours worked as required under the foregoing provisions of the California Labor Code
7 and IWC Wage Order by, among other methods: failing to properly calculate the regular rate of
8 pay for the purposes of calculating overtime pay owed and due; requiring, permitting or suffering
9 Plaintiff and Class members to work off the clock; requiring, suffering, or permitting Plaintiff and
10 Class members to work through meal and rest periods but not compensating them for this time,
11 failing to include this time in all hours worked; rounding the time worked by Plaintiff and Class
12 members unfavorably to benefit Defendant; and other methods to be discovered.

13 34. In a short-sighted attempt to maximize profits, Defendant has understaffed its
14 stores and its employees are not adequately scheduled. Not only has this practice resulted in
15 widespread missed meal and rest breaks, but it has also caused Plaintiff and Class members to
16 perform significant amounts of work while off-the-clock. Plaintiff is further informed and
17 believes that Defendant's managers and supervisors know and are aware that Plaintiff and Class
18 members perform work off-the-clock performing work before and after their scheduled shifts.

19 35. Plaintiff and Class members also perform substantial work off-the-clock as a result
20 of Defendant's unlawful rounding practice. Defendant implements a rounding practice wherein it
21 rounds the time worked by non-exempt employees to the nearest quarter-hour. Defendant pays
22 Plaintiff and Class members based on the rounded time which is unfavorable to Plaintiff and the
23 other Class Members and benefits Defendant. This rounding practice results in systematic off-the-
24 clock work and unpaid overtime.

25 36. Plaintiff and Class members must get to work by no later than the start of their
26 shifts – and usually earlier. Thus, they are not afforded the benefit of clocking in for work a few
27 minutes late. Likewise, Plaintiff and Class members are in a rush to complete their mandatory job
28

1 duties, so they are rarely afforded the benefit of clocking out early at the end of their shifts. This
2 results in the widespread underpayment of time worked, including overtime.

3 37. In violation of California law, Defendant has knowingly and willfully refused to
4 perform its obligations to compensate Plaintiff and Class members for all wages earned and all
5 hours worked at the legally required rates of pay. As a proximate result, Plaintiff and Class
6 members have suffered, and continue to suffer, substantial losses related to the use and enjoyment
7 of such wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel
8 Defendant to fully perform its obligations under state law, all to their respective damages in
9 amounts according to proof at time of trial, and within the jurisdiction of this Court.

10 38. Defendant's conduct described herein violates California Labor Code §§ 510, 1194,
11 1198 and IWC Wage Order No. 7-2001, § 3. Therefore, pursuant to California Labor Code §§
12 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor Code
13 and IWC Wage Orders, Plaintiff and Class members are entitled to recover the unpaid balance of
14 wages owed to them by Defendant, plus interest, penalties, attorneys' fees, expenses, and costs of
15 suit.

16 **FOURTH CAUSE OF ACTION**

17 **Failure to Pay Minimum Wages**

18 **[Cal. Lab. Code §§ 1194, 1197; IWC Wage Order No. 7-2001, § 4]**

19 **(On Behalf of Plaintiff and the Class against all Defendants)**

20 39. Plaintiff incorporates herein by specific reference, as though fully set forth, the
21 allegations in paragraphs 1 through 38.

22 40. Pursuant to Cal. Lab. Code §§ 1194, 1197, and § 4 of IWC Wage Order No. 7,
23 payment to an employee of less than the applicable minimum wage for all hours worked in a
24 payroll period is unlawful.

25 41. During the statute of limitations period, the hourly rates for Plaintiff and Class
26 members were precisely at minimum wage. Based on this common practice, Defendant failed to
27 actually pay Plaintiffs and Class members minimum wages for all hours worked by requiring,
28 permitting or suffering them to work off-the-clock, such as requiring them to work through meal,

1 rest breaks, but not compensating them for this time, and failing to include this time in all hours
2 worked, and other methods to be discovered.

3 42. Defendant's conduct described herein violates Cal. Lab. Code §§ 1194, 1197, and §
4 4 of IWC Wage Order No. 7. As a proximate result of the aforementioned violations, Plaintiff and
5 Class members have been damaged in an amount according to proof at trial. Therefore, pursuant
6 to California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and any other applicable law,
7 Plaintiff and Class members are entitled to recover the unpaid balance of wages owed to them by
8 Defendant, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

9 **FIFTH CAUSE OF ACTION**

10 **Failure to Pay Timely Wages**

11 **[Cal. Lab. Code §§ 204, 210]**

12 **(On Behalf of Plaintiff and the Class against all Defendants)**

13 43. Plaintiff incorporates herein by specific reference, as though fully set forth, the
14 allegations in paragraphs 1 through 42.

15 44. California Labor Code § 204 provides that all wages earned by any person in any
16 employment between the 1st and 15th days, inclusive, of any calendar month, other than those
17 wages due upon termination of an employee, are due and payable between the 16th and 26th day
18 of the month during which the labor was performed. California Labor Code § 204 further
19 provides that all wages earned by any person in any employment between the 16th and the last
20 day, inclusive, of any calendar month, other than those wages due upon termination of an
21 employee, are due and payable between the 1st and the 10th day of the following month.
22 California Labor Code § 204 further provides that all wages earned for labor in excess of the
23 normal work period shall be paid no later than the payday for the next regular payroll period.

24 45. During the statute of limitations period, Defendant, among other things, willfully
25 failed to pay Plaintiff and Class members all wages earned and due to them, including but not
26 limited to, meal and rest break premiums, overtime and minimum wages, and payment for work
27 performed off-the-clock, within any time period permissible under Labor Code § 204.

1 46. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and
2 Class members are entitled to all available statutory penalties, including but not limited to, civil
3 penalties pursuant to California Labor Code §§ 200, 210, 558, 1194, 1197.1, 2699(a), and other
4 applicable provisions under the California Labor Code and IWC Wage Orders, and an award of
5 costs, expenses, and reasonable attorneys' fees.

6 **SIXTH CAUSE OF ACTION**

7 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

8 **[Cal. Lab. Code §§ 201, 202, 203]**

9 **(On Behalf of Plaintiff and the Class against all Defendants)**

10 47. Plaintiff incorporates herein by specific reference, as though fully set forth, the
11 allegations in paragraphs 1 through 46.

12 48. Pursuant to California Labor Code §§ 201, 202, and 203, Defendant is required to
13 pay all earned and unpaid wages to an employee who is discharged. California Labor Code § 201
14 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid
15 at the time of discharge are due and payable immediately.

16 49. Furthermore, pursuant to California Labor Code § 202, Defendant is required to
17 pay all accrued wages due to an employee no later than seventy-two (72) hours after the employee
18 quits his or her employment, unless the employee provided seventy-two (72) hours previous notice
19 of his or her intention to quit, in which case the employee is entitled to his or her wages at the time
20 of quitting.

21 50. California Labor Code § 203 provides that if an employer willfully fails to pay, in
22 accordance with California Labor Code §§ 201 and 202, any wages of an employee who is
23 discharged or who quits, the employer is liable for waiting time penalties in the form of continued
24 compensation to the employee at the same rate for up to thirty (30) workdays.

25 51. During the statute of limitations period, Defendant has willfully failed to pay
26 accrued wages and other compensation to Plaintiff and Class members in accordance with
27 California Labor Code §§ 201 and 202. Defendant does not have a sufficient policy to provide
28 Plaintiff and Class members with their final paychecks within the timeframes required under

1 California law. In addition, because Defendant has failed and continues to fail to properly
2 compensate Plaintiff and Class members for all hours worked when due, overtime wages,
3 minimum wages, and compensation for non-compliant meal and rest breaks, Defendant has also
4 willfully failed and continues to fail to pay accrued wages and other compensation to Plaintiff and
5 Class members in accordance with California Labor Code §§ 201 and 202. Moreover, Defendant
6 fails to pay Class members employed on a temporary basis weekly in accordance with Labor Code
7 §201.3.

8 52. As a result, Plaintiff and Class members are entitled to all available statutory
9 penalties, including the waiting time penalties provided in California Labor Code § 203, together
10 with interest thereon, as well as other available remedies.

11 53. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and
12 Class members have been deprived of compensation in an amount according to proof at the time
13 of trial, but in excess of the jurisdiction of this Court, and are entitled to recovery of such amounts,
14 plus interest thereon, and attorneys' fees and costs, pursuant to California Labor Code § 1194.

15 **SEVENTH CAUSE OF ACTION**

16 **Failure to Maintain Required Records**

17 **[Cal. Lab. Code §§ 226, 247.5, 1174; IWC Wage Order No. 7-2001, § 7]**

18 **(On Behalf of Plaintiff and the Class against all Defendants)**

19 54. Plaintiff incorporates herein by specific reference, as though fully set forth, the
20 allegations in paragraphs 1 through 53.

21 55. During the statute of limitations period, as part of Defendant's illegal payroll
22 policies and practices to deprive Plaintiff and Class members of all wages earned and due,
23 Defendant knowingly and intentionally failed to maintain records as required under California
24 Labor Code §§ 226, 1174, and IWC Wage Order No. 7-2001, § 7, including but not limited to, the
25 following records: total daily hours worked by each non-exempt employee; applicable rates of
26 pay; all deductions; meal periods; time records showing when each non-exempt employee begins
27 and ends each workday; and accurate itemized wage statements.

28 56. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and

1 Class members have been damaged in an amount according to proof at trial, and are entitled to all
2 wages earned and due, plus interest thereon. Additionally, Plaintiff and Class members are
3 entitled to all available statutory penalties, including but not limited to civil penalties pursuant to
4 California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and
5 reasonable attorneys' fees, including but not limited to those provided in California Labor Code §
6 226(e), as well as other available remedies.

7 **EIGHTH CAUSE OF ACTION**

8 **Failure to Furnish Accurate Itemized Wage Statements**

9 **[Cal. Lab. Code §§ 226; IWC Wage Order No. 7-2001, § 7]**

10 **(On Behalf of Plaintiff and the Class against all Defendants)**

11 57. Plaintiff incorporates herein by specific reference, as though fully set forth, the
12 allegations in paragraphs 1 through 56.

13 58. During the statute of limitations period, Defendant routinely failed to provide
14 Plaintiff and Class members with timely, accurate, and itemized wage statements in writing
15 showing each employee's gross wages earned, total hours worked, all deductions made, net wages
16 earned, and all applicable hourly rates in effect during each pay period and the corresponding
17 number of hours worked at each hourly rate, in violation of California Labor Code § 226 and IWC
18 Wage Order No. 7-2001, § 7.

19 59. Defendant's wage statements violate Labor Code § 226 by, among other things,
20 failing to provide Plaintiff and Class members with proper meal and rest breaks and not including
21 in their wage statements one (1) additional hour of compensation at their regular rates of pay for
22 each non-compliant meal or rest break. In addition, Defendant required Plaintiff and Class
23 members to work off-the-clock without compensation and illegally rounded the time that they
24 worked, rendering the wage statements inaccurate.

25 60. Defendant knowingly and intentionally failed to provide Plaintiff and Class
26 members with timely, accurate, and itemized wage statements in accordance with California Labor
27 Code § 226(a) so as to prevent Plaintiff and Class members from being able to determine whether
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1 they were being paid for, among other things, all of the hours they worked and at the proper rates
2 of pay.

3 61. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and
4 Class members have been damaged in an amount according to proof at trial, and seek all wages
5 earned and due, plus interest thereon. Additionally, Plaintiff and Class members are entitled to all
6 available penalties, including but not limited to penalties pursuant to California Labor Code §§
7 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees,
8 including but not limited to those provided in California Labor Code § 226(e), as well as other
9 available remedies.

10 **NINTH CAUSE OF ACTION**

11 **Failure To Provide And Properly Calculate Mandatory California Sick Leave**

12 **[Cal. Labor Code §§246 and 247.5]**

13 **(On Behalf of Plaintiff and the Class against all Defendants)**

14 62. Plaintiff incorporates herein by specific reference, as though fully set forth, the
15 allegations in paragraphs 1 through 61.

16 63. Pursuant to California Labor Code §246, any employee who works in the State of
17 California and who works more than "30 or more days within a year ... is entitled to be paid sick
18 days" Labor Code §246(l) provides an employer shall calculate sick pay under the following
19 methods: (1) Paid sick time for nonexempt employees shall be calculated in the same manner as
20 the regular rate of pay for the workweek in which the employee uses paid sick time, whether or
21 not the employee actually works overtime in that workweek." Alternatively, pursuant to Labor
22 Code §246(l)(2), states, "Paid sick time for nonexempt employees shall be calculated by dividing
23 the employee's total wages, including overtime premium pay, by the employee's total hours
24 worked in the full pay periods of the prior 90 days of employment."

25 64. During the applicable statute of limitations period, Defendant failed to comply with
26 Labor Code Section §246 by not providing Plaintiff and the other Class members with sick pay
27 pursuant to the two (2) methods as set forth in Labor Code §246(l)(1) or (2). Additionally,
28 Plaintiff is informed and believes, during the applicable statute of limitations period, Defendant

1 violated California Labor Code § 246(l)(1) by failing to pay sick leave to the Class Member
2 employees at their regular rate of pay taking into consideration non-discretionary bonus payments
3 and other methods to be discovered. Alternatively, Plaintiff is informed and believes, during the
4 applicable statute of limitations period, Defendant violated Labor Code § 246(l)(2) by failing to
5 divide the Class members total wages by their total hours worked in the “full pay periods of the
6 prior 90 days of employment”.

7 **TENTH CAUSE OF ACTION**

8 **Failure to Provide Sick Leave and Supplemental COVID-19 Sick Leaves**

9 **[Cal. Lab. Code §§246, 247.5, 248.1, 248.2 and 248.6]**

10 **(On Behalf of Plaintiff and the Class against Defendants)**

11 65. Plaintiff incorporates herein by specific reference, as though fully set forth, the
12 allegations in paragraphs 1 through 67.

13 66. Plaintiff is informed and believes Defendant knowingly and intentionally failed in
14 their affirmative obligation provide and pay paid sick leave and Covid-19 Supplemental Sick
15 Leave to Plaintiff and Class Members in violation of Labor Code section 246. 81. Labor Code
16 section 246(b)(1) requires that employees accrue sick leave at the commencement of employment
17 at a rate of 1 hour for every thirty hours worked. Section 246(c) entitles employees to use any
18 accrued sick leave beginning on their 90th day of employment.

19 67. Defendant failed to pay Plaintiff and Class Members paid sick leave at one of the
20 lawful rates set forth in the statute because Defendant failed to include in their calculation the
21 commissions and additional remuneration received by Plaintiff and the Class Members.

22 68. Furthermore, Defendant knowingly and intentionally failed in its affirmative
23 obligation to provide and pay Covid-19 Supplemental Sick Leave to Class Members in violation
24 of Labor Code sections 246, 247.5, 248.1, 248.2, and 248.6. 84. Labor Code section 248.1 requires
25 employers to provide up to 80 hours of Covid19 Supplemental Paid Sick Leave to employees for
26 the period of April 16, 2020, to December 31, 2020. Labor Code 248.2 requires employers to
27 provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1,
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2021, through September 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and requires employers to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2022, to September 30, 2022, and may be extended thereafter.

85. Under Labor Code section 248.1, employees must be paid for Covid-19 Supplemental Paid Sick Leave at the highest of the following: (1) the regular rate of pay for the last pay period, (2) state minimum wage, (3) local minimum wage.

69. Under Labor Code section 248.2, non-exempt employees must be paid Covid-19 supplemental paid sick leave according to the highest of the following four methods: (1) the regular rate of pay for the workweek in which the employee uses COVID-19 supplemental paid sick leave, (2) the employee's total wages in a 90-day period divided by total hours worked, (3) the state minimum wage, or (4) the local minimum wage.

70. Labor Code section 248.6 requires employers to pay Covid-19 supplemental sick leave under either one of the following methods: (1) regular rate of pay or (2) the employee's total wages in a 90-day period divided by total hours worked.

71. Defendant failed to provide and pay Covid-19 supplemental paid sick leave in the manner described above because Defendant failed to pay Plaintiff and the Class Members such sick leave at one of the rates authorized by statute.

72. As a result, Defendant violated the Labor Code and are liable to Plaintiff and the Class for underpaid sick leave earnings, in addition to interest, attorneys' fees, and costs.

ELEVENTH CAUSE OF ACTION

Failure to Indemnify for Necessary Expenditures Incurred in Discharge of Duties

[Cal. Lab. Code § 2802]

(On Behalf of Plaintiff and the Class against all Defendants)

73. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 72.

74. California Labor Code § 2802(a) requires an employer to indemnify an employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of her his or her duties, or of his or her obedience to the directions of the employer.

75. During the statute of limitations period, Defendant knowingly and willfully failed to indemnify Plaintiff and Class Members for all business expenses and/or losses incurred in direct consequence of the discharge of their duties while working under the direction of Defendant, including but not limited to, cellular phone usage and personal protective gear during the COVID-19 pandemic, in violation of California Labor Code § 2802.

76. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and Class members have been damaged in an amount according to proof at trial, and seek reimbursement of all necessary expenditures, plus interest thereon pursuant to California Labor Code § 2802(b). Additionally, Plaintiff and Class Members are entitled to all available statutory penalties and an award of costs, expenses, and reasonable attorneys' fees, including those provided in California Labor Code § 2802(c), as well as other available remedies.

TWELFTH CAUSE OF ACTION

Unfair and Unlawful Business Practices

[Cal. Bus. & Prof. Code § 17200 *et. seq.*]

(On Behalf of Plaintiff and the Class against all Defendants)

77. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 76.

78. Each and every one of Defendant's acts and omissions in violation of the California Labor Code and/or the applicable IWC Wage Order as alleged herein, including but not limited to, Defendant's failure to provide required meal and rest breaks, failure to pay proper overtime and minimum wage compensation, unlawful rounding and requiring off-the-clock work, failure to pay all wages due to discharged or quitting employees or to pay timely wages, failure to furnish accurate itemized wage statements or to maintain required records, failure to provide and properly calculate mandatory California sick leave, failure to provide and properly calculate supplemental COVID-19 sick leave; and failure to indemnify employees for necessary expenditures incurred in the discharge of their duties, constitute an unfair and unlawful business practice under California Business and Professions Code § 17200 et seq.

79. Defendant's violations of California wage and hour laws constitute a business practice because Defendant's aforementioned acts and omissions were done repeatedly over a significant period of time, and in a systematic manner, to the detriment of Plaintiff and Class members.

80. Among other practices, Defendant has avoided payment of wages, overtime wages, the provision of meal and rest breaks, and other benefits as required by the California Labor Code, the California Code of Regulations, and the applicable IWC Wage Order. Further, Defendant has failed to record, report, and pay the correct sums of assessment to the state authorities under the California Labor Code and other applicable regulations.

81. As a result of these unfair and unlawful business practices, Defendant has reaped unfair and illegal profits during the Class period at the expense of Plaintiff and Class members, and members of the public. Defendant should be made to disgorge its ill-gotten gains and to restore them to Plaintiff and Class members.

82. Defendant's unfair and unlawful business practices entitle Plaintiff and Class members to seek preliminary and permanent injunctive relief, including but not limited to orders that Defendant account for, disgorge, and restore to Plaintiff and Class members the wages and other compensation unlawfully withheld from them. Plaintiff and Class members are entitled to restitution of all monies to be disgorged from Defendant in an amount according to proof at the time of trial.

THIRTEENTH CAUSE OF ACTION

Representative Action for Civil Penalties Pursuant to the

Private Attorneys General Act (“PAGA”)

[Cal. Lab. Code §§ 2698- 2699.5]

(On Behalf of Plaintiff and all Other Aggrieved Employees against all Defendants)

83. Plaintiff incorporates herein by specific reference as though fully set forth the allegations in paragraphs 1 through 82, with exception of the allegations in Paragraphs 15 through 17 (A) – (D).

1 84. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code
2 § 2699(c) and is a proper representative to bring a civil action on behalf of himself and other
3 current and former non-exempt employees of Defendant pursuant to the procedures specified in
4 California Labor Code § 2699.3, because Plaintiff was employed by Defendant and the alleged
5 violations of the California Labor Code were committed against Plaintiff.

6 85. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Labor
7 Code §§ 2698-2699.5, Plaintiff seeks to recover civil penalties, including but not limited to
8 penalties under California Labor Code §§ 2699, 210, 225.5, 226.3, 246, 558, 1174.5, 1197.1,
9 1199, and IWC Wage Order No. 7-2001, § 20, from Defendant in a representative action for the
10 violations set forth above, including but not limited to violations of California Labor Code §§ 201,
11 202, 203, 226, 226.7, 246, 247.5, 248.2, 248.6, 510, 512, 1174, 1194, 1197, and 1198. Plaintiff is
12 also entitled to an award of reasonable attorneys’ fees and costs pursuant to California Labor Code
13 § 2699(g)(1).

14 86. Defendant also failed to follow other Labor Code provisions. For instance,
15 Defendant also failed to provide supplemental COVID-19 sick leave. As of March 29, 2021,
16 Defendant employs 26 or more aggrieved employees. As such, Defendant is required to provide
17 80 hours of COVID-19 supplemental paid sick leave and compensate Plaintiff and the other Class
18 members at their regular rate of pay for supplemental sick leave, i.e. highest regular rate of pay,
19 taking into consideration non-discretionary bonuses, etc. See, California Labor Code
20 §248.1(b)(3)(A). Defendant has an obligation to provide COVID-19 supplemental sick leave is in
21 addition to regular sick leave. See, California Labor Code §248.1(b)(2)(D).

22 87. Moreover, based upon the incorporation of California Labor Code §246 into
23 California Labor Code §248.1(b)(2)(D), starting on March 29, 2021, or shortly thereafter,
24 Defendant is required to accurately reflect any offset and/or the current amount of COVID-19
25 supplemental sick leave available to Plaintiff and the other Class members. See, California Labor
26 Code §248.1(b)(2)(D). Further, Defendant is prohibited from requiring aggrieved employees from
27 use any other paid or unpaid leave, paid time off, or vacation time provided by Defendant before
28 the aggrieved employees were provided, used or in lieu of COVID-19 supplemental paid sick

1 leave. See, California Labor Code §248.1 (b)(4). Defendant is also in violation of California
2 Labor Code §§248.2, 248.3, 248.6 also for the reasons provided herein.

3 88. Defendant also failed to follow other provisions of IWC Wage Order No. 7-2001.
4 Defendant failed to provide for suitable resting and seating for Plaintiff and the other Class
5 members. IWC Wage Order No. 7-2001, § 13 provides: “Suitable resting facilities shall be
6 provided in an area separate from the toilet rooms and shall be available to employees during work
7 hours.” Defendant failed to provide suitable resting facilities by not providing a break room, or
8 any other appropriate designated area on the work premises, where Plaintiff and the other Class
9 members could take meal periods and rest breaks.

10 89. Moreover, Defendant failed to comply with IWC Wage Order No. 7-2001, § 14
11 which provides:

12 “(A) All working employees shall be provided with suitable seats when the nature of the
13 work reasonably permits the use of seats. (B) When employees are not engaged in the
14 active duties of their employment and the nature of the work requires standing, an adequate
15 number of suitable seats shall be placed in reasonable proximity to the work area and
16 employees shall be permitted to use such seats when it does not interfere with the
17 performance of their duties.”

18 82. Defendant has failed to provide suitable seating by not providing any seats or stools
19 at the cash registers operated by Class members. The nature of the work reasonably permits the
20 use of seats when cashiers assist customers by ringing up transactions. To the extent that the use of
21 seats could interfere with their work duties, at all times herein it is and has been reasonable for
22 Defendant to place seats in reasonable proximity to the cash registers to be used by Plaintiff and
23 the other Class members when doing so would not interfere with their job duties.

24 83. Pursuant to California Labor Code §§ 2699.3, on January 11, 2024, Plaintiff gave
25 written notice by certified mail to the California Labor and Workforce Development Agency
26 (“LWDA”) and Defendant of the specific provisions of the California Labor Code and IWC Wage
27 Orders alleged to have been violated, including the facts and theories to support the alleged
28 violations. Within sixty-five (65) calendar of the postmark date of Plaintiff’s notice letter, the

1 LWDA did not provide notice to Plaintiff that it intends to investigate the alleged violations.
2 Therefore, Plaintiff has complied with all of the requirements set forth in California Labor Code §
3 2699.3 to commence a representative action under PAGA.

4 **PRAYER FOR RELIEF**

5 **WHEREFORE**, Plaintiff, individually and on behalf of all other persons similarly
6 situated, respectfully prays for relief against Defendant and DOES 1 through 50, inclusive, and
7 each of them, as follows:

- 8 1. For compensatory damages in an amount to be ascertained at trial;
- 9 2. For restitution of all monies due to Plaintiff and Class members, as well as
10 disgorged profits from the unfair and unlawful business practices of Defendant;
- 11 3. For meal and rest break compensation pursuant to California Labor Code § 226.7
12 and IWC Wage Order No. 7-2001;
- 13 4. For liquidated damages pursuant to California Labor Code § 1194.2;
- 14 5. For preliminary and permanent injunctive relief enjoining Defendant from violating
15 the relevant provisions of the California Labor Code and the IWC Wager Orders, and from
16 engaging in the unlawful business practices complained of herein;
- 17 6. For waiting time penalties pursuant to California Labor Code § 203;
- 18 7. For statutory and civil penalties according to proof, including but not limited to all
19 penalties authorized by the California Labor Code §§ 210, 225.5, 226(e), 226.3, 1174.5, 1197.1,
20 and 2699;
- 21 8. For interest on the unpaid wages at 10 percent per annum pursuant to California
22 Labor Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other
23 applicable provision providing for pre-judgment interest;
- 24 9. For sick leave owed and due to Plaintiff and Class members.
- 25 10. For reasonable attorneys' fees and costs pursuant to California Labor Code §§
26 218.5, 226, 1194, 2802, and 2699, and California Civil Code § 1021.5, and/or any other applicable
27 provisions providing for attorneys' fees and costs;
- 28 11. For declaratory relief;

1 12. For an order requiring and certifying the First through Twelfth Causes of Action as
2 a class action;

3 13. For an order appointing Plaintiff as Class representative and Plaintiff's counsel as
4 Class counsel; and

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

6 **DEMAND FOR JURY TRIAL**

7 Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial
8 with respect to all issues triable of right by jury.

9 DATED: March 18, 2024

THE LAW OFFICE OF SCOTT E. WHEELER

10
11 By: _____


Scott Ernest Wheeler
Justin A. Wheeler