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12 **SUPERIOR COURT OF CALIFORNIA**
13 **COUNTY OF STANISLAUS**

15 JOSEPH CHRISTIANSEN, and all others
16 similarly situated,

17 Plaintiff,

18 vs.

19 THE SAVE MART COMPANIES,

20 Defendant.

Case No. CV-24-008369

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay All Minimum Wages,
2. Failure to Pay All Overtime Wages,
3. Failure to Provide Rest Periods and Pay Missed Rest Period Premiums,
4. Failure to Provide Meal Periods and Pay Missed Meal Period Premiums,
5. Failure to Maintain Accurate Records,
6. Failure to Pay Wages Timely during Employment,
7. Failure to Pay All Wages Earned and Unpaid at Separation,
8. Failure to Furnish Accurate Itemized Wage Statements, and,
9. Violation of the Unfair Competition Law.

DEMAND FOR JURY TRIAL

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This case has been assigned to Judge Sandhu, Sonny S.
Dept. 24
Department _____, for all purposes including Trial.

1 **I. INTRODUCTION**

2 1. The Save Mart Companies (“SaveMart” or “Defendant”) are one of the largest
3 grocery store conglomerates in Northern California, operating 187 stores in the state under brands
4 such as SaveMart Supermarkets, Lucky, and FoodMaxx.

5 2. These brands pride themselves on their bargain pricing, but those discounts come at
6 a steep price. SaveMart has a long history of systemically, strategically, and improperly classifying
7 employees as exempt from overtime pay laws to keep costs low.

8 3. While these wage theft practices may be good for SaveMart’s bottom line—indeed,
9 SaveMart has revenue of over 5 billion dollars annually—they come at the expense of SaveMart’s
10 approximately 14,000 employees.

11 4. Over the past two decades, SaveMart has been repeatedly sued and has repeatedly
12 settled claims over employee misclassification, most recently resolving claims from assistant
13 managers on a class wide basis in 2020 for millions of dollars in unpaid wages and other violations
14 of California law.

15 5. Rather than change how it operates its stores, however, SaveMart has continued its
16 unlawful and exploitative business practices, apparently concluding that it is cheaper to periodically
17 settle litigation than to follow the law.

18 6. Plaintiff Joseph Christiansen (“Plaintiff”), on behalf of himself and all others
19 similarly situated within the State of California (the “Class”),¹ brings this class action lawsuit to
20 hold SaveMart responsible, to force SaveMart to pay back wages to its employees, and to require
21 SaveMart to stop these unlawful practices, among other relief.

22 7. As further detailed below, Plaintiff and the Class were, and are, subject to
23 SaveMart’s policies and/or practices complained of herein and have been deprived of the rights
24 guaranteed to them by: California Labor Code sections 142.3, 201, 202, 203, 204, 210, 226, 226.3,
25 226.7, 256, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804,
26 and others that may be applicable; California Business and Professions Code sections 17200
27 through 17210 (“UCL”); section 3364, subdivision (b), of Title 8 of the California Code of

28 ¹ The Class is further defined in greater detail in Paragraph 90, below.

1 Regulations; section 3395, subdivisions (a)(l) and (c), of Title 8 of the California Code of
2 Regulations; and California Industrial Welfare Commission (“IWC”) Wage Order 7-2001
3 (“Applicable Wage Order”) and Cal. Code of Regs., tit. 8, § 11090.

4 **II. JURISDICTION AND VENUE**

5 8. This Court has subject matter jurisdiction over all causes of action asserted herein
6 pursuant to Article VI, section 10, of the California Constitution and Code of Civil Procedure
7 section 410.10 because this is a civil action in which the matter in controversy, exclusive of interest,
8 exceeds \$25,000, and because each cause of action asserted arises under the laws of the State of
9 California.

10 9. This Court has personal jurisdiction over SaveMart because SaveMart is a California
11 corporation headquartered in Stanislaus County, operates stores in Stanislaus County and
12 throughout California, transacts millions of dollars of business in the County and billions of dollars
13 of business throughout the State, and has caused injuries in the County and throughout the State.

14 10. Venue is proper in this judicial district, pursuant to section 395 of the Code of Civil
15 Procedure because SaveMart operates within California and does business within Stanislaus
16 County, California, and the unlawful practices identified in this Complaint were directed from
17 SaveMart’s headquarters in this County.

18 11. This matter is not appropriate for removal under the Class Action Fairness Act (28
19 U.S.C. §§ 1332, *et seq.*) because SaveMart is a California corporation headquartered in California,
20 and Plaintiff and all members of the putative class are citizens of California. Accordingly, there is
21 no diversity of citizenship between any party. Moreover, this action is not appropriate for removal
22 under the “local controversy” exception to the Class Action Fairness Act, as the proposed class
23 consists entirely of California citizens arising from practices that are entirely contained with the
24 State, the causes of action are limited to those arising under California law, on information and
25 belief, no other substantially similar class case has been filed against SaveMart within the past three
26 years, and the sole defendant, SaveMart, is a citizen of the state. *See* 28 U.S.C. § 1332(d)(4)(A).

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1 **III. THE PARTIES**

2 **A. PLAINTIFF**

3 12. Plaintiff Joseph (Joey) Christiansen is a former SaveMart employee who at all times
4 relevant to this action was over the age of 18 and resided in California.

5 **B. SAVEMART**

6 13. Defendant The Save Mart Companies is a California corporation headquartered in
7 Modesto, California.

8 14. At all times relevant to this action, including, without limitation, within the four
9 years prior to the filing of this action, SaveMart operated in the State of California, including within
10 Stanislaus County.

11 15. SaveMart is and/or was the legal employer of Plaintiff² and the Class at all times
12 relevant to this action, including, without limitation, within the four years prior to the filing of this
13 action.

14 **IV. COMMON FACTS & ALLEGATIONS**

15 **A. Wage Theft Impacts Millions of Americans Each Year, Resulting in Billions of**
16 **Dollars in Stolen Wages.**

17 16. Wage theft is a major problem that impacts millions of Americans each year, taking
18 billions of dollars away from blue collar workers and redistributing that wealth to multi-billion-
19 dollar corporations.³

20 17. Wage theft occurs anytime an employer fails to pay workers the full wages to which
21 they are legally entitled and takes many forms. One of the most common forms of wage theft occurs
22 when employers improperly designate hourly employees as salaried workers who are exempt from
23 overtime requirements and other laws designed to protect employees.

24 18. This allows the employers to *require* employees to work beyond 8-hours per day
25 and beyond 40-hours per week—often up to 50, 60, or 70 hours or more—for no additional

26 _____
27 ² Mr. Christiansen’s last day of employment with SaveMart was on or about March 31, 2024.

28 ³ See <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year/>

1 compensation.

2 19. As a result, employers have every incentive to designate employees as exempt: it
3 makes these additional hours of labor free, allowing the companies to pad their bottom lines at the
4 expense of their employees.

5 20. Only a small portion of stolen wages are ever recovered, meaning that most
6 employers face little or no consequences for their unlawful schemes.⁴

7 **B. SaveMart’s Decision to Misclassify Its Workers and Steal Their Wages.**

8 21. SaveMart is one of the largest grocery store conglomerates in Northern California,
9 operating 187 stores in the state, with approximately 14,000 employees, and with revenue of over
10 5 billion dollars annually.

11 22. Over the past two decades, SaveMart has been repeatedly sued and has repeatedly
12 settled claims over employee misclassification, most recently resolving claims from assistant
13 managers on a class wide basis in 2020 for millions of dollars in unpaid wages and other violations
14 of California law.⁵

15 23. Rather than change how it operates its stores, however, SaveMart has continued its
16 unlawful and exploitative employment practices, apparently concluding that it is cheaper to
17 periodically settle litigation than to comply with the law.

18 24. While SaveMart’s decision is unfortunate, it is not surprising. SaveMart has every
19 incentive to designate employees as exempt: it makes the additional hours of labor performed by
20 the employees free, allowing SaveMart to decrease its costs and increase its profits at the expense
21 of its employees.

22 25. Beginning in or about 2017, SaveMart began systemically reducing labor budgets
23 for hourly store employees—in other words, the amount of hourly employee labor that was
24 allocated by SaveMart corporate to each store was decreased.

25 26. However, SaveMart corporate kept the deliverables required for each of its stores
26 the same and/or increased them.

27 ⁴ <https://files.epi.org/uploads/240542.pdf>

28 ⁵ *Curley vs. Save Mart Supermarkets*, Alameda Superior Court Case No. RG13685740.

1 27. This meant that assistant managers and store managers had to personally make up
2 the differences, and rather than managing or running stores, managers and assistant managers were
3 forced to spend the majority of their time addressing gaps in hourly employee labor.

4 28. Common hourly tasks that managers and assistant managers were forced to spend
5 the majority of their time engaged in include:

- 6 a. Serving as cashiers at check-out stands
- 7 b. Bagging groceries
- 8 c. Collecting carts
- 9 d. Stocking shelves
- 10 e. Making sandwiches and cutting meat in the deli
- 11 f. Conducting janitorial work, including mopping floors and cleaning
12 bathrooms
- 13 g. Unloading freight
- 14 h. Operating forklifts

15 29. In many instances, managers and assistant managers were required to work 10-14
16 hours per day, six to seven days per week, spending a majority of their days on these and other
17 similar non-management tasks.

18 30. They were also forced to work without lunch or other required rest and meal breaks.

19 31. Moreover, because SaveMart's corporate policies set specific requirements for how
20 stores must be run, both store managers and assistant managers lacked any meaningful control or
21 autonomy over how tasks were allocated and/or performed.

22 32. The outbreak of COVID and the resulting impacts on the economy only made these
23 conditions worse, and beginning in March 2020, shortages in available hourly employees further
24 forced managers and assistant managers to spend more and more of their time—and in all events,
25 more than 50% of their time—on non-management, hourly employee work.

26 33. The experience of Mr. Christiansen—a long time SaveMart employee—is
27 instructive.

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1 **C. Mr. Christiansen’s Experience.**

2 34. Mr. Christiansen was hired by SaveMart in or about October 2000. Mr. Christiansen
3 was wrapping up high school at the time, and after high school continued his employment with
4 SaveMart.

5 35. Over the next two decades, Mr. Christiansen rose through the SaveMart ranks,
6 eventually becoming an assistant manager in or about 2007 and a store manager in or about April
7 2013.

8 36. While Mr. Christiansen started his career classified by SaveMart as an hourly
9 employee, at all times relevant to this lawsuit, including within the past four years, SaveMart
10 classified Mr. Christiansen as a salaried and overtime exempt employee.

11 37. Mr. Christiansen has a strong work ethic, and SaveMart exploited that work ethic
12 for its own benefit once Mr. Christiansen was in supposedly exempt positions.

13 38. Specifically, in or about 2017, SaveMart began systemically reducing the hourly
14 store labor budgets, which forced assistant managers and store managers, like Mr. Christiansen, to
15 cover any labor gaps.

16 39. Mr. Christian found himself spending more than half of each of his workdays
17 conducting hourly employee work, such as running cash registers, working the deli counter, and
18 stocking shelves.

19 40. The decreased labor budget combined with SaveMart’s corporate policies, also
20 forced Mr. Christiansen to spend more than 40 hours each week working for SaveMart, often
21 working 50 hours, 60 hours, or more per week.

22 41. He was also forced to work without lunch or other required rest and meal breaks

23 42. This became notably worse in 2020 with the outbreak of COVID.

24 43. Among other things, COVID further reduced the available hourly employees, first
25 due to health absences, and later due to labor shortages.

26 44. This meant that Mr. Christiansen was personally forced to work even longer hours
27 each day and each week to make up those shortfalls.

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1 45. On top of the reduced availability of hourly labor, SaveMart corporate added
2 additional, mandatory tasks related to cleaning each store, without providing Mr. Christiansen and
3 other assistant managers and managers additional budgets or resources to address those new tasks.

4 46. SaveMart also transitioned many vendor jobs and responsibilities—including store
5 maintenance—to store managers, once again, without any corresponding increase in available
6 hourly labor, meaning assistant managers and store managers were forced to perform these tasks
7 themselves.

8 47. At all times relevant to this Complaint, including within the past four years, Mr.
9 Christiansen had no material autonomy or control over store management, with the store’s tasks
10 and deliverables directed by SaveMart corporate.

11 **D. SaveMart’s Wage and Hour Violations.**

12 48. Plaintiff and the other members of the Class (“Class Members”) were at all relevant
13 times employed by the SaveMart within the State of California.

14 49. Plaintiff and the Class Members are, were, at all relevant times, non-exempt
15 employees for the purposes of minimum wages, overtime, rest breaks, meal periods, and the other
16 claims alleged in this Complaint.

17 **1. Minimum Wage Violations.**

18 50. Labor Code section 1197 requires employees to be paid at least the minimum wage
19 fixed by the IWC, and any payment of less than the minimum wage is unlawful. Similarly, Labor
20 Code section 1194 entitles “any employee receiving less than the legal minimum wage . . . to
21 recover in a civil action the unpaid balance of the full amount of this minimum wage.” Likewise,
22 the Applicable Wage Order also obligates employers to pay each employee minimum wages for all
23 hours worked. Cal. Code of Regs, tit. 8, § 11090. Labor Code section 1198 makes unlawful the
24 employment of an employee under conditions that the IWC Wage Orders prohibit.

25 51. These minimum wage standards apply to each hour that employees work. Therefore,
26 an employer’s failure to pay for any particular time worked by an employee is unlawful, even if
27 averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly
28 wage above minimum wage. *Armenta v. Osmose, Inc.* 135 Cal. App. 4th 314, 324 (2005).

1 52. Here, SaveMart failed to fully conform its pay practices to the requirements of the
2 law during the relevant statutory periods. The Class Members were not compensated for all hours
3 worked including, but not limited to, all hours they were subject to the control of SaveMart and/or
4 suffered or permitted to work under the California Labor Code and the Applicable Wage Order.

5 53. Labor Code sections 1194, subdivision (a), and 1194.2, subdivision (a), provide that
6 an employer who has failed to pay its employees the legal minimum wage is liable to pay those
7 employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount
8 equal to the wages due and interest thereon.

9 54. When employees, such as the Class Members, are not paid for all hours worked
10 under Labor Code section 1194, they are entitled to recover minimum wages for the time which
11 they received no compensation. *See Sillah v. Command International Security Services* 154 F.
12 Supp. 3d 891 (N.D. Cal. 2015) (employees suing for failure to pay overtime could recover
13 liquidated damages under Labor Code section 1194.2 if they also showed they were paid less than
14 minimum wage).

15 55. Labor Code section 1197.1 authorizes employees who are paid less than the
16 minimum wage fixed by an applicable state or local law, or by an order of the IWC, a civil penalty,
17 among other damages, as follows:

18 For any initial Violation that is intentionally committed, one hundred
19 dollars (\$100) for each underpaid employee for each pay period for
 which the employee is underpaid. . . .

20 For each subsequent violation for the same specific offense, two
21 hundred fifty dollars (\$250) for each underpaid employee for each
22 pay period for which the employee is underpaid regardless of
 whether the initial Violation is intentionally committed.

23 Lab. Code, § 1197.1, subd. (a)(1)-(2).

24 56. As set forth above, SaveMart failed to fully compensate the Class Members for all
25 minimum wages. Accordingly, the Class Members are entitled to recover liquidated damages for
26 violations of Labor Code section 1197.1.

27 57. Based upon these same factual allegations, the Class Members are likewise
28 entitled to penalties under Labor Code sections 1199.

1 **2. Overtime Violations.**

2 58. Labor Code section 510 requires employers to compensate employees who work
3 more than eight hours in one workday, forty hours in a workweek, and for the first eight hours
4 worked on the seventh consecutive day no less than one and one-half times the regular rate of pay
5 for an employee. Lab. Code, § 510, subd. (a). Further, Labor Code section 510 obligates employers
6 to compensate employees at no less than twice the regular rate of pay when an employee works
7 more than twelve hours in a day or more than eight hours on the seventh consecutive day of work.
8 Lab. Code, § 510, subd. (a). These rules are also reflected in the Applicable Wage Order.

9 59. In accordance with Labor Code section 1194 and the Applicable Wage Order, the
10 Class Members could not then agree and cannot now agree to work for a lesser wage than the
11 amount provided by Labor Code section 510 or the Applicable Wage Order.

12 60. Here, SaveMart violated its duty to accurately and completely compensate the Class
13 Members for all overtime worked. The Class Members worked hours that entitled them to overtime
14 compensation under the law but were not fully compensated for those hours.

15 61. These actions were and are in clear Violation of California’s overtime laws as set
16 forth in Labor Code sections 510, 1194, 1199, and the Applicable Wage Order. Cal. Code of Regs.,
17 tit. 8, § 11090. As a result of SaveMart’s faulty policies and practices, the Class Members were not
18 compensated for all hours worked or paid accurate overtime compensation.

19 **3. Rest Break Violations**

20 62. Pursuant to Labor Code section 226.7 and the Applicable Wage Order, SaveMart is
21 and was required to provide the Class Members with compensated, duty-free rest periods of not
22 less than ten minutes for every major fraction of four hours worked. Under the Applicable Wage
23 Order, an employer must authorize and permit all employees to take ten minute duty-free rest
24 periods for every major fraction of four hours worked. Cal. Code of Regs., tit. 8, § 1 1090.

25 63. Likewise, Labor Code section 226.7 provides that “[a]n employer shall not require
26 an employee to work during a meal or rest or recovery period mandated pursuant to an applicable
27 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission”
28 Lab. Code, § 226.7, subd. (b). Labor Code section 226.7 also provides that employers must pay

1 their employees one additional hour of pay at the employee’s regular rate for each workday that a
2 “meal or rest or recovery period is not provided.” Lab. Code, § 226.7, subd. (c). The “regular rate”
3 for these purposes must factor in all nondiscretionary payments for work performed by the
4 employee, including nondiscretionary bonuses, commissions, and other forms of wage payments
5 exceeding the employees’ base hourly rate. *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858,
6 878 (2021). Thus, the Wage Orders set when and for how long the rest period must take place and
7 the Labor Code establishes that violations of the IWC Wage Orders are unlawful and sets forth the
8 premium pay employer must pay their employees when employers fail to provide rest periods.

9 64. The California Supreme Court has held that, during required rest periods,
10 “employers must relieve their employees of all duties and relinquish any control over how
11 employees spend their break time.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 260
12 (2016). Relinquishing control over employees during rest periods requires that employees be “free
13 to leave the employer’s premises” and be “permitted to attend to personal business.” *Id.* at p. 275.
14 The *Brinker* Court explained in the context of rest breaks that employer liability attaches from
15 adopting an unlawful policy:

16 An employer is required to authorize and permit the amount of rest
17 break time called for under the wage order for its industry. If it does
18 not—if, for example, it adopts a uniform policy authorizing and
19 permitting only one rest break for employees working a seven-hour
20 shift when two are required—it has violated the wage order and is
21 liable.

22 *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1033 (2012).

23 65. Here, SaveMart did not permit the Class Members to take compliant duty-free rest
24 breaks, free from SaveMart’s control as required by Labor Code section 226.7, the Applicable
25 Wage Order, and applicable precedent. *See Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257,
26 269 (2016) (concluding that “during rest periods employers must relieve employees of all duties
27 and relinquish control over how employees spend their time”). At all relevant times, the Class
28 Members were not provided with legally-compliant and timely rest periods of at least ten minutes
for each four hour work period, or major fraction thereof due to SaveMart’s unlawful rest period
policies/practices. The Class Members were often expected and required to continue working

1 through rest periods to meet the expectations SaveMart established and finish the workday. When
2 the Class Members worked more than ten hours in a shift, SaveMart failed to authorize and/or
3 permit a third mandated rest period. As a result, the Class Members were unable to take compliant
4 rest periods.

5 66. In such cases where SaveMart did not offer the Class Members the opportunity to
6 receive a compliant off-duty rest period, “the court may not conclude employees voluntarily chose
7 to skip those breaks.” *Alberts v. Aurora Behavioral Health Care*, 241 Cal. App. 4th 388, 410 (2015)
8 (“If an employer fails to provide legally compliant meal or rest breaks, the court may not conclude
9 employees voluntarily chose to skip those breaks.”); *Brinker Rest. Corp. v. Superior Court*, *supra*,
10 53 Cal. 4th at p. 1033 (“No issue of waiver ever arises for a rest break that was required by law but
11 never authorized; if a break is not authorized, an employee has no opportunity to decline to take
12 it.”).

13 67. In addition to failing to authorize and permit compliant rest periods, the Class
14 Members were not compensated with one hour’s worth of pay at their regular rate of compensation
15 when they were not provided with a compliant rest period in accordance with Labor Code section
16 226.7, subdivision (c). Thus, SaveMart has violated Labor Code section 226.7 and the Applicable
17 Wage Order.

18 68. Based on the foregoing, Plaintiff seeks to recover, on behalf of himself and other
19 non-exempt employees, rest period premiums and penalties.

20 **4. Meal Break Violations.**

21 69. Labor Code section 512 and the Applicable Wage Order require employers to
22 provide employees with a thirty-minute uninterrupted and duty—free meal period within the first
23 five hours of work. Lab. Code, § 512, subd. (a) (“An employer shall not employ an employee for a
24 work period of more than five hours per day Without providing the employee with a meal period
25 of not less than 30 minutes”); Cal. Code of Regs., tit. 8, § 11090 (“No employer shall employ
26 any person for a work period of more than five (5) hours without a meal period of not less than 30
27 minutes”). Additionally, an employee who works more than ten hours per day is entitled to
28 receive a second thirty minute uninterrupted and duty-free meal period. Lab. Code, § 512, subd. (a)

1 (“An employer shall not employ an employee for a work period of more than 10 hours per day
2 without providing the employee with a second meal period of not less than 30 minutes.”).

3 70. “An on-duty meal period is permitted only when the nature of the work prevents an
4 employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal
5 break.” *Lubin v. The Wackenhut Corp.*, 5 Cal. App. 5th 926, 932 (2016). The written agreement
6 must include a provision allowing the employee to revoke it at any time. *Id.* Generally, the
7 California Department of Industrial Relations, Division of Labor Standards Enforcement (“DLSE”)
8 and courts have “found that the nature of the work exception applies: (1) where the work has some
9 particular external force that requires the employee to be on duty at all times, and (2) where the
10 employee is the sole employee of a particular employer.” *Id.* at p. 945 (cleaned up); *Abdullah v.*
11 *U.S. Security Associates, Inc.*, 731 F.3d 952, 958-959 (9th Cir. 2013). “[I]t is the employer’s
12 obligation to determine whether the nature of the work prevents an employee from being relieved
13 before requiring an employee to take an on-duty meal period.” *Lubin, supra*, 5 Cal. App. 5th at p.
14 946.

15 71. Here, the Class Members were never asked to sign any enforceable document
16 agreeing to an on-duty meal period. Moreover, nothing in the nature of their work involved the kind
17 of “external force” that might justify on-duty meal breaks. Nevertheless, SaveMart did not provide
18 compliant off-duty meal periods within the first five hours of work for the Class Members.

19 72. As with rest breaks, meal breaks must be duty-free. *Brinker Restaurant Corp. v.*
20 *Superior Court*, 53 Cal. 4th 1004, 1035 (2012) (“The IWC’s wage orders have long made a meal
21 period’s duty-free nature its defining characteristic.”). Relinquishing control over employees
22 during meal periods requires that employees be “free to leave the employer’s premises” and be
23 “permitted to attend to personal business.” *Augustus, supra*, 2 Cal. 5th at p. 275. Under Labor Code
24 section 512, if an employer maintains a uniform policy that does not authorize and permit the
25 amount of meal time called for under the law (as specified in the Labor Code and/or applicable
26 IWC Wage Order), “it has violated the wage order and is liable.” *Brinker Restaurant*, 53 Cal. 4th
27 at p. 1033.

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1 73. During the applicable statutory periods here, the Class Members were denied
2 legally-compliant and timely off-duty meal periods of at least thirty minutes due to SaveMart’s
3 unlawful meal period policy and practices. As a result of SaveMart’s uniform meal period policies
4 and practices, the Class Members were not permitted to take compliant first meal periods before
5 the end of the fifth hour of work. The Class Members were also not permitted to take second meal
6 periods for shifts in excess of ten hours. SaveMart thus violated Labor Code section 512 and the
7 Applicable Wage Order by failing to advise, authorize, or permit the Class Members to receive
8 thirty-minute, off-duty meal periods within the first five hours of their shifts.

9 74. Labor Code section 226.7 provides that “[a]n employer shall not require an
10 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
11 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission.” Lab.
12 Code, § 226.7, subd. (b). Labor Code section 226.7, subdivision (c), and the Applicable Wage Order
13 further obligate employers to pay employees one additional hour of pay at the employee’s regular
14 rate of compensation for each workday that the meal period is not provided. Lab. Code, § 226.7,
15 subd. (c); Cal. Code of Regs., tit. 8, § 11090 (“If an employer fails to provide an employee a meal
16 period in accordance with the applicable provisions of this order, the employer shall pay the
17 employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that
18 the meal period is not provided.”). The “regular rate” for these purposes must factor in all
19 nondiscretionary payments for work performed by the employee, including non-discretionary
20 bonuses, commissions, and other forms of wage payments exceeding the employees’ base hourly
21 rate. *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858, 878 (2021).

22 75. Accordingly, for each day that the Class Members did not receive compliant meal
23 periods, they were and are entitled to receive meal period premiums pursuant to Labor Code section
24 226.7 and the Applicable Wage Order. SaveMart, however, failed to pay the Class Members
25 applicable meal period premiums for many workdays that the employees did not receive a
26 compliant meal period. Thus, SaveMart has violated Labor Code section 226.7 and the Applicable
27 Wage Order.

28 ///

1 76. Based on the foregoing, Plaintiff seeks to recover, on behalf of himself and other
2 non-exempt employees, meal period premiums and penalties.

3 **5. Untimely Wages During Employment.**

4 77. Labor Code section 204 expressly requires employers who pay employees on a
5 weekly, biweekly, or semimonthly basis to pay all wages “not more than seven calendar days
6 following the close of the payroll period.” Labor Code section 210, subdivision (a), makes
7 employers who Violate Labor Code section 204 subject to a penalty of:

8 For any initial violation, one hundred dollars (\$100) for each failure
9 to pay each employee.

10 For each subsequent violation, or any willful or intentional Violation,
11 two hundred dollars (\$200) for each failure to pay each employee,
12 plus 25 percent of the amount unlawfully withheld.

13 Lab. Code, § 210, subd. (a)(1)-(2).

14 78. Notably, the penalty provided by Labor Code section 210 is “[i]n addition to, and
15 entirely independent and apart from, any other penalty provided in this article” Lab. Code, §
16 210, subd. (a).

17 79. Due to SaveMart’s failure to pay the Class Members the wages described above,
18 along with rest and meal break premiums, SaveMart failed to timely pay the Class Members within
19 seven calendar days following the close of payroll in accordance with Labor Code section 204 on
20 a regular and consistent basis. *See Parson v. Golden State FC, LLC*, 2016 WL 1734010, at p. *3-5,
21 2016 U.S. Dist. LEXIS 58299 (N.D. Cal., May 2, 2016) (finding that a failure to pay rest period
22 premiums can support claims under Labor Code sections 203 and 204).

23 **6. Untimely Wages at Separation.**

24 80. Labor Code section 203 provides “if an employer willfully fails to pay . . . any wages
25 of an employee who is discharged or who quits, the wages of the employee shall continue as a
26 penalty” for up to thirty days. Lab. Code § 203; *Mamika v. Barca*, 68 Cal. App. 4th 487, 492
27 (1998). As a result of SaveMart’s failure to pay the Class Members for the wages described above,
28 along with rest and meal break premiums, SaveMart violated and continues to violate Labor Code
section 203.

1 81. Due to SaveMart’s faulty pay policies, those Class Members whose employment
2 with SaveMart concluded were not compensated for each and every hour worked at the appropriate
3 rate. SaveMart has failed to pay formerly-employed Class Members whose sums were certain at
4 the time of termination within at least seventy-two hours of their resignation and have failed to pay
5 those sums for thirty days thereafter.

6 **7. Wage Statement Violations.**

7 82. SaveMart also failed to provide accurate itemized wage statements in accordance
8 with Labor Code sections 226, subdivisions (a)(1), (2), (5), and (9). Labor Code section 226,
9 subdivision (a), obligates employers, semi-monthly or at the time of each payment to furnish an
10 itemized wage statement in writing showing:

- 11 • The Gross Wages earned;
- 12 • The total hours worked by the employee;
- 13 • The number of piece-rate units earned and any applicable
14 piece rate if the employee is paid on a piece rate basis;
- 15 • All deductions, provided that all deductions made on written
16 orders of the employee may be aggregated and shown as one
17 item;
- 18 • The net wages earned;
- 19 • The inclusive dates of the period for which the employee is
20 paid;
- 21 • The name of the employee and only the last four digits of his
22 or her social;
- 23 • Security number or an employee identification number other
24 than a social security number;
- 25 • The name and address of the legal entity that is the employer;
and,
- 26 • All applicable hourly rates in effect during the pay period and
27 the corresponding number of hours worked at each hourly
28 rate by the employee.

26 83. Due to SaveMart’s failure to pay the Class Members properly as described above,
27 the wage statements issued do not indicate the correct amount of gross wages earned, total hours
28 worked, or the net wages earned, or the applicable hourly rates in effect during the pay period and

1 the corresponding number of hours worked at each hourly rate. Thus, SaveMart has violated Labor
2 Code section 226, subdivisions (a)(1), (2), (5), and (9).

3 84. In addition to Labor Code section 226, subdivision (a), SaveMart also knowingly
4 and intentionally failed to provide the Class Members with accurate itemized wage statements in
5 Violation of Labor Code section 226, subdivision (e). SaveMart knew that they were not providing
6 the Class Members with wage statements required by California law but nevertheless failed to
7 correct their unlawful practices and policies. *See Garnett v. ADT LLC*, 139 F. Supp. 3d 1121, 1134
8 (E.D. Cal. 2015) (finding the defendant knowingly and intentionally violated Labor Code section
9 226 because the “[d]efendant knew that it was not providing total hours worked to plaintiff or other
10 employees paid on commission” even though it believed that employees paid solely on commission
11 or commission and salary “are exempt and therefore we do not record hours on a wage statement.”).

12 **8. Recordkeeping Violations.**

13 85. Labor Code section 226, subdivision (a), requires employers to keep an accurate
14 record of, among other things, all hours worked by employees. Labor Code section 226.3 provides,
15 in pertinent part, as follows:

16 Any employer who violates subdivision (a) of Section 226 shall be
17 subject to a civil penalty in the amount of two hundred fifty dollars
18 (\$250) per employee per Violation in an initial citation and one
19 thousand dollars (\$1,000) per employee for each violation in a
20 subsequent citation, for which the employer fails to provide the
employee a wage deduction statement or fails to keep the records
required in subdivision (a) of Section 226. The civil penalties
provided for in this section are in addition to any other penalty
provided by law.

21 Lab. Code, § 226.3.

22 86. Likewise, Labor Code section 1174, subdivision (d), requires every employer,
23 including SaveMart, to:

24 Keep, at a central location in the state or at the plants or
25 establishments at which employees are employed, payroll records
26 showing the hours worked daily by and the wages paid to, and the
27 number of piece-rate units earned by and any applicable piece rate
28 paid to, employees employed at the respective plants or
establishments. These records shall be kept in accordance with rules
established for this purpose by the commission, but in any case shall
be kept on file for not less than three years. An employer shall not
prohibit an employee from maintaining a personal record of hours

1 worked, or, if paid on a piece—rate basis, piece-rate units earned.

2 Lab. Code, § 1174, subd. (d).

3 87. As explained in detail above, SaveMart failed to provide the Class Members with
4 accurate itemized wage statements. SaveMart did so, in part, because they failed to accurately track
5 hours worked by the Class Members. SaveMart has thus failed to keep accurate records of the “total
6 hours worked by the employee[s]” in Violation of Labor Code section 226, subdivision (a), and are
7 therefore subject to the penalties provided by Labor Code section 226.3. These penalties are “in
8 addition to any other penalty provided by law.” Lab. Code, § 226.3.

9 88. The failure to accurately track hours worked also resulted in a failure of SaveMart
10 to keep a record of all “payroll records showing the hours worked daily by” SaveMart’s employees,
11 including Plaintiff and the other Class Members, in violation of Labor Code section 1174,
12 subdivision (d).

13 **V. CLASS ACTION ALLEGATIONS**

14 89. Plaintiff brings this action on behalf himself and the Class Members pursuant to
15 section 382 of the Code of Civil Procedure.

16 90. The Class is defined as:

17 All SaveMart store managers and assistant store managers who are
18 presently residents of the State of California and who worked for
19 SaveMart at a California store location within the four years prior to
the filing of this lawsuit.

20 91. Plaintiff expressly reserves his right to amend the definition of the Class based upon
21 information learned in discovery.

22 92. **Numerosity / Ascertainability:** The Class Members are so numerous that joinder
23 of all members would be unfeasible and not practicable. The membership of the class is unknown
24 to Plaintiff at this time; however, it is estimated that the number of Class Members is greater than
25 100 individuals. The identity of such membership is readily ascertainable via inspection of
26 SaveMart’s employment records.

27 93. **Common Questions of Law and Fact:** There are common questions of law and
28 fact as to Plaintiff and all other similarly situated non-exempt employees, which predominate over

1 questions affecting only individual members including, without limitation:

- 2 a. Whether SaveMart's pay policies/practices resulted in a failure to pay the
- 3 Class Members for all hours worked, including all minimum wages;
- 4 b. Whether SaveMart's pay policies/practices resulted in a failure to pay the
- 5 Class Members for all required overtime wages at the Class Members'
- 6 regular rate of pay;
- 7 c. Whether SaveMart's rest period policies and practices afforded legally
- 8 compliant rest periods or compensation in lieu thereof;
- 9 d. Whether SaveMart's meal period policies and practices afforded legally
- 10 compliant meal periods or compensation in lieu thereof;
- 11 e. Whether SaveMart Maintained accurate employment records;
- 12 f. Whether SaveMart timely paid all wages during employment;
- 13 g. Whether SaveMart timely paid all wages earned and unpaid at separation
- 14 expenditures;
- 15 h. Whether SaveMart furnished legally-compliant wage statements to the Class
- 16 Members pursuant to Labor Code section 226; and,
- 17 i. Whether SaveMart's violations of the Labor Code and Applicable Wage
- 18 Order amounted to a violation of California's UCL.

19 94. **Predominance of Common Questions:** Common questions of law and fact
20 predominate over questions that affect only individual Class Members. The common questions of
21 law set forth above are numerous and substantial and stem from SaveMart's uniform policies and
22 practices applicable to each individual class member, such as SaveMart's uniform policy and
23 practice of failing to pay for all hours worked, SaveMart's uniform policies and practices which
24 failed to provide compliant rest periods, SaveMart's uniform policies and practices which failed to
25 provide compliant meal periods, SaveMart's failure to provide accurate itemized wage statements,
26 and others. As such, the common questions predominate over individual questions concerning each
27 individual Class Member's showing as to his or her eligibility for recovery or as to the amount of
28 his or her damages.

1 **95. Typicality:** The claims of Plaintiff are typical of the claims of the Class Members
2 because Plaintiff was employed by SaveMart as a non-exempt employee in California during the
3 statute(s) of limitation applicable to each cause of action pleaded in this Complaint. As alleged
4 herein, Plaintiff, like the other Class Members, was deprived of minimum, regular, and overtime
5 wages because of SaveMart's unlawful timekeeping policies and practices, were deprived of rest
6 periods and premium wages in lieu thereof, were deprived of meal periods and premium wages in
7 lieu thereof, were subject to SaveMart's uniform rest period policies and practices, were subject to
8 SaveMart's uniform meal period policies and practices, were not provided accurate itemized Wage
9 statements, were not paid all wages in full and on time, and were subject to other similar policies
10 and practices to which the Class Members were subject.

11 **96. Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
12 to represent fairly and adequately the interests of the Class Members. Moreover, Plaintiff's
13 attorneys are ready, willing, and able to fully and adequately represent the Class Members and
14 Plaintiff. Plaintiff's attorneys have prosecuted numerous wage-and-hour cases and numerous class
15 actions in state and federal court and are committed to vigorously prosecuting this action on behalf
16 of the Class Members.

17 **97. Superiority:** The California Labor Code is broadly remedial in nature and serves an
18 important public interest in establishing minimum working conditions and standards in California.
19 These laws and labor standards protect the average working employee from exploitation by
20 employers who have the responsibility to follow the laws and who may seek to take advantage of
21 superior economic and bargaining power in setting onerous terms and conditions of employment.
22 The nature of this action and the format of laws available to Plaintiff and the Class Members make
23 the class action format a particularly efficient and appropriate procedure to redress the Violations
24 alleged herein. If each employee were required to file an individual lawsuit, SaveMart would
25 necessarily gain an unconscionable advantage since it would be able to exploit and overwhelm the
26 limited resources of each individual plaintiff with its vastly superior financial and legal resources.

27 **98.** Moreover, requiring each Class Member to pursue an individual remedy would also
28 discourage the assertion of lawful claims by employees who would be disinclined to file an action

1 against their former or current employer for real and justifiable fear of retaliation and permanent
2 damages to their careers at subsequent employment. Further, the prosecution of separate actions by
3 the individual Class Members, even if possible, would create a substantial risk of inconsistent or
4 varying verdicts or adjudications with respect to the individual Class Members against SaveMart
5 herein, and which would establish potentially incompatible standards of conduct for SaveMart or
6 legal determinations with respect to individual Class Members which would, as a practical matter,
7 be dispositive of the interest of the other Class Members not parties to adjudications or which would
8 substantially impair or impede the ability of the Class Members to protect their interests.

9 99. Further, the claims of the individual Class Members are not sufficiently large to
10 warrant vigorous individual prosecution considering the concomitant costs and expenses attending
11 thereto. As such, the Class Members identified above are maintainable as a class under section 382
12 of the Code of Civil Procedure.

13 **VI. CAUSES OF ACTION**

14 **First Cause of Action**

15 *Failure to Pay All Minimum Wages*

16 100. Plaintiff realleges and incorporates by reference all previous paragraphs.

17 101. Section 4 of the Applicable Wage Order and Labor Code section 1197 establish the
18 right of employees to be paid minimum wages for all hours worked, in amounts set by state law.
19 Lab. Code, § 1197; Cal. Code of Regs., tit. 8, § 11090. Labor Code sections 1194, subdivision (a),
20 and 1194.2, subdivision (a), provide that an employee who has not been paid the legal minimum
21 wage as required by Labor Code section 1197 may recover the unpaid balance, together with
22 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
23 wages and interest accrued thereon.

24 102. Here, SaveMart failed to fully conform its pay practices to the requirements of the
25 law during the relevant statutory periods. Plaintiff and the other Class Members were not
26 compensated for all hours worked including, but not limited to, all hours they were subject to the
27 control of SaveMart and/or suffered or permitted to work under the Labor Code and the Applicable
28 Wage Order.

1 103. Labor Code section 1198 makes unlawful the employment of an employee under
2 conditions that the IWC Wage Orders prohibit. Labor Code sections 1194, subdivision (a), and
3 1194.2, subdivision (a), provide that an employer who has failed to pay its employees the legal
4 minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as
5 liquidated damages in an amount equal to the wages due and interest thereon.

6 104. As a direct and proximate result of SaveMart's unlawful conduct as alleged herein,
7 Plaintiff and the other Class Members have sustained economic damages, including but not limited
8 to unpaid wages and lost interest, in an amount to be established at trial, and they are entitled to
9 recover economic and statutory damages and penalties and other appropriate relief because of
10 SaveMart violations of the Labor Code and Applicable Wage Order.

11 105. SaveMart's practices and policies regarding illegal employee compensation are
12 unlawful and create an entitlement to recovery by Plaintiff and the other Class Members in a civil
13 action for the unpaid amount of minimum wages, liquidated damages, including interest thereon,
14 statutory penalties, attorney's fees, and costs of suit according to Labor Code sections 204, 218.5,
15 1194, 1194.2, 1197, and 1198, and Code of Civil Procedure section 1021.5.

16 **Second Cause of Action**

17 *Failure to Pay All Overtime Wages*

18 106. Plaintiff realleges and incorporates by reference all previous paragraphs.

19 107. This cause of action is brought pursuant to Labor Code sections 204, 510, 1194, and
20 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime
21 hours worked and provide a private right of action for the failure to pay all overtime compensation
22 for overtime work performed. At all times relevant herein, SaveMart was required to properly pay
23 Plaintiff and the other Class Members for all overtime wages earned pursuant to Labor Code section
24 1194 and the Applicable Wage Order. SaveMart caused Plaintiff and the other Class Members to
25 work overtime hours but did not compensate them at one and one-half times their regular rate of
26 pay for such hours in accordance with California law. Likewise, SaveMart caused Plaintiff and the
27 other Class Members to work double-time hours but did not compensate them at twice their regular
28 rate of pay for such hours in accordance with California law.

1 108. SaveMart failed to fully conform its pay practices to the requirements of California
2 law. This unlawful conduct includes but is not limited to SaveMart's uniform and unlawful pay
3 policies and practices of failing to accurately record all the time that non-exempt employees were
4 under the supervision and control of SaveMart. The foregoing policies and practices are unlawful
5 and allow Plaintiff and the other Class Members to recover in a civil action the unpaid amount of
6 overtime premiums owing, including interest thereon, statutory penalties, attorney's fees, and costs
7 of suit according to Labor Code section 204, 516, 1194, and 1198, the Applicable Wage Order, and
8 Code of Civil Procedure section 1021 .5.

9 **Third Cause of Action**

10 *Failure to Provide Rest Periods and Pay Missed Rest Period Premiums*

11 109. Plaintiff realleges and incorporates by reference all previous paragraphs.

12 110. Section 12 of the Applicable Wage Order, and Labor Code section 226.7 establish
13 the right of employees to be provided with a rest period of at least ten minutes for each four hour
14 period worked, or major fraction thereof. *See* Cal. Code of Regs., tit. 8, § 11090.

15 111. Due to SaveMart's unlawful rest period policies and practices described in detail
16 above, SaveMart did not authorize and permit Plaintiff and the other Class Members to take all rest
17 periods to which they were legally entitled. Despite SaveMart's violations, SaveMart has not paid
18 an additional hour of pay to Plaintiff and the other Class Members at their respective regular rates
19 of pay for each Violation, in accordance with California Labor Code section 226.7.

20 112. The foregoing Violations create an entitlement to recovery by Plaintiff and the other
21 Class Members in a civil action for the unpaid amount of rest period premiums owing, including
22 interest thereon, statutory penalties, and costs of suit pursuant to the Applicable Wage Order, and
23 California Labor Code section 226.7.

24 **Fourth Cause of Action**

25 *Failure to Provide Meal Periods and Pay Missed Meal Period Premiums*

26 113. Plaintiff realleges and incorporates by reference all previous paragraphs.

27 114. Plaintiff is informed and believes and thereon alleges, that SaveMart failed in its
28 affirmative obligation to provide its hourly non-exempt employees, including Plaintiff and the other

1 Class Members, with all required meal periods in accordance with the mandates of the Labor Code
2 and the Applicable Wage Order, for the reasons set forth herein above. Despite SaveMart's
3 Violations, SaveMart has not paid an additional hour of pay to Plaintiff and the other Class
4 Members at their respective regular rates of pay for each violation, in accordance with California
5 Labor Code section 226.7.

6 115. As a result, SaveMart is responsible for paying premium compensation for meal
7 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the
8 Applicable Wage Order and Labor Code sections 226.7 and 512, and Civil Code sections 3287,
9 subdivision (b), and 3289. *See* Cal. Code of Regs., tit. 8, § 11090.

10 **Fifth Cause of Action**

11 *Failure to Maintain Accurate Employment Records*

12 116. Plaintiff realleges and incorporates by reference all previous paragraphs.

13 117. Pursuant to California Labor Code section 1174, subdivision (d), an employer shall
14 keep at a central location in the state or at the plants or establishments at which employees are
15 employed, payroll records showing the hours worked daily by and wages paid to employees
16 employed at the respective plants or establishments. These records must be kept in accordance with
17 rules established for this purpose by the commission, but in any case shall be kept on file for not
18 less than two years.

19 118. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure
20 to maintain accurate and complete records.

21 119. Defendant has intentionally and willfully failed to keep accurate and complete
22 records showing the hours worked daily by and wages paid to Plaintiff and the other Class
23 Members. Thus, Plaintiff and the other Class Members have been denied their legal right and
24 protected interest in having available at a central location at the store or establishment where they
25 are employed, accurate and complete payroll records showing the hours worked daily by, and the
26 wages paid to, employees at those respective locations pursuant to Labor Code 1174.

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1 **Sixth Cause of Action**

2 *Failure to Pay Wages Timely During Employment*

3 120. Plaintiff realleges and incorporates by reference all previous paragraphs.

4 121. Labor Code section 200 provides that “wages” include all amounts for labor
5 performed by employees of every description, whether the amount is fixed or ascertained by the
6 standard of time, task, pieces, commission basis, or other method of calculation. Labor Code section
7 204 states that all wages earned by any person in any employment are payable twice during the
8 calendar month and must be paid not more than seven days following the close of the period when
9 the wages were earned. Labor Code section 210, subdivision (a), makes employers who violate
10 Labor Code section 204 subject to a penalty of \$100 for any initial failure to timely pay each
11 employee’s full wages and \$200 for each subsequent violation, plus 25% of the amount unlawfully
12 withheld.

13 122. Labor Code section 216 establishes that it is a misdemeanor for any person, with
14 regards to wages due, to “falsely deny the amount or validity thereof, or that the same is due, with
15 intent to secure himself, his employer or other person, any discount upon such indebtedness, or
16 with intent to annoy, harass, oppress, hinder, delay, or defraud, the person to whom such
17 indebtedness is due.”

18 123. SaveMart as a matter of established company policy and procedure in the State of
19 California, scheduled, required, suffered, and/or permitted Plaintiff and the other Class Members,
20 to work without full compensation, to work without legally-compliant off-duty meal periods, to
21 work without legally-compliant off-duty rest periods, and thereby failed to fully pay Plaintiff and
22 the other Class Members within seven days of the close of payroll, as required by law.

23 124. SaveMart, as a matter of established company policy and procedure in the State of
24 California, falsely deny they owe Plaintiff and the other Class Members these wages, with the intent
25 of securing for itself a discount upon its indebtedness and/or to annoy, harass, oppress, hinder,
26 delay, and/or defraud Plaintiff and the other Class Members.

27 125. SaveMart’s pattern, practice, and uniform administration of its corporate policy of
28 illegally denying employees compensation, as described herein, is unlawful and entitles Plaintiff

1 and the other Class Members to recover, pursuant to Labor Code section 218, the unpaid balance
2 of the compensation owed to them in a civil action and any applicable penalties, attorney fees, and
3 interest owed to them pursuant to Labor Code sections 210 and 218.5.

4 **Seventh Cause of Action**

5 *Failure to Pay All Wages Earned and Unpaid at Separation*

6 126. Plaintiff realleges and incorporates by reference all previous paragraphs.

7 127. The actionable period for this cause of action is three years prior to the filing of this
8 Complaint through the present, and ongoing until the violations are corrected or the class is
9 certified. *Pineda v. Bank of America, N.A.*, 50 Cal. 4th 1389, 1395 (2010); *Murphy v. Kenneth Cole*
10 *Productions, Inc.*, 40 Cal. 4th 1094, 1109 (2007); Code Civ. Proc., § 338, subd. (a).) Labor Code
11 sections 201 and 202 of the California Labor Code require SaveMart to pay all compensation due
12 and owing to its former employees (including the formerly-employed Class Members) during the
13 actionable period for this cause of action at or around the time that their employment is or was
14 terminated, or ended. Section 203 of the Labor Code provides that if an employer willfully fails to
15 pay compensation promptly upon discharge or resignation, as required by Sections 201 and 202,
16 then the employer is liable for penalties in the form of continued compensation up to thirty
17 workdays.

18 128. Due to SaveMart's faulty pay policies, those Class Members whose employment
19 with SaveMart has concluded were not compensated for each and every hour worked at the
20 appropriate rate. SaveMart has willfully failed to pay those formerly-employed Class Members
21 whose sum were certain at the time of termination within seventy-two hours of their resignation
22 and have failed to pay those sums for thirty days thereafter as required by Labor Code sections 201
23 through 203.

24 129. As a result, SaveMart is liable to the formerly-employed Class Members for waiting
25 time penalties amounting to thirty days wages for the formerly-employed Class Members pursuant
26 to Labor Code section 203. *See, e.g.*, DLSE Manual, § 4.3.4 (failure to pay any sum of wages due
27 upon termination entitles an employee to recover waiting time penalties).

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1 **Eighth Cause of Action**

2 *Failure to Furnish Accurate Itemized Wage Statements*

3 130. Plaintiff realleges and incorporates by reference all previous paragraphs.

4 131. Labor Code section 226, subdivision (a), obligates employers, semi-monthly or at
5 the time of each payment to furnish an itemized wage statement in writing showing:

6 The gross wages earned;

7 The total hours worked by the employee;

8 The number of piece-rate units earned and any applicable piece rate
9 if the employee is paid on a piece rate basis;

10 All Deductions, provided that all deductions made on written orders
11 of the employee may be aggregated and own as one item;

12 The net wages earned;

13 The inclusive dates of the period for which the employee is paid;

14 The name of the employee and only the last four digits of his or her
15 social security number or an employee identification number other
16 than a social security number;

17 The name and address of the legal entity that is the employer; and,

18 All applicable hourly rates in effect during the pay period and the
19 corresponding number of hours worked at each hourly rate by the
20 employee.

21 132. As set forth above, SaveMart issued and continues to issue wage statements to its
22 non-exempt employees including Plaintiff and the other Class Members that are inadequate under
23 Labor Code section 226, subdivision (a). By failing to pay Plaintiff and the other Class Members
24 properly as described above, SaveMart failed to include required information on their wage
25 statements, including, but not limited to, the gross wages earned, the net wages earned in violation
26 of Labor Code section 226, subdivision (a).

27 133. SaveMart's failure to comply with Labor Code section 226, subdivision (a), of the
28 Labor Code was knowing and intentional. Lab. Code, § 226, subd. (6).

134. As a result of SaveMart's issuance of inaccurate itemized wage statements to
Plaintiff and the other Class Members in violation of Labor Code section 226, subdivision (a),
Plaintiff and the other Class Members are each entitled to recover an initial penalty of \$50, and

1 subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per
2 Plaintiff and per each Class Member from SaveMart pursuant to Labor Code section 226,
3 subdivision (e), along with costs and reasonable attorneys' fees.

4 **Ninth Cause of Action**

5 *Violations of California's Unfair Competition Law*

6 135. Plaintiff realleges and incorporates by reference all previous paragraphs.

7 136. SaveMart has engaged and continues to engage in unfair and/or unlawful business
8 practices in California in violation of California Business and Professions Code section 17200
9 through 17210, by committing the unlawful acts described above. SaveMart's utilization of these
10 unfair and unlawful business practices deprived and continues to deprive Plaintiff and the other
11 Class Members of compensation to which they are legally entitled. These practices constitute unfair
12 and unlawful competition and provide an unfair advantage over SaveMart's competitors who have
13 been and/or are currently employing workers and attempting to do so in honest compliance with
14 applicable wage and hour laws.

15 137. Because Plaintiff is a victim of SaveMart's unfair and unlawful conduct alleged
16 herein, Plaintiff for himself and on behalf of the Class Members, seeks full restitution of monies,
17 as necessary and according to proof, to restore any and all monies withheld, acquired and/or
18 converted by SaveMart pursuant to Business and Professions Code sections 17203 and 17208.

19 138. The acts complained of herein occurred within the four years prior to the initiation
20 of this action and are continuing into the present and ongoing.

21 139. Plaintiff was compelled to retain the services of counsel to file this Court action to
22 protect his interests and those of the Class Members, to obtain restitution and injunctive relief on
23 behalf of SaveMart's current non-exempt employees and to enforce important rights affecting the
24 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
25 which Plaintiff is entitled to recover under Code of Civil Procedure section 1021.5.

26 **VII. PRAYER FOR RELIEF**

27 140. Plaintiff prays for judgment for himself and for all others on whose behalf this suit
28 is brought against SaveMart, as follows:

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- a. For an order certifying the proposed Class;
- b. For an order appointing Plaintiff as representatives of the Class;
- c. For an order appointing Plaintiff's counsel as counsel for the Class;
- d. For the failure to pay all minimum wages, compensatory, consequential, general, and special damages according to proof pursuant to Labor Code sections 1194, 1194.2, 1197, and others as may be applicable;
- e. For the failure to pay all overtime wages, compensatory, consequential, general, and special damages according to proof pursuant to Labor Code sections 204, 510, 1194, 1198, and others as may be applicable;
- f. For the failure to provide rest periods and pay missed rest period premiums, compensatory, consequential, general, and special damages according to proof pursuant to Labor Code section 226.7;
- g. For the failure to provide meal periods and pay missed meal period premiums, compensatory, consequential, general, and special damages according to proof pursuant to Labor Code sections 226.7 and 512;
- h. For the failure to maintain accurate employment records, penalties pursuant to Labor Code sections 226.3, 1174.5, and others that may be applicable;
- i. For the failure to pay wages timely during employment, the unpaid balance of the compensation owed to Plaintiff and the other Class Members and any applicable penalties owed to them pursuant to Labor Code section 210;
- j. For the failure to pay all wages earned and unpaid at separation, statutory waiting time penalties pursuant to Labor Code sections 201 through 203, for the Class Members who quit or were fired in an amount equal to their daily wage multiplied by thirty days, as may be proven;
- k. For the Violations of California's Unfair Competition Law, restitution to Plaintiff and the other Class Members of all money and/or property unlawfully acquired by SaveMart by means of any acts or practices declared by this Court to be in violation of Business and Professions Code sections

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17200 through 17210;

- l. Prejudgment interest on all due and unpaid wages pursuant to Labor Code section 21 8.6 and Civil Code sections 3287 and 3289;
- m. On all causes of action for which attorneys’ fees may be available, for attorneys’ fees and costs as provided by Labor Code sections 218.5, 226, Code of Civil Procedure section 1021.5, and others as may be applicable;
- n. For an order enjoining SaveMart, and each of them, and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or duties adumbrated in this Complaint; and,
- o. For such other and further relief, this Court may deem just and proper.

Dated: October 18, 2024

By: WESLEY M. GRIFFITH
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1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands a trial by jury of Plaintiff's and Class Members' claims against
3 SaveMart.

4 Dated: October 18, 2024

5 By: WESLEY M. GRIFFITH
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