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SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA
CIVIL - UNLIMITED JURISDICTION

GUILLERMO PALATTO, individually
and on behalf of other members of the
general public similarly situated,

Plaintiff,

vs.

SAFEWAY INC.;
GROCERYWORKS.COM, LLC;
GROCERYWORKS.COM OPERATING
COMPANY, LLC.; and DOES 1 to 10,

Defendants.

Case No. RG19020914

FIRST AMENDED COMPLAINT

[CLASS ACTION]

1. Labor Code §§ 510, 1194 (Cal. Wages)
2. Labor Code §§ 226.7, 512 (Meal Breaks)
3. B&P § 17200 (Cal. Wages)
4. Labor Code § 203 (Waiting Time Penalties)
5. Labor Code § 226 and 1174 (Wage Statement Penalties)
6. Labor Code § 2699 (PAGA Penalties)

ENDORSED
FILED
ALAMEDA COUNTY

JUL 08 2019

CLERK OF THE SUPERIOR COURT

By P. Prew Deputy

MCCORMACK & ERLICH, LLP
150 POST STREET, SUITE 742, SAN FRANCISCO, CA 94108
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1 Plaintiff Guillermo Palatto (hereinafter "Plaintiff"), on behalf of himself and all others
2 similarly situated, alleges as follows:

3 INTRODUCTION

4 1. This is a class action, under California Code of Civil Procedure § 382, seeking
5 damages, restitution, declaratory relief, equitable relief, penalties, and reasonable attorneys' fees and
6 costs, on behalf of Plaintiff and all other individuals who are or have been employed as Delivery
7 Drivers for Defendants Safeway, Inc.; GroceryWorks.com Operating Company, LLC and
8 GroceryWorks.com, LLC, in California during the four years prior to the filing of this action.
9 Plaintiff brings this complaint on behalf of similarly situated employees who were (a) not paid
10 wages for all working hours; (b) not provided uninterrupted meal breaks; and (b) not timely and
11 properly paid all their wages at time of separation.

12 2. The "Class Period" is designated as the period from four years prior to the filing of
13 this Complaint through the time the Court certifies this case as a class action. The violations of
14 California's wage and hour laws, as described more fully below, have been ongoing for at least four
15 years prior to the filing of this action, are continuing at present, and will continue unless and until
16 enjoined by the Court.

17 JURISDICTION AND VENUE

18 3. This Court has jurisdiction over the claims brought under the California Labor Code
19 and California's Unfair Competition Law, Business & Professions Code § 17200 *et seq.*

20 4. Venue is proper in this Court pursuant to Code of Civil Procedure § 395.5.
21 Defendants conducts business within this judicial district and the harms complained of herein
22 occurred within this judicial district.

23 5. All of the parties and class members are California citizens.

24 PARTIES

25 7. Plaintiff is an adult individual and resident of the State of California.

26 8. Plaintiff is informed and believes, and on that basis alleges that Defendant Safeway,
27 Inc. is registered to do business in the State of California, with its principal place of business in the
28 City of Pleasanton, County of Alameda.

1 9. Plaintiff is informed and believes, and on that basis alleges that Defendant
2 GroceryWorks.com, LLC is registered to do business in the State of California, with its principal
3 place of business in the City of Pleasanton, County of Alameda.

4 10. Plaintiff is informed and believes, and on that basis alleges that Defendant
5 GroceryWorks.com Operating Company, LLC is registered to do business in the State of California,
6 with its principal place of business in the City of Pleasanton, County of Alameda.

7 11. Defendants GroceryWorks.com, LLC and GroceryWorks.com Operating Company,
8 LLC are in the business of delivering groceries for stores owned, operated and managed by
9 Defendant Safeway Inc. Defendant GroceryWorks.com, LLC is the the managing member of
10 GroceryWorks.com Operating Company, LLC; and both companies are wholly owned subsidiaries
11 of defendant Safeway, Inc.

12 11. During the Class Period, Defendants Safeway Inc.; GroceryWorks.com Operating
13 Company, LLC; and GroceryWorks.com, LLC (hereinafter with DOES 1 to 10 as "Defendants")
14 jointly employed Plaintiff and the other class members.

15 12. Plaintiff brings this action as a California-only Class on behalf of all of Defendants'
16 employees with the job title of Delivery Driver, or the functional equivalent, employed within the
17 State of California during the last four years through the time this case is certified as a class, alleging
18 that they have been denied wages, lawful meal periods, and accurate wage statements.

19 13. Plaintiff also brings this action as a California-only Waiting Time Penalties Sub-
20 Class on behalf of all formerly-employed California-based employees during the last four years,
21 through the time this case is certified as a class, who were not timely and properly paid their final
22 wages at time of termination in violation of California Labor Code §§ 201-203.

23 14. The true names and capacities of persons or entities, whether individual, corporate,
24 associate, or otherwise, sued herein as DOES 1 through 10, inclusive, are currently unknown to
25 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure §
26 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
27 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to
28 herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and

1 capacities of the Defendants designated hereinafter as DOES when such identities become known.

2 15. All of Plaintiff's claims stated herein are asserted against Defendants and any of their
3 owners, predecessors, successors, subsidiaries, and/or assigns.

4 **FACTUAL ALLEGATIONS**

5 16. In or about July 2016, Defendants hired Plaintiff as a Delivery Driver. Plaintiff
6 delivered groceries for Defendants in the San Francisco area.

7 17. During the Class Period, Defendants did not provide Plaintiff and the other class
8 members with uninterrupted meal breaks. Due to the nature of their work, Plaintiff and the other
9 class members were too busy to take uninterrupted thirty-minute meal breaks on most working days.
10 Defendants instructed Plaintiff and the other class members to not take "off duty" meal periods when
11 the nature of their work on a particular day prevented them from being relieved of all duties. Under
12 such circumstances, Defendants did not pay Plaintiff and the other Class members one additional
13 hour of wages at their regular hourly rate, as is required by Labor Code Section 226.7.

14 18. During the Class Period, Defendants frequently deducted thirty minutes of pay from
15 Plaintiff's and other class members' wages for meal breaks that were not taken.

16 19. On or about October 12, 2018, Defendants terminated Plaintiff's employment.

17 **CLASS ALLEGATIONS**

18 20. Plaintiff brings this action, on behalf of himself and all others similarly situated, as a
19 class action pursuant to Code of Civil Procedure § 382. The class, and subclasses, that Plaintiff seeks
20 to represent are composed of and defined as follows:

21 All persons who are or have been employed, at any time from four years prior to the
22 filing of this Complaint through the date of the Court's granting of class certification
23 in this matter, by Defendants under the job title Delivery Driver or the functional
equivalent, however titled.

24 21. Plaintiff further alleges the following Waiting Time Penalty subclass:

25 All persons who have been employed and separated from employment (either by
26 involuntary termination or resignation), at any time from four years prior to the filing
27 of the Complaint through the date of the Court's granting of class certification in this
28 matter, by Defendants in California under the job title Delivery Driver or the
functional equivalent, however titled; and who did not timely receive all of their
wages at time of separation.

22. The class members are so numerous that joinder of all members is impracticable. The exact number of the class members can be determined by reviewing Defendants' records.

23. Plaintiff will fairly and adequately protect the interests of the class members and has retained counsel that is experienced and competent in class action and employment litigation. Plaintiff has no interests that are contrary to, or in conflict with, class members.

24. A class action suit, such as the instant one, is superior to other available means for fair and efficient adjudication of this lawsuit. The damages suffered by individual class members may be relatively small when compared to the expense and burden of litigation, making it virtually impossible for class members to individually seek redress for the wrongs done to them.

25. A class action is, therefore, superior to other available methods for the fair and efficient adjudication of the controversy. Absent these actions, the class members likely will not obtain redress of their injuries and Defendants will retain the proceeds of their violations of California law.

26. Even if any class member could afford individual litigation against Defendants, it would be unduly burdensome to the judicial system. Concentrating this litigation in one forum will promote judicial economy and parity among the claims of individual class members and provide for judicial consistency.

FIRST CAUSE OF ACTION
(Labor Code §§ 510, 1194 and 1194.2)
(Claim on behalf of the class)

27. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

28. California Labor Code § 510 states that an employee must be paid overtime, equal to 1.5 times the employee's regular rate of pay, for all hours worked in excess of 40 per week and/or 8 per day.

29. Defendants routinely failed to pay Plaintiff and other class members for all hours worked. Class members routinely worked more than 40 hours per week and 8 hours per day, but were not paid all straight time wages and overtime compensation owed to them.

30. By their failure to pay wages for all hours worked, as alleged above, Defendants have

1 violated and continue to violate the above-noted provisions of the California Labor Code and the
2 applicable IWC Wage Order. As a result of Defendants' unlawful acts, Plaintiff and other class
3 members have been deprived of wages at the overtime rate, the regular rate and the minimum wage
4 rate, and are entitled to recovery of such unpaid wages.

5 31. Due to Defendants' failure to pay the minimum wage for all hours worked, Plaintiff
6 and the other class members are entitled to liquidated damages, in an amount equal to the unpaid
7 minimum wages, pursuant to Labor Code § 1194.2.

8 32. Plaintiff and the class members seek their unpaid minimum wages, straight time
9 wages, overtime compensation, and other wages, including interest thereon and reasonable attorneys'
10 fees and costs pursuant to Labor Code §§ 218.5 and 1194.

11 **SECOND CAUSE OF ACTION**
12 **(Labor Code §§ 226.7 and 512 – Meal Period Violations)**
13 **(Claim on behalf of the class)**

14 33. Plaintiff incorporates the allegations contained in the previous paragraphs of this
15 Complaint as if fully set forth herein.

16 34. In violation of Labor Code § 512 and IWC Wage Order 7-2001, Defendants failed to
17 provide and document meal period breaks for Plaintiff and the other class members, in the number,
18 length and manner required. In violation of Labor Code § 226.7, Defendants have failed to pay
19 Plaintiff and the other class members their wages owed for not being provided meal period breaks as
20 required by law. Plaintiff and the other class members have been injured by Defendants' failure to
21 comply with Labor Code § 512 and IWC Wage Order 7-2001 and are thus entitled to the wages set
22 forth in Labor Code § 226.7 and IWC Wage Order 7-2001.

23 35. As a proximate result of the unlawful acts of Defendants, Plaintiff and the other class
24 members have been deprived of premium wages in an amount unknown at this time, but which will
25 be shown according to proof at the time of trial. Further, Plaintiff and the other class members are
26 entitled by statute to recover reasonable attorneys' fees, costs of suit, and interest and penalties on the
27 unpaid amounts pursuant to Labor Code § 218.5.

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THIRD CAUSE OF ACTION
(Bus. & Prof. Code § 17203)
(Claim on behalf of the class)

36. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

37. Defendants have committed an act of unfair competition under California Business & Professions Code § 17200 *et seq.* by not paying the required state law minimum wages, straight time pay, overtime pay, and meal period penalties to the class members.

38. Pursuant to Bus. & Prof. Code § 17203, Plaintiff requests an order requiring Defendants to make restitution of all minimum wages, straight time pay, overtime pay, and meal period penalties due to the class.

FOURTH CAUSE OF ACTION
(Labor Code § 203)

(Claim on behalf of the waiting time penalty subclass)

39. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

40. Plaintiff was discharged by Defendants and did not have a written contract for employment. Defendants, in violation of California Labor Code §§ 201 and 202 *et seq.* had a consistent and uniform policy, practice, and procedure of willfully failing to pay the earned and unpaid wages of all such former employees. Defendants have willfully failed to pay the earned and unpaid wages of such individuals, including, but not limited to, straight time and overtime compensation according to proof. Plaintiff and the other class members did not secret or absent themselves from Defendants, nor refuse to accept the earned and unpaid wages from Defendants. Accordingly, Defendants is liable for waiting time penalties for the unpaid wages pursuant to California Labor Code § 203.

FIFTH CAUSE OF ACTION
(Labor Code §§ 226 and 1174)
(Claim on behalf of the class)

41. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

42. Defendants, as a matter of corporate policy, did not maintain or provide accurate

1 itemized statements in violation of Labor Code §§ 226 and 1174.

2 43. Defendants did not accurately state, *inter alia*, the total hours worked or daily hours
3 worked by Plaintiff and other non-exempt employees in their pay statements. Defendants' failure to
4 maintain accurate itemized statements was willful, knowing, intentional, and the result of
5 Defendants' custom, habit, pattern and practice. Defendants' failure to maintain accurate itemized
6 statements was not the result of isolated, sporadic or unintentional behavior. Due to Defendants'
7 failure to comply with the requirements of Labor Code § 226, Plaintiff and other non-exempt
8 employees suffered damages.

9 44. Such a pattern and practice as alleged herein is unlawful and creates an entitlement to
10 recovery by Plaintiff and the other class members for all damages pursuant to Labor Code §§ 226,
11 1174, and 1174.5 including interest, attorneys' fees and costs.

12 **SIXTH CAUSE OF ACTION**
13 **(Labor Code § 2699 et seq.)**
14 **(Claim on behalf of the class)**

15 45. Plaintiff incorporates the allegations contained in the previous paragraphs of this
16 Complaint as if fully set forth herein.

17 46. As alleged above, Defendants failed to comply with the California Labor Code. As
18 such, Plaintiffs are "aggrieved employees" as defined in Labor Code § 2699(a). Pursuant to Labor
19 Code § 2699, the Labor Code Private Attorneys General Act of 2004, Plaintiffs bring this action on
20 behalf of themselves and other current and former employees against Defendants and seek recovery
21 of applicable civil penalties as follows:

- 22 a. where civil penalties are specifically provided in the Labor Code for each of the
23 violations alleged herein, Plaintiffs seek recovery of such penalties;
24 b. where civil penalties are not established in the Labor Code for each of the
25 violations alleged herein, Plaintiffs seek recovery of the penalties established in §
26 2699(e) of the Labor Code Private Attorneys General Act of 2004, and in
27 accordance with § 200.5 of the Labor Code.

28 47. On March 27, 2019, Plaintiff filed and served the Labor and Workforce Development

1 Agency with a written notice of his intent to file a lawsuit against Defendant GroceryWorks.com
2 Operating Company, LLC pursuant to Labor Code § 2699 *et seq.* On the same date, Plaintiff served
3 Defendant GroceryWorks.com Operating Company, LLC with a written notice via certified mail of
4 his intent to file a lawsuit pursuant to Labor Code § 2699 *et seq.*

5 48. On April 25, 2019, Plaintiff filed an amended PAGA notice, adding
6 GroceryWorks.com, LLC and Safeway, Inc. as additional named defendants. On the same date,
7 Plaintiff served Defendant GroceryWorks.com, LLC and Safeway, Inc. with a written notice via
8 certified mail of his intent to file a lawsuit pursuant to Labor Code § 2699 *et seq.*

9 49. The LWDA did not respond to the notices within the time provided by Labor Code §
10 2699.3.

11
12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff, on his own behalf and on behalf of the members of all classes,
14 prays for judgment as follows:

15 1. For an order certifying the claims brought under California law and for an order
16 directing notice be send to all members of the California Class;

17 3. For damages, restitution, penalties, attorney fees and costs; and,

18 4. For prejudgment interest.

19
20 Dated: July 8, 2019

MCCORMACK AND ERLICH, LLP

21
22 By: 

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