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Superior Court of California,
County of San Diego
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8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN DIEGO**

11 ERICA LEE, individually, and on behalf of
12 all others similarly situated,

13 Plaintiff,

14 vs.

15 DALLO & CO, INC., and DOES 1 through
100, inclusive,

16 Defendant.

Case No. 37-2019-00053934-CU-OE-CTL

INDIVIDUAL AND CLASS ACTION

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

[JURY TRIAL DEMANDED]

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18 Representative Plaintiff alleges as follows:

19 **INTRODUCTION**

20 1. This is an individual and class action seeking unpaid regular and overtime wages,
21 including unpaid compensation for meal and/or rest period violations, interest thereon, liquidated
22 damages and other penalties, injunctive and other equitable relief, and reasonable attorneys' fees
23 and costs under, *inter alia*, California Labor Code §§ 98.6, 200-204, inclusive, 226, 226.7, 226.8,
24 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1198, 2802, California Business and Professions
25 Code §§ 17200, *et seq.* and California Code of Civil Procedure § 1021.5. Plaintiff Erica Lee
26 ("Representative Plaintiff" or "Plaintiff") brings this action on behalf of herself and all other
27 persons similarly situated ("Class Members" and/or the "Plaintiff Class") who are or have been
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1 employed by defendant Dallo & Co., Inc. d/b/a Foodland Market (“Defendant”) as non-exempt
2 employees within the State of California within the applicable class period.

3 2. For the class allegations, the period is designated as the time from October 8, 2015
4 through trial, based upon the allegation that the violations of California’s wage and hour laws, as
5 described more fully below, have been ongoing throughout that time.

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

13 4. Defendant operates a chain of grocery stores within California for which
14 Representative Plaintiff worked as a non-exempt employee. The Representative Plaintiff is
15 informed and believes and, on that basis, alleges that, within the Class Period, Defendant employed
16 dozens of individuals in California in recent years to work in its stores, employment positions
17 which did not, and currently do not, meet any known test for exemption from the payment of
18 overtime wages and/or the entitlement to meal or rest periods.

19 5. Despite actual knowledge of these facts and legal mandates, Defendant has and
20 continues to enjoy an advantage over its competition and a resultant disadvantage to its workers
21 by electing not to pay all wages due (missed meal and rest period compensation) and/or all
22 penalties due (including “waiting time” penalties) to its California based non-exempt employees.

23 6. Representative Plaintiff is informed and believes and, based thereon, alleges that
24 Defendant’s officers knew of these facts and legal mandates yet, nonetheless, repeatedly
25 authorized and/or ratified the violation of the laws cited herein.

26 7. Despite Defendant’s knowledge of Class Members’ entitlement to meal and/or rest
27 periods for all applicable work periods, Defendant failed to provide the same to Class Members,
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1 in violation of California state statutes, the applicable California Industrial Welfare Commission
2 Wage Order, and Title 8 of the California Code of Regulations.

3 8. This action is brought to redress and end this prolonged pattern of unlawful conduct
4 once and for all.

5 **JURISDICTION AND VENUE**

6 9. This Court has jurisdiction over the Representative Plaintiff's and Class Members'
7 claims for unpaid wages, expenses and/or penalties under, *inter alia*, the applicable Industrial
8 Welfare Commission Wage Order, Title 8 of the California Code of Regulations, various sections
9 of the California Labor Code, and/or the California Code of Civil Procedure § 1021.5.

10 10. Additionally, this Court has jurisdiction over the Representative Plaintiff's and
11 Class Members' claims for injunctive relief and restitution of ill-gotten benefits arising from
12 Defendant's unfair and/or fraudulent business practices under California Business & Professions
13 Code § 17200, *et seq.*

14 11. Finally, this Court has jurisdiction over the Representative Plaintiff's individual
15 claims for damages and penalties.

16 12. Venue as to Defendant is proper in this judicial district pursuant to California Code
17 of Civil Procedure § 395(a). Defendant owns and operates a chain of grocery stores within the
18 County of San Diego (where Plaintiff and numerous Class Members worked), transacts business,
19 has agents, and is otherwise within this Court's jurisdiction for purposes of service of process. The
20 unlawful acts alleged herein have and have had a direct effect on Representative Plaintiff and those
21 similarly situated within the State of California and within the County of San Diego.

22 **PLAINTIFF**

23 13. Representative Plaintiff Erica Lee is a natural person who was employed by
24 Defendant as a non-exempt worker during the Class Period.

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

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DEFENDANT

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15. Representative Plaintiff is informed and believes and, based thereon, alleges that, at all times herein relevant, defendant Dallo & Co., Inc. d/b/a Foodland Market did business within the State of California operating a chain of grocery stores.

16. 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, Dallo & Co., Inc. d/b/a Foodland Market 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.

17. 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 was 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.

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

CLASS ACTION ALLEGATIONS

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

1 "All persons employed by Defendant as a non-exempt employee in
2 California at any time on or after October 7, 2015"

3 20. Defendant's officers and directors are excluded from the Plaintiff Class.

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

7 a. Numerosity: A class action is the only available method for the fair
8 and efficient adjudication of this controversy. The members of the
9 Plaintiff Class are so numerous that joinder of all members is
10 impractical, if not impossible, insofar as Representative Plaintiff is
11 informed and believes and, on that basis, alleges that there are
12 sufficient Class Members to meet the numerosity requirement.
13 Membership in the Class will be determined upon analysis of
14 employee and payroll, among other, records maintained by
15 Defendant.

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

21 1) Whether Defendant violated California Business and
22 Professions Code § 17200, *et seq.* by failing to provide meal
23 and/or rest breaks to Class Members working eligible shifts;

24 2) Whether Defendant violated California Labor Code § 1174 by
25 failing to keep accurate records of employees' hours of work;

26 3) Whether Defendant violated California Labor Code §§ 201-204
27 by failing to pay wages due and owing at the time that certain
28 Class Members' employment with Defendant terminated;

1) 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

2) 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

1 Plaintiff Class and the Representative Plaintiff has the same interest
2 in the litigation of this case as the Class Members. The
3 Representative Plaintiff is committed to vigorous prosecution of this
4 case and has retained competent counsel who are experienced in
5 conducting litigation of this nature. The Representative Plaintiff is
6 not subject to any individual defenses unique from those
7 conceivably applicable to Class Members as a whole. The
8 Representative Plaintiff anticipates no management difficulties in
9 this litigation.

- 6 e. Superiority of Class Action: Since the damages suffered by
7 individual Class Members, while not inconsequential, may be
8 relatively small, the expense and burden of individual litigation by
9 each member makes or may make it impractical for Class Members
10 to seek redress individually for the wrongful conduct alleged herein.
11 Should separate actions be brought, or be required to be brought, by
12 each individual Class Member, the resulting multiplicity of lawsuits
13 would cause undue hardship and expense for the Court and the
14 litigants. The prosecution of separate actions would also create a risk
15 of inconsistent rulings which might be dispositive of the interests of
16 other Class Members who are not parties to the adjudications and/or
17 may substantially impede their ability to adequately protect their
18 interests.

13 COMMON FACTUAL ALLEGATIONS

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

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

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

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

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

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

19 28. As a direct and proximate result of Defendant's unlawful conduct, as set forth
20 herein, Representative Plaintiff and Class Members have sustained damages, as described above,
21 including compensation for loss of earnings for hours worked on behalf of Defendant, in an amount
22 to be established at trial. As a further direct and proximate result of Defendant's unlawful conduct,
23 as set forth herein, certain Class Members are entitled to recover "waiting time" penalties (pursuant
24 to California Labor Code § 203) and penalties for failure to provide semimonthly statements of
25 hours worked and all applicable hourly rates (pursuant to California Labor Code § 226) in an
26 amount to be established at trial. As a further direct and proximate result of Defendant's unlawful
27 conduct, as set forth herein, Representative Plaintiff and Class Members are also entitled to recover
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1 costs and attorneys' fees pursuant to California Code of Civil Procedure § 1021.5, among other
2 authorities.

3 29. Representative Plaintiff seeks injunctive relief prohibiting Defendant from
4 engaging in the complained-of illegal labor acts and practices in the future. Representative Plaintiff
5 also seeks restitution of costs incurred by Representative Plaintiff and Class Members under
6 California's Unfair Competition Law. Unless enjoined, Defendant's unlawful conduct will
7 continue unchecked, while Representative Plaintiff and Class Members bear the financial brunt of
8 Defendant's unlawful conduct. As a further direct and proximate result of Defendant's unlawful
9 conduct, as set forth herein, Representative Plaintiff and the Plaintiff Class are also entitled to
10 recover costs and attorneys' fees, pursuant to statute.

11 **FIRST CAUSE OF ACTION**
12 **UNLAWFUL FAILURE TO PAY WAGES**
13 **(California Labor Code §§ 200-204, 510, 558, 1194, and 1198; IWC Wage Order(s))**

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

16 31. During the limitations period, Plaintiff performed work for Defendant. The number
17 of hours will be proven at trial.

18 32. During the limitations period, Defendant refused to compensate Plaintiff for all of
19 the wages earned, in violation of the applicable IWC Wage Order(s) and provisions of the
20 California Labor Code.

21 33. Defendant's conduct, as heretofore detailed, represents underpayment of wages
22 pursuant to California Labor Code § 558 for which Plaintiff seeks damages and/or penalties
23 according to proof.

24 34. As a direct and proximate result of Defendant's unlawful conduct, as set forth
25 herein, Plaintiff has sustained damages, including loss of earnings for hours worked on behalf of
26 Defendant, in an amount to be established at trial. As a further direct and proximate result of
27 Defendant's unlawful conduct, as set forth herein, Plaintiff is entitled to recover penalties in
28 amounts to be established at trial, as well as attorneys' fees and costs, and restitution, pursuant to
statute.

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

35. 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.

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

37. California Labor Code § 226.7 provides:

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

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

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

An employer may not employ an employee for a work period of 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.

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

40. Section 11 of the applicable IWC Wage Order provides:

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

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the

1 Representative Plaintiff is informed and believes and, on that basis, alleges that none of the
2 statements provided by Defendant accurately reflected actual gross wages earned, net wages
3 earned, or the appropriate deductions of such Class Members.

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

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

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

13 54. California Labor Code § 203 provides that:

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

20 55. Numerous Class Members were employed by Defendant during the class period
21 and were thereafter terminated or resigned from their positions, yet they were not paid all premium
22 (overtime) wages due upon said termination or within 72 hours of said resignation of employment
23 therefrom. Said non-payment was the direct and proximate result of a willful refusal to do so by
24 Defendant.

25 56. More than 30 days have elapsed since certain Class Members were involuntarily
26 terminated or voluntarily resigned from Defendant's employ.

27 57. As a direct and proximate result of Defendant's willful conduct in failing to pay
28 said Class Members for all hours worked, affected Class Members are entitled to recover "waiting
time" penalties of up to thirty days' wages pursuant to California Labor Code § 203 in an amount
to be established at trial, together with interest thereon, and attorneys' fees and costs.

1 **FIFTH CAUSE OF ACTION**
2 **UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**
3 **(California Business & Professions Code §§ 17200-17208)**

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

7 59. Representative Plaintiff further brings this cause of action seeking equitable and
8 statutory relief to stop Defendant's misconduct, as complained of herein, and to seek restitution of
9 the amounts Defendant acquired through the unfair, unlawful, and fraudulent business practices
10 described herein.

11 60. Defendant's knowing conduct, as alleged herein, constitutes an unlawful and/or
12 fraudulent business practice, as set forth in California Business & Professions Code §§ 17200-
13 17208. Specifically, Defendant conducted business activities while failing to comply with the legal
14 mandates cited herein.

15 61. Defendant has clearly established a policy of accepting a certain amount of
16 collateral damage, as represented by the damages to the Representative Plaintiff and to Class
17 Members herein alleged, as incidental to its business operations, rather than accept the alternative
18 costs of full compliance with fair, lawful, and honest business practices, ordinarily borne by its
19 responsible competitors and as set forth in legislation and the judicial record.

20 **RELIEF SOUGHT**

21 **WHEREFORE, the Representative Plaintiff**, on behalf of herself and the proposed
22 Plaintiff Class, prays for judgment and the following specific relief against Defendant as follows:

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

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

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

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

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

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

12 7. For all other Orders, findings and determinations identified and sought in this
13 Complaint;

14 8. For interest on the amount of any and all economic losses, at the prevailing legal
15 rate;

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

18 10. For reasonable attorneys' fees, pursuant to California Code of Civil Procedure §
19 1021.5; and

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

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JURY DEMAND

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2 Representative Plaintiff, on behalf of herself and the Plaintiff Class, hereby demands a trial
3 by jury.
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5 Dated: October 8, 2019

SCOTT COLE & ASSOCIATES, APC

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7 By: *Laura Van Note*
8 Laura Van Note, Esq.
9 Attorneys for Representative Plaintiff
10 and the Plaintiff Class
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