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13 Attorneys for Representative Plaintiff,
14 and the Plaintiff Class

15 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **IN AND FOR THE COUNTY OF SAN DIEGO**

17 LEWIS PALOMBO, individually, and on
18 behalf of all others similarly situated,

19 Plaintiff,

20 vs.

21 ALBERTSONS COMPANIES, INC., and
22 DOES 1 through 100, inclusive,

23 Defendant.

Case No. 37-2020-00000428-CU-OE-CTL

CLASS ACTION

**COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF AND
RESTITUTION**

[JURY TRIAL DEMANDED]

24 Representative Plaintiff alleges as follows:

25 **INTRODUCTION**

26 1. This is a class action seeking unpaid compensation for wages, meal and/or rest
27 period violations, interest thereon, liquidated damages and other penalties, injunctive and other
28 equitable relief, and reasonable attorneys' fees and costs under, *inter alia*, California Labor Code
§§ 200-204, 210, 218, *et seq.*, 226, *et seq.*, 256, 510, 512, 558, 1174, 1174.5, 1182.12, 1194 *et*
seq., 1197, 1197.1, 1198, California Business and Professions Code §§ 17200, *et seq.* and

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
01/03/2020 at 09:47:07 AM
Clerk of the Superior Court
By Jose Hernandez, Deputy Clerk

1 California Code of Civil Procedure § 1021.5. Plaintiff Lewis Palombo (“Representative Plaintiff”
2 or “Plaintiff”) brings this action on behalf of himself and all other persons similarly situated
3 (“Class Members” and/or the “Plaintiff Class”) who are or have been employed by defendant
4 Albertsons Companies, Inc., and/or Does 1 through 100, inclusive (collectively “Defendant”) as
5 assistant store directors within the State of California within the applicable class period.

6 2. The relevant class period extends through trial, based upon the allegation that the
7 violations of California’s wage and hour laws, as described more fully below, have been ongoing
8 throughout that time.

9 3. During the class period, Defendant has had a consistent policy of (1) unlawfully
10 denying Plaintiff and Class Members statutorily-mandated meal and rest periods, (2) willfully
11 failing to provide Plaintiff and Class Members with accurate semimonthly itemized wage
12 statements reflecting the total number of hours each worked, the applicable deductions, and the
13 applicable hourly rates in effect during the pay period, and (3) willfully failing to pay compensation
14 in a prompt and timely manner to Plaintiff and those Class Members whose employment with
15 Defendant has terminated.

16 4. Defendant operates grocery stores within California for which Representative
17 Plaintiff worked as an assistant store director. The Representative Plaintiff is informed and
18 believes and, on that basis, alleges that, within the class period, Defendant employed hundreds of
19 individuals in California in recent years as assistant store directors, employment positions which
20 did not, and currently do not, meet any known test for exemption from the payment of overtime
21 wages and/or the entitlement to meal or rest periods.

22 5. Despite actual knowledge of these facts and legal mandates, Defendant has and
23 continues to enjoy an advantage over its competition and a resultant disadvantage to its workers
24 by electing not to pay all wages due (including missed meal and rest period compensation) and/or
25 all penalties due (including “waiting time” penalties) to its California based assistant store
26 directors.

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PLAINTIFF

11. Representative Plaintiff Lewis Palombo is a natural person who was employed by Defendant as an assistant store director during the class period.

12. In these capacities, Representative Plaintiff is and was entitled to full, uninterrupted and statutorily-mandated meal and rest periods, as well as other benefits of employment as set forth herein.

DEFENDANT

13. Representative Plaintiff is informed and believes and, based thereon, alleges that, at all times herein relevant, defendant Albertsons Companies, Inc., and Does 1 through 100, did business within the State of California providing security services.

14. Those defendants identified as Does 1 through 100, inclusive, are and were, at all relevant times herein-mentioned, officers, directors, partners, and/or managing agents of some or each of the remaining defendants. Representative Plaintiff is informed and believes and, on that basis, alleges that, at all relevant times herein mentioned, defendant Albertsons Companies, Inc. and those identified as Does 1 through 100, inclusive, employed and/or exercised control over the wages, hours, and/or working conditions of the Representative Plaintiff and Class Members within the State of California.

15. The Representative Plaintiff is unaware of the true names and capacities of those defendants sued herein as Does 1 through 100, inclusive and, therefore, sues these defendants by such fictitious names. The Representative Plaintiff will seek leave of court to amend this Complaint when such names are ascertained. The Representative Plaintiff is informed and believes and, on that basis, alleges that each of the fictitiously-named defendants were responsible in some manner for, gave consent to, ratified, and/or authorized the conduct herein alleged and that the Representative Plaintiff's and Class Members' damages, as herein alleged, were proximately caused thereby.

16. Representative Plaintiff is informed and believes and, on that basis, alleges that, at all relevant times herein mentioned, each of the defendants was the agent and/or employee of each

1 of the remaining defendants and, in doing the acts herein alleged, was acting within the course and
2 scope of such agency and/or employment.

3
4 **CLASS ACTION ALLEGATIONS**

5 17. The Representative Plaintiff brings this action on behalf of himself and as a class
6 action on behalf of all persons similarly situated and proximately damaged by Defendant's conduct
7 including, but not necessarily limited to, the following Plaintiff Class:

8 "All persons employed by Defendant as non-exempt assistant store
9 directors in California after January 3, 2016."

10 18. Defendant's officers and directors are excluded from the Plaintiff Class.

11 19. This action has been brought and may properly be maintained as a class action
12 under California Code of Civil Procedure § 382 because there is a well-defined community of
13 interest in the litigation and the proposed class is easily ascertainable.

14 a. Numerosity: A class action is the only available method for the fair
15 and efficient adjudication of this controversy. Insofar as
16 Representative Plaintiff is informed and believes and, on that basis,
17 alleges that there are sufficient Class Members to meet the
18 numerosity requirement, the members of the Plaintiff Class are so
19 numerous that joinder of all members is impractical, if not
20 impossible. Membership in the class will be determined upon
21 analysis of employee and payroll, among other, records maintained
22 by Defendant.

23 b. Commonality: The Representative Plaintiff and the Class Members
24 share a community of interests in that there are numerous common
25 questions and issues of fact and law which predominate over any
26 questions and issues solely affecting individual members, including,
27 but not necessarily limited to:

- 28
- 1) Whether Defendant violated California Business and Professions Code § 17200, *et seq.* by failing to provide meal and/or rest breaks to Class Members working eligible shifts;
 - 2) Whether Defendant violated California Labor Code § 1174 by failing to keep accurate records of employees' hours of work;
 - 3) Whether Defendant violated California Labor Code §§ 201-204 by failing to pay wages due and owing at the time that certain Class Members' employment with Defendant terminated;

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- 4) Whether Defendant violated California Labor Code § 226 by failing to provide semimonthly itemized statements to Class Members of total hours worked by each and all applicable hourly rates in effect during the pay period; and
 - 5) Whether Class Members are entitled to “waiting time” penalties, pursuant to California Labor Code § 203.
- c. Typicality: The Representative Plaintiff’s claims are typical of the claims of Class Members. The Representative Plaintiff and Class Members sustained damages arising out of and caused by Defendant’s common course of conduct in violation of law, as alleged herein.
- d. Adequacy of Representation: The Representative Plaintiff in this class action is an adequate representative of the Plaintiff Class in that the Representative Plaintiff’s claims are typical of those of the Plaintiff Class and the Representative Plaintiff has the same interest in the litigation of this case as the Class Members. The Representative Plaintiff is committed to vigorous prosecution of this case and has retained competent counsel who are experienced in conducting litigation of this nature. The Representative Plaintiff is not subject to any individual defenses unique from those conceivably applicable to Class Members as a whole. The Representative Plaintiff anticipates no management difficulties in this litigation.
- e. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes or may make it impractical for Class Members to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought, or be required to be brought, by each individual Class Member, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings which might be dispositive of the interests of other Class Members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.

COMMON FACTUAL ALLEGATIONS

20. As described herein, for years, Defendant has knowingly failed to adequately compensate those employees within the class definition identified above for all wages earned (including premium wages such as compensation for missed meal and/or rest periods) under the California Labor Code and the applicable IWC Wage Order, thereby enjoying a significant competitive edge over other service providers.

1 21. Defendant has declined to pay these wages, even upon a Class Member's
2 termination or resignation from employment, in blatant violation of California Labor Code § 201
3 and/or § 202.

4 22. California Labor Code §§ 201 and 202 require Defendant to pay severed employees
5 all wages due and owed to the employee immediately upon discharge or within 72 hours of
6 resignation of their positions, in most circumstances. California Labor Code § 203 provides that
7 an employer who willfully fails to timely pay such wages must, as a penalty, continue to pay the
8 subject employees' wages until the back wages are paid in full or an action is commenced, and the
9 payment of such penalty shall continue for a period of time up to 30 days.

10 23. Furthermore, despite its knowledge of the Representative Plaintiff's and the Class
11 Members' entitlement to compensation for all hours worked, Defendant violated California Labor
12 Code § 1174(d) by failing to provide or require the use, maintenance, or submission of time records
13 by members of the Plaintiff Class. Defendant also failed to provide the Representative Plaintiff
14 and Class Members with accurate semimonthly itemized statements of the total number of hours
15 worked by each, and all applicable hourly rates in effect, during the pay period, in violation of
16 California Labor Code § 226. In failing to provide the required documents, Defendant has not only
17 failed to pay its workers the full amount of compensation due, but the company has also, until now,
18 effectively shielded itself from its employees' scrutiny by concealing the magnitude and financial
19 impact of its wrongdoing that such documents might otherwise have led workers to discover.

20 24. Representative Plaintiff and all persons similarly situated are entitled to unpaid
21 compensation, yet, to date, have not received such compensation despite many of the same having
22 been terminated by and/or resigned from Defendant's employ. More than 30 days have passed
23 since certain Class Members have left Defendant's employ.

24 25. As a consequence of Defendant's willful conduct in not paying former employees'
25 compensation for all hours worked in a prompt and timely manner, Representative Plaintiff and
26 certain Class Members are entitled to up to 30 days wages as a penalty under California Labor
27 Code § 203, together with attorneys' fees and costs.

28

1 29. During the limitations period, Representative Plaintiff and Class Members
2 performed work for Defendant, oftentimes in excess of eight hours in a workday and/or forty hours
3 in a workweek. The number of hours will be proven at trial.

4 30. During the limitations period, Defendant refused to compensate Representative
5 Plaintiff and Class Members for all of the wages earned, in violation of the applicable IWC Wage
6 Order(s) and provisions of the California Labor Code.

7 31. At all relevant times, Defendant was aware of, and was under a duty to comply
8 with, the overtime provisions of the California Labor Code including, but not limited to, California
9 Labor Code §§ 510, 1194, and 1198.

10 32. California Labor Code § 510(a), in pertinent part, provides:

11 Any work in excess of eight hours in one workday and any work in
12 excess of 40 hours in any one workweek and the first eight hours
13 worked on the seventh day of work in any one workweek shall be
14 compensated at the rate of no less than one and one-half times the
15 regular rate of pay for an employee.

14 33. California Labor Code § 1194(a), in pertinent part, provides:

15 Notwithstanding any agreement to work for a lesser wage, any
16 employee receiving less than the legal minimum wage or the legal
17 overtime compensation applicable to the employee is entitled to
18 recover in a civil action the unpaid balance of the full amount of this
19 minimum wage or overtime compensation, including interest
20 thereon, reasonable attorneys' fees, and costs of suit.

19 34. California Labor Code § 1198, in pertinent part, provides:

20 The maximum hours of work and the standard conditions of labor
21 fixed by the commission shall be the maximum hours of work and
22 the standard conditions of labor for employees. The employment of
23 any employee for longer hours than those fixed by the order or under
24 conditions of labor prohibited by the order is unlawful.

23 35. By refusing to compensate Representative Plaintiff and Class Members for
24 overtime wages earned, Defendant violated those California Labor Code provisions cited herein
25 as well as the applicable IWC Wage Order(s).

26 36. Defendant's conduct, as heretofore detailed, represents underpayment of wages
27 pursuant to California Labor Code §§ 218 *et seq.*, 558, 1194 *et seq.*, and 1197 *et seq.*, and 1198,
28 for which Representative Plaintiff seeks damages and/or penalties according to proof.

1 37. As a direct and proximate result of Defendant's unlawful conduct, as set forth
2 herein, Representative Plaintiff and Class Members have sustained damages, including loss of
3 earnings for hours of overtime worked on behalf of Defendant, in an amount to be established at
4 trial. As a further direct and proximate result of Defendant's unlawful conduct, as set forth herein,
5 Representative Plaintiff and Class Members are entitled to recover penalties in amounts to be
6 established at trial, as well as attorneys' fees and costs, and restitution, pursuant to statute.

7
8 **SECOND CAUSE OF ACTION**
9 **FAILURE TO PROVIDE MEAL AND REST PERIODS**
10 **(California Labor Code §§ 226.7 and 512)**

11 38. Representative Plaintiff incorporates in this cause of action each and every
12 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
13 herein.

14 39. At all relevant times, Defendant was aware of and was under a duty to comply with
15 California Labor Code § 226.7 and §512.

16 40. California Labor Code § 226.7 provides:

17 (a) No employer shall require any employee to work during any
18 meal or rest period mandated by an applicable order of the Industrial
19 Welfare Commission.

20 (b) If an employer fails to provide an employee a meal period or
21 rest period in accordance with an applicable order of the Industrial
22 Welfare Commission, the employer shall pay the employee one
23 additional hour of pay at the employee's regular rate of
24 compensation for each work day that the meal or rest period is not
25 provided.

26 41. Moreover, California Labor Code § 512(a) provides:

27 An employer may not employ an employee for a work period of
28 more than five hours per day without providing the employee with
a meal period of not less than 30 minutes, except that if the total
work period per day of the employee is no more than six hours, the
meal period may be waived by mutual consent of both the employer
and employee. An employer may not employ an employee for a
work period of more than 10 hours per day without providing the
employee with a second meal period of not less than 30 minutes,
except that if the total hours worked is no more than 12 hours, the
second meal period may be waived by mutual consent of the
employer and the employee only if the first meal period was not
waived.

1 42. Sections 11 and 12, respectively, of the applicable IWC Wage Order mandate that
2 employers provide all applicable meal and/or rest periods to non-exempt (including exempt-
3 misclassified) employees.

4 43. Section 11 of the applicable IWC Wage Order provides:

5 (A) No employer shall employ any person for a work period of more
6 than five (5) hours without a meal period of not less than 30
minutes...

7 (B) An employer may not employ an employee for a work period of
8 more than ten (10) hours per day without providing the
9 employee with a second meal period of not less than 30
minutes...

10 (C) If an employer fails to provide an employee a meal period in
11 accordance with the applicable provisions of this order, the
12 employer shall pay the employee one (1) hour of pay at the
employee's regular rate of compensation for each workday that
the meal period is not provided.

13 44. Moreover, Section 12 of the applicable IWC Wage Order provides:

14 (A) Every employer shall authorize and permit all employees to
15 take rest periods, which insofar as practicable shall be in the middle
16 of each work period. The authorized rest period time shall be based
on the total hours worked daily at the rate of ten (10) minutes net
rest time per four (4) hours or major fraction thereof

17 (B) If an employer fails to provide an employee a rest period in
18 accordance with the applicable provisions of this order, the
19 employer shall pay the employee one (1) hour of pay at the
20 employee's regular rate of compensation for each workday that the
rest period is not provided.

21 45. By failing to consistently provide uninterrupted thirty-minute meal periods within
22 the first five hours of work each day and/or uninterrupted net ten-minute rest periods to
23 Representative Plaintiff and Class Members, Defendant violated the California Labor Code and
24 applicable IWC Wage Order provisions.

25 46. Representative Plaintiff is informed and believes and, on that basis, alleges that
26 Defendant has never paid the one hour of compensation to any Class Member due to its violations
27 of the California Labor Code and applicable IWC Wage Order provisions.
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1 47. As a direct and proximate result of Defendant's unlawful conduct, as set forth
2 herein, Representative Plaintiff and Class Members have sustained damages, including lost
3 compensation resulting from missed meal and/or rest periods, in an amount to be established at
4 trial.

5 48. As a further direct and proximate result of Defendant's unlawful conduct, as set
6 forth herein, certain Class Members are entitled to recover "waiting time" and other penalties, in
7 amounts to be established at trial, as well as recovery of attorneys' fees and costs, pursuant to
8 statute.

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10 **THIRD CAUSE OF ACTION**
FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
11 **(California Labor Code §§ 226 and 1174)**

12 49. Representative Plaintiff incorporates in this cause of action each and every
13 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
14 herein.

15 50. California Labor Code § 226(a) provides:

16 Each employer shall semimonthly, or at the time of each payment of
17 wages, furnish each of his or her employees either as a detachable
18 part of the check, draft or voucher paying the employee's wages, or
19 separately when wages are paid by personal check or cash, an
20 itemized wage statement in writing showing: (1) gross wages
21 earned; (2) total number of hours worked by each employee whose
22 compensation is based on an hourly wage; (3) all deductions,
provided that all deductions made on written orders of the employee
may be aggregated and shown as one item; (4) net wages earned; (5)
the inclusive date of the period for which the employee is paid; (6)
the name of the employee and his or her social security number; and
(7) the name and address of the legal entity which is the employer.

23 51. Moreover, California Labor Code § 226(e) provides:

24 An employee suffering injury as a result of a knowing and
25 intentional failure by an employer to comply with subdivision (a) is
26 entitled to recover the greater of all actual damages or fifty dollars
27 (\$50) for the initial pay period in which a violation occurs and one
28 hundred dollars (\$100) per employee for each violation in a
subsequent pay period, not exceeding an aggregate penalty of four
thousand dollars (\$4,000), and is entitled to an award of costs and
reasonable attorney's fees.

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52. Finally, California Labor Code § 1174(d) provides:

Every person employing labor in this state shall . . . [k]eep, at a central location in the state...payroll records showing the hours worked daily by and the wages paid to...employees.... 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 two years.

53. Representative Plaintiff seeks to recover actual damages, costs, and attorneys' fees under these provisions on behalf of himself and on behalf of all Class Members.

54. Defendant has failed to provide timely, accurate itemized wage statements to the Representative Plaintiff and Class Members in accordance with California Labor Code § 201.3, 204, 226, 226.3 1174, 1174.5. Representative Plaintiff is informed and believes and, on that basis, alleges that none of the statements provided by Defendant accurately reflected actual gross wages earned, net wages earned, or the appropriate deductions of such Class Members.

55. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, the Representative Plaintiff and Class Members have sustained damages in an amount to be established at trial and are entitled to recover attorneys' fees and costs of suit.

FOURTH CAUSE OF ACTION
FAILURE TO PAY WAGES ON TERMINATION
(California Labor Code § 203)

56. Representative Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

57. California Labor Code § 203 provides that:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

1 costs of full compliance with fair, lawful, and honest business practices, ordinarily borne by its
2 responsible competitors and as set forth in legislation and the judicial record.

3
4 **RELIEF SOUGHT**

5 **WHEREFORE, the Representative Plaintiff**, on behalf of himself and the proposed
6 Plaintiff Class, prays for judgment and the following specific relief against defendants, and each
7 of them, jointly and separately, as follows:

8 1. That the Court declare, adjudge, and decree that this action is a proper class action
9 and certify the proposed class and/or any other appropriate subclasses under California Code of
10 Civil Procedure § 382;

11 2. That the Court declare, adjudge, and decree that Defendant willfully violated its
12 legal duties to pay all wages due under the California Labor Code and the applicable California
13 Industrial Welfare Commission Wage Orders;

14 3. That the Court make an award to Representative Plaintiff and Class Members of
15 one hour of pay at each employee's regular rate of compensation for each workday that a meal
16 period was not provided;

17 4. That the Court make an award to Representative Plaintiff and Class Members of
18 one hour of pay at each employee's regular rate of compensation for each workday that a rest
19 period was not provided;

20 5. That the Court Order Defendant to pay restitution to Representative Plaintiff and
21 Class Members due to Defendant's unlawful activities, pursuant to California Business and
22 Professions Code §§ 17200-17208;

23 6. That the Court further enjoin Defendant, ordering it to cease and desist from
24 unlawful activities in violation of California Business and Professions Code § 17200, *et seq.*;

25 7. For interest on the amount of any and all economic losses, at the prevailing legal
26 rate;

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8. That the Court make an award to Representative Plaintiff and Class Members of penalties, pursuant to California Labor Code §§ 203, 226, 558, and 1174.5, in an amount to be proven at trial;

9. For reasonable attorneys' fees, pursuant to California Code of Civil Procedure § 1021.5 and Labor Code § 218.5;

10. For costs of suit and any and all such other relief as the Court deems just and proper; and


11. For all other Orders, findings and determinations identified and sought in this Complaint.

JURY DEMAND

Representative Plaintiff, on behalf of himself the Plaintiff Class, hereby demands a trial by jury.

Dated: January 3, 2020

SCOTT COLE & ASSOCIATES, APC

By: 
Andrew Daniel Weaver, Esq.
Attorneys for Representative Plaintiff
And the Plaintiff Class