

EXHIBIT A



Notice of Service of Process

Transmittal Number: 17252667
Date Processed: 10/12/2017

null / ALL

Primary Contact: Melissa Vandenberg
Winco Foods, LLC
650 N Armstrong Place
Boise, ID 83704

Entity:	Winco Foods, LLC Entity ID Number 2251203
Entity Served:	Winco Foods, LLC
Title of Action:	Alfred Johnson vs. Winco Foods, LLC
Document(s) Type:	Summons/Complaint
Nature of Action:	Class Action
Court/Agency:	San Bernardino County Superior Court, California
Case/Reference No:	CIVDS 1716405
Jurisdiction Served:	California
Date Served on CSC:	10/10/2017
Answer or Appearance Due:	30 Days
Originally Served On:	CSC
How Served:	Personal Service
Sender Information:	Robert Drexler 310-556-4811

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC

251 Little Falls Drive, Wilmington, Delaware 19808-1674 (888) 690-2882 | sop@cscglobal.com

COPY

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

WINCO FOODS, LLC, a Delaware limited liability company; WINCO HOLDINGS, INC., an Idaho corporation; and DOES 1 through 10, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

ALFRED JOHNSON, individually, and on behalf of other members of the general public similarly situated

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED

SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

AUG 23 2017

BY Sandra Ortega
SANDRA ORTEGA/DEPUTY

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): San Bernardino Superior Court
247 West Third Street, San Bernardino, California 92415

CASE NUMBER:
(Número del Caso): CIVDS 1716405

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Robert Drexler (SBN 119119), Jonathan Lee (SBN 267146), Natalie Torbati (SBN 301663)
Capstone Law APC, 1875 Century Park East, Suite 1000, Los Angeles, California 90067, Telephone:(310) 556-4811

DATE: AUG 23 2017 Clerk, by SANDRA ORTEGA, Deputy (Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):

[SEAL]
COPY

- on behalf of (specify): WINCO FOODS, LLC,
a Delaware limited liability company
- under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):

- by personal delivery on (date):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

SAN BERNARDINO JUSTICE CENTER
247 WEST THIRD STREET
SAN BERNARDINO, CA 92415-0210

CASE NO: CIVDS1716405

<http://www.sb-court.org>

----- APPEARANCE IS MANDATORY - Unless Case is Finalized -----

Appearance Date: 10/10/17 Time: 8:30 Dept: S24

IN RE: JOHNSON -v- WINCO FOODS, LLC, ETAL

NOTICE OF CASE ASSIGNMENT FOR ALL PURPOSES
NOTICE OF CASE MANAGEMENT CONFERENCE

PLEASE TAKE NOTICE, that the above-entitled case has been set for a Case Management Conference on 10/10/17 at 8:30 in Department S26. You must appear at this hearing or your case may be dismissed and monetary penalties may be imposed.

THIS CASE HAS BEEN ASSIGNED TO JUDGE DAVID COHN IN DEPARTMENT S26 FOR ALL PURPOSES.

Your Joint Statement must be filed, directly in the Complex Litigation Department, five (5) calendar days prior to the hearing.

TO THE PARTY SERVED: The setting of this date DOES NOT increase the time you have to respond to the petition. The time for response is clearly stated on the Summons.

Please see the Guidelines for the Complex Litigation Program for further information. The guidelines may be found at the Court Website: <http://www.sb-court.org>

A COPY OF THIS NOTICE MUST BE SERVED ON THE RESPONDENT

Nancy Eberhardt, Interim Court Executive Officer

Date: 08/23/17

By: SANDRA ORTEGA

CERTIFICATE OF SERVICE

I am a Deputy Clerk of the Superior Court for the County of San Bernardino at the above listed address. I am not a party to this action and on the date and place shown below, I served a copy of the above listed notice by:

() Enclosed in an envelope mailed to the interested party addressed above, for collection and mailing this date, following ordinary business practice.

() Enclosed in a sealed envelope, first class postage prepaid in the U.S. mail at the location shown above, mailed to the interested party and addressed as shown above, or as shown on the attached listing.

() A copy of this notice was given to the filing party at the counter.

() A copy of this notice was placed in the bin located at this office and identified as the location for the above law firm's collection of file stamped documents.

DATE OF MAILING: 08/23/17

I declare under penalty of perjury that the foregoing is true and correct. Executed on 08/23/17 at San Bernardino, CA By: SANDRA ORTEGA



COPY

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

AUG 23 2017

BY Sandra Ortega
SANDRA ORTEGA/DEPUTY

1 Robert Drexler (SBN 119119)
2 Robert.Drexler@capstonelawyers.com
3 Jonathan Lee (SBN 267146)
4 Jonathan.Lee@capstonelawyers.com
5 Natalie Torbati (SBN 301663)
6 Natalie.Torbati@capstonelawyers.com
7 Capstone Law APC
8 1875 Century Park East, Suite 1000
9 Los Angeles, California 90067
10 Telephone: (310) 556-4811
11 Facsimile: (310) 943-0396

12 Attorneys for Plaintiff Alfred Johnson

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF SAN BERNARDINO

CIVDS 1716405

15 ALFRED JOHNSON, individually, and on
16 behalf of other members of the general
17 public similarly situated,

Case No.:

CLASS ACTION COMPLAINT

18 Plaintiff,

19 vs.

20 WINCO FOODS, LLC, a Delaware limited
21 liability company; WINCO HOLDINGS,
22 INC., an Idaho corporation; and DOES 1
23 through 10, inclusive,

24 Defendants.

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7 and 1198 (Failure to Provide Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201, 202, and 203 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (8) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (9) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Alfred Johnson, individually and on behalf of all other members of the public
2 similarly situated, alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This class action is brought pursuant to California Code of Civil Procedure
5 section 382. The monetary damages, penalties, and restitution sought by Plaintiff exceed the
6 minimal jurisdiction limits of the Superior Court and will be established according to proof at
7 trial. This Court has jurisdiction over this action pursuant to the California Constitution,
8 Article VI, section 10. The statutes under which this action is brought do not specify any
9 other basis for jurisdiction. Plaintiff's share of damages, penalties, and other relief sought in
10 this action does not exceed \$75,000.

11 2. This Court has jurisdiction over all Defendants because Defendants are either
12 citizens of California, have sufficient minimum contacts in California, or otherwise
13 intentionally avail themselves of the California market so as to render the exercise of
14 jurisdiction over them by the California courts consistent with traditional notions of fair play
15 and substantial justice.

16 3. Venue is proper in this Court, because Defendants employ persons in this
17 county and employed Plaintiff in this county, and thus a substantial portion of the
18 transactions and occurrences related to this action occurred in this county.

19 **THE PARTIES**

20 4. Plaintiff Alfred Johnson is a resident of Victorville, in San Bernardino County,
21 California. Defendants employed Plaintiff as an hourly, non-exempt Meat Clerk and Pizza
22 Clerk from approximately February 2016 to August 25, 2016. During his employment,
23 Plaintiff worked for Defendants at their grocery store location in Victorville, California.
24 Plaintiff worked approximately eight (8) hours or more per day, five (5) to six (6) days per
25 week, and forty (40) hours or more per week. At the time Plaintiff's employment with
26 Defendants ended, he earned approximately \$10.55 per hour. His job duties as a Meat Clerk
27 and Pizza Clerk included cutting, preparing, and packaging meat and pizza products.

28 5. Defendant WINCO FOODS, LLC, was and is, upon information and belief, a

1 Delaware limited liability company doing business in California, and at all times hereinafter
2 mentioned, an employer whose employees are engaged throughout this county, the State of
3 California, or the various states of the United States of America.

4 6. Defendant WINCO HOLDINGS, INC., was and is, upon information and
5 belief, an Idaho corporation doing business in California, and at all times hereinafter
6 mentioned, an employer whose employees are engaged throughout this county, the State of
7 California, or the various states of the United States of America.

8 7. Plaintiff is unaware of the true names or capacities of the Defendants sued
9 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
10 amend the complaint and serve such fictitiously named Defendants once their names and
11 capacities become known.

12 8. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
13 are the partners, agents, owners, shareholders, managers, or employees of WINCO FOODS,
14 LLC and WINCO HOLDINGS, INC. at all relevant times.

15 9. Plaintiff is informed and believes, and thereon alleges, that each and all of the
16 acts and omissions alleged herein was performed by, or is attributable to, WINCO FOODS,
17 LLC, WINCO HOLDINGS, INC., and/or DOES 1 through 10 (collectively "Defendants" or
18 "WINCO"), each acting as the agent, employee, alter ego, and/or joint venturer of, or
19 working in concert with, each of the other co-Defendants and was acting within the course
20 and scope of such agency, employment, joint venture, or concerted activity with legal
21 authority to act on the others' behalf. The acts of any and all Defendants were in accordance
22 with, and represent, the official policy of Defendants.

23 10. At all relevant times, Defendants, and each of them, ratified each and every act
24 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
25 and abetted the acts and omissions of each and all the other Defendants in proximately
26 causing the damages herein alleged.

27 11. Plaintiff is informed and believes, and thereon alleges, that each of said
28 Defendants is in some manner intentionally, negligently, or otherwise responsible for the

1 acts, omissions, occurrences, and transactions alleged herein.

2 12. Under California law, Defendants are jointly and severally liable as employers
3 for the violations alleged herein because they have each exercised sufficient control over the
4 wages, hours, working conditions, and employment status of Plaintiff and class members.
5 Each Defendant had the power to hire and fire Plaintiff and class members, supervised and
6 controlled their work schedule and/or conditions of employment, determined their rate of
7 pay, and maintained their employment records. Defendants suffered or permitted Plaintiff
8 and class members to work and/or “engaged” Plaintiff and class members so as to create a
9 common law employment relationship. As joint employers of Plaintiff and class members,
10 Defendants are jointly and severally liable for the civil penalties and all other relief available
11 to Plaintiff and class members under the law.

12 13. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
13 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and
14 class members because Defendants have:

- 15 (a) jointly exercised meaningful control over the work performed by
16 Plaintiff and class members;
- 17 (b) jointly exercised meaningful control over Plaintiff and class members’
18 wages, hours, and working conditions, including the quantity, quality
19 standards, speed, scheduling, and operative details of the tasks
20 performed by Plaintiff and class members;
- 21 (c) jointly required that Plaintiff and class members perform work which is
22 an integral part of Defendants’ businesses; and jointly exercised control
23 over Plaintiff and class members as a matter of economic reality in that
24 Plaintiff and class members were dependent on Defendants, who shared
25 the power to set the wages of Plaintiff and class members and determine
26 their working conditions, and who jointly reaped the benefits from the
27 underpayment of their wages and noncompliance with other statutory
28 provisions governing their employment.

1 14. Plaintiff is informed and believes, and further alleges, that at all relevant times
2 there has existed a unity of interest and ownership between Defendants such that any
3 individuality and separateness between the entities has ceased.

4 15. WINCO FOODS, LLC, WINCO HOLDINGS, INC., and DOES 1-10 are
5 therefore alter egos of each other.

6 16. Adherence to the fiction of the separate existence of Defendants would permit
7 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
8 from liability for the wrongful acts committed by it under the name WINCO.

9 17. Plaintiff further alleges, upon information and belief, that Defendants are alter
10 egos of each other for the additional following reasons:

- 11 (a) WINCO FOODS, LLC and WINCO HOLDINGS, INC., share the same
12 principal place of business address of 6505 N. Armstrong Place, Boise,
13 Idaho 83704;
- 14 (b) WINCO FOODS, LLC and WINCO HOLDINGS, INC. share the same
15 Chief Executive Officer, Steven L. Goddard; and
- 16 (c) WINCO FOODS, LLC and WINCO HOLDINGS, INC. share the same
17 officers and directors, including, but not limited to, Richard L. Charrier,
18 Gary A. Piva, Carole Moerdyk, and Glen Reynolds, all of whom have
19 the same mailing address.

20 GENERAL ALLEGATIONS

21 18. Defendants are a supermarket chain operating approximately 115 retail stores
22 in Arizona, California, Idaho, Nevada, Oklahoma, Oregon, Texas, Utah, and Washington. In
23 California, Defendants operate approximately 37 grocery store locations. Upon information
24 and belief, Defendants employ approximately 4,000 employees in California.

25 19. Upon information and belief, Defendants maintain a single, centralized Human
26 Resources (HR) department at their corporate headquarters in Boise, Idaho, which is
27 responsible for communicating and implementing Defendants' company-wide policies to
28 employees throughout California.

1 20. In particular, Plaintiff and class members, on information and belief, received
2 the same standardized documents and/or written policies. Upon information and belief, the
3 usage of standardized documents and/or written policies, including new hire documents,
4 indicate that Defendants dictated policies at the corporate level and implemented them
5 company-wide, regardless of their employees' assigned locations or positions. Upon
6 information and belief, Defendants set forth uniform policies and procedures in several
7 documents provided at an employee's time of hire. For example, at the time Plaintiff was
8 hired, he received documents including, but not limited to, Store Orientation Checklist,
9 Company Personnel Policies, and Information Security Policies.

10 21. Upon information and belief, Defendants' written policy requires that all new
11 hires and/or prospective employees undergo mandatory drug testing as a condition of
12 employment: "New hires and rehires will be required to take a breath alcohol and/or drug test
13 prior to employment." Defendants provide their newly-hired employees and/or prospective
14 employees with the location of the testing facility, select the time and date of the drug test,
15 and determine the scope of the testing. Defendants require that these newly-hired employees
16 and/or prospective employees travel using their own vehicles to the site to undergo the drug
17 test. Upon information and belief, Defendants do not compensate newly-hired employees
18 and/or prospective employees for the time it takes to travel to and from the testing facility or
19 for the time it takes to undergo the drug testing. Upon information and belief, Defendants do
20 not reimburse employees for the travel expenses they incur getting to and from the testing
21 facility.

22 22. Upon information and belief, Defendants maintain a centralized Payroll
23 department at their corporate headquarters in Boise, Idaho, which processes payroll for all
24 non-exempt, hourly-paid employees working for Defendants at their various locations in
25 California, including Plaintiff and class members. Based upon information and belief,
26 Defendants issue the same formatted wage statements to all non-exempt, hourly-paid
27 employees in California, irrespective of their work location. Upon information and belief,
28 Defendants process payroll for departing employees in the same manner throughout the State

1 of California, regardless of the manner in which each employee's employment ends.

2 23. Defendants continue to employ non-exempt or hourly-paid employees in retail,
3 warehouse, and distribution center locations, throughout California.

4 24. Plaintiff is informed and believes, and thereon alleges, that at all times herein
5 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
6 and advisors knowledgeable about California labor and wage law, employment and personnel
7 practices, and about the requirements of California law.

8 25. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
9 members were not paid for all hours worked because all hours worked were not recorded.

10 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and class members were entitled to receive certain wages
12 for overtime compensation and that they were not receiving certain wages for overtime
13 compensation.

14 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and class members were entitled to be paid at a regular rate
16 of pay, and corresponding overtime rate of pay, that included all forms of remuneration paid
17 to Plaintiff and class members, including shift differential pay, incentive pay, nondiscretionary
18 bonuses and/or other forms of compensation.

19 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and class members were entitled to receive at least
21 minimum wages for compensation and that they were not receiving at least minimum wages
22 for work that was required to be done off-the-clock. In violation of the California Labor
23 Code, Plaintiff and class members were not paid at least minimum wages for work done off-
24 the-clock.

25 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and class members were entitled to meal periods in
27 accordance with the Labor Code or payment of one (1) additional hour of pay at their regular
28 rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal

1 periods and that Plaintiff and class members were not provided with all meal periods or
2 payment of one (1) additional hour of pay at their regular rates of pay when they did not
3 receive a timely, uninterrupted, thirty (30) minute meal period.

4 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and class members were entitled to rest periods in
6 accordance with the Labor Code and applicable IWC Wage Order or payment of one (1)
7 additional hour of pay at their regular rates of pay when they were not provided with a
8 compliant rest period and that Plaintiff and class members were not provided compliant rest
9 periods or payment of one (1) additional hour of pay at their regular rates of pay when they
10 were not provided a compliant rest period.

11 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and class members were entitled to receive complete and
13 accurate wage statements in accordance with California law. In violation of the California
14 Labor Code, Plaintiff and class members were not provided complete and accurate wage
15 statements.

16 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that they had a duty to maintain accurate and complete payroll records in
18 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
19 and intentionally failed to do so.

20 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and class members were entitled to timely payment of all
22 wages earned upon termination of employment. In violation of the California Labor Code,
23 Plaintiff and class members did not receive payment of all wages due, including, but not
24 limited to, overtime wages, minimum wages, and meal and rest period premiums, within
25 permissible time periods.

26 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and class members were entitled to timely payment of
28 wages during their employment. In violation of the California Labor Code, Plaintiff and

1 class members did not receive payment of all wages, including, but not limited to, overtime
2 wages, minimum wages, and meal and rest period premiums, within permissible time
3 periods.

4 35. Plaintiff is informed and believes, and thereon alleges, that at all times herein
5 mentioned, that Defendants knew or should have known that they had a duty to cover the costs
6 and expenses Plaintiff and class members incurred obtaining mandatory pre-employment
7 physical examinations and drug tests, but willfully, knowingly, and intentionally failed to do
8 so.

9 36. Plaintiff is informed and believes, and thereon alleges, that at all times herein
10 mentioned, Defendants knew or should have known that they had a duty to provide Plaintiff
11 and class members with written notice of the material terms of their employment with
12 Defendants as required by the California Wage Theft Prevention Act, but willfully,
13 knowingly, and intentionally failed to do so.

14 37. Plaintiff is informed and believes, and thereon alleges, that at all times herein
15 mentioned, Defendants knew or should have known that they had a duty to compensate
16 Plaintiff and class members for all hours worked, and that Defendants had the financial
17 ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so,
18 and falsely represented to Plaintiff and class members that they were properly denied wages,
19 all in order to increase Defendants' profits.

20 **CLASS ACTION ALLEGATIONS**

21 38. Plaintiff brings this action on his own behalf, as well as on behalf of each and
22 all other persons similarly situated, and thus seeks class certification under California Code
23 of Civil Procedure section 382.

24 39. All claims alleged herein arise under California law for which Plaintiff seeks
25 relief authorized by California law.

26 40. Plaintiff's proposed class consists of and is defined as follows:

27 All persons who worked for Defendants as nonexempt, hourly-
28 paid employees in California, including retail, warehouse, and
distribution center locations, within four years prior to the filing

of this complaint until the date of trial (“Class”).

1
2 41. Plaintiff’s proposed subclass consists of and is defined as follows:

3 All persons who worked for Defendants as nonexempt, hourly-
4 paid employees in California, including retail, warehouse, and
5 distribution center locations, within one year prior to the filing of
6 this complaint until the date of trial (“Subclass”).

7 42. Members of the Class and Subclass are referred to herein as “class members.”

8 43. Plaintiff reserves the right to redefine the Class and to add additional subclasses
9 as appropriate based on further investigation, discovery, and specific theories of liability.

10 44. There are common questions of law and fact as to class members that
11 predominate over questions affecting only individual members, including, but not limited to:

- 12 (a) Whether Defendants required Plaintiff and class members to work over
13 eight (8) hours per day, over twelve (12) hours per day, or over forty
14 (40) hours per week and failed to pay all legally required overtime
15 compensation to Plaintiff and class members;
- 16 (b) Whether Defendants failed to properly calculate the “regular rate” of
17 pay on which Plaintiff and class members’ overtime rate of pay was
18 based;
- 19 (c) Whether Defendants failed to pay Plaintiff and class members at least
20 minimum wages for all hours worked;
- 21 (d) Whether Defendants failed to provide Plaintiff and class members with
22 meal periods;
- 23 (e) Whether Defendants failed to provide Plaintiff and class members with
24 rest periods;
- 25 (f) Whether Defendants provided Plaintiff and class members with
26 complete and accurate wage statements as required by California Labor
27 Code section 226(a);
- 28 (g) Whether Defendants failed to pay earned overtime wages, minimum
wages, and meal and rest period premiums due to Plaintiff and class

- 1 members upon their discharge;
- 2 (h) Whether Defendants failed timely to pay overtime wages, minimum
- 3 wages, and meal and rest period premiums to Plaintiff and class
- 4 members during their employment;
- 5 (i) Whether Defendants failed to pay Plaintiff and class members for the
- 6 costs of mandatory pre-employment physical examinations and drug
- 7 testing;
- 8 (j) Whether Defendants reimbursed Plaintiff and class members for
- 9 business-related expenses they incurred as a result of their employment;
- 10 (k) Whether Defendants failed to provide written notice of information
- 11 material to Plaintiff and class members' employment as required by
- 12 Labor Code section 2810.5(a)(1)(A)-(C);
- 13 (l) Whether Defendants engaged in unlawful and unfair business practices
- 14 in violation of California Business & Professions Code sections 17200,
- 15 *et seq.*; and
- 16 (m) The appropriate amount of damages, restitution, or monetary penalties
- 17 resulting from Defendants' violations of California law.

18 45. There is a well-defined community of interest in the litigation and the class
19 members are readily ascertainable:

- 20 (a) Numerosity: The class members are so numerous that joinder of all
- 21 members would be unfeasible and impractical. The membership of the
- 22 entire class is unknown to Plaintiff at this time; however, the class is
- 23 estimated to be greater than one hundred (100) individuals and the
- 24 identity of such membership is readily ascertainable by inspection of
- 25 Defendants' employment records.
- 26 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
- 27 protect the interests of each class member with whom he has a well-
- 28 defined community of interest, and Plaintiff's claims (or defenses, if

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any) are typical of all class members as demonstrated herein.

(c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that he has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort, and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.

(e) Public Policy Considerations: Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while simultaneously protecting their privacy.

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FIRST CAUSE OF ACTION

Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime

(Against all Defendants)

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4 46. Labor Code section 1198 makes it illegal to employ an employee under
5 conditions of labor that are prohibited by the applicable wage order. California Labor Code
6 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
7 be the . . . standard conditions of labor for employees. The employment of any employee . . .
8 under conditions of labor prohibited by the order is unlawful.”

9 47. California Labor Code section 1198 and the applicable IWC Wage Order
10 provide that it is unlawful to employ persons without compensating them at a rate of pay
11 either time-and-one-half or two-times that person’s regular rate of pay, depending on the
12 number of hours worked by the person on a daily or weekly basis.

13 48. Specifically, the applicable IWC Wage Order provides that Defendants are and
14 were required to pay Plaintiff and class members working more than eight (8) hours in a day
15 or more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all
16 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
17 workweek.

18 49. The applicable IWC Wage Order further provides that Defendants are and were
19 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
20 overtime compensation at a rate of two (2) times their regular rate of pay, and required to pay
21 Plaintiff and other class members at a rate of two (2) times their regular rate of pay for hours
22 worked in excess of eight (8) hours on the seventh (7th) consecutive day of a work in a
23 workweek.

24 50. At all relevant times, Defendants willfully failed to pay all overtime wages
25 owed to Plaintiff and class members. At all relevant times, Plaintiff and class members were
26 not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a
27 day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week,
28 because all hours worked were not recorded.

1 51. During the relevant time period, Defendants routinely and systematically
2 understaffed their locations, resulting in a lack of break coverage and causing Plaintiff and
3 class members to be interrupted by work during unpaid meal periods, resulting in them
4 working off-the-clock. Plaintiff and class members had their meal periods interrupted by
5 work in order to ensure their departments or floors were covered and in order to meet
6 customer demand.

7 52. At all relevant times, Defendants also systematically, and on a company-wide
8 basis, did not schedule second meal periods and had no policy for permitting Plaintiff and
9 class members to take uninterrupted second 30-minute meal periods on days that they worked
10 in excess of 10 hours in one day. As a result, on days that Plaintiff and class members
11 worked in excess of 10 hours, they were not provided with second 30-minute meal periods.
12 Plaintiff and class members did not sign valid meal break waivers on days that they were
13 entitled to meal periods but were not relieved of all duties.

14 53. Defendants knew or should have known that as a result of its policies and
15 failure to schedule second meal periods, Plaintiff and class members were performing some
16 of their assigned duties during unpaid meal periods, and were suffered or permitted to
17 perform work for which they were not paid. Because Plaintiff and class members worked
18 shifts of ten (10) hours a day or more and forty (40) hours a week or more, much of this off-
19 the-clock work performed during unpaid meal periods and before shifts qualified for
20 overtime premium pay. Therefore, Plaintiff and class members were not paid overtime
21 wages for all of the overtime hours they actually worked.

22 54. Furthermore, on information and belief, Defendants did not pay Plaintiff and
23 class members the correct overtime rate for the recorded overtime hours that they generated.
24 In addition to an hourly wage, Defendants paid Plaintiff and class members shift differential
25 pay, incentive pay, and/or nondiscretionary bonuses. However, upon information and belief,
26 Defendants failed to incorporate all remunerations, including shift differential pay, incentive
27 pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for
28 purposes of calculating the overtime wage rate.

1 55. Specifically, Plaintiff and class members were entitled to shift differential pay
2 for working a graveyard shift. On information and belief, in the same pay periods in which
3 this shift differential pay was earned, Plaintiff and class members also worked overtime hours
4 for which they were paid overtime wages. However, Defendants failed to incorporate these
5 other earned forms of pay into Plaintiff and class members' regular rate of pay and, as a result,
6 paid them at an incorrect and lower rate of pay for overtime hours worked. Specifically,
7 Defendants paid them at 1.5 times their hourly rate of pay instead of at 1.5 times their regular
8 rate of pay. Therefore, during times when Plaintiff and class members worked overtime and
9 received shift differential pay, incentive pay, and/or nondiscretionary bonuses, Defendants
10 failed to pay all overtime wages by paying a lower overtime rate than required.

11 56. Defendants' failure to pay Plaintiff and class members the balance of overtime
12 compensation, as required by California law, violates the provisions of California Labor
13 Code sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and
14 class members are entitled to recover their unpaid overtime compensation, as well as interest,
15 costs, and attorneys' fees.

16 **SECOND CAUSE OF ACTION**

17 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 18 **Minimum Wages** 19 **(Against All Defendants)**

20 57. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
21 and every allegation set forth above.

22 58. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
23 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
24 minimum wage to be paid to employees, and the payment of a wage less than the minimum
25 so fixed is unlawful. Compensable work time is defined in Wage Order No. 7 as "the time
26 during which an employee is subject to the control of an employer, and includes all the time
27 the employee is suffered or permitted to work, whether or not required to do so." Cal. Code.
28 Regs. tit. 8, § 11070(2)(G) (defining "Hours Worked").

1 59. Defendants have, and continue to have, a company-wide policy and/or practice
2 of understaffing, which resulted in a lack of break coverage and impeded Plaintiff and class
3 members from taking all uninterrupted meal periods to which they were entitled and resulted
4 in them working off-the-clock. Plaintiff and class members had their meal periods
5 interrupted by work in order to ensure their departments or floors were covered and in order
6 to meet customer demand. Defendants did not pay class members for the time they continued
7 to perform tasks during their meal periods.

8 60. During the relevant time period, Defendants also maintained and implemented
9 a company-wide policy of requiring all new hires and/or prospective employees to undergo a
10 mandatory drug test as a condition of employment. At all times, upon information and belief,
11 Defendants were in control of scheduling the date and time for the tests, selecting the provider
12 or facility where the tests were to take place, and determining the scope of the tests.
13 Defendants gave Plaintiff and class members strict instructions to obtain drug tests as a
14 condition of their employment, and Plaintiff and class members underwent the testing for the
15 sole benefit of Defendants. However, Defendants did not compensate Plaintiff and class
16 members for the time they spent traveling to and from the testing facility or for the time they
17 spent undergoing drug testing. In all, Plaintiff spent approximately 2.5 hours traveling to and
18 from the designated medical facility, and waiting for and undergoing a drug test. Defendants
19 did not compensate Plaintiff for this time.

20 61. Defendants did not pay at least minimum wages for all hours worked by
21 Plaintiff and class members. To the extent that these off-the-clock hours did not qualify for
22 overtime premium payment, Defendants did not pay at least minimum wages for those hours
23 worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197,
24 1197.1, and 1198. Accordingly, Defendants regularly failed to pay at least minimum wages
25 to Plaintiff and class members for all of the hours they worked.

26 62. Defendants' failure to pay Plaintiff and class members minimum wages violates
27 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
28 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover

1 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

2 **THIRD CAUSE OF ACTION**

3 **Violations of California Labor Code, §§ 226.7, 512(a), and 1198—Meal Period Violations**
4 **(Against all Defendants)**

5 63. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

7 64. At all relevant times herein set forth, California Labor Code section 512(a)
8 provides that an employer may not require, cause, or permit an employee to work for a period
9 of more than five (5) hours per day without providing the employee with a meal period of not
10 less than thirty (30) minutes, except that if the total work period per day of the employee is
11 not more than six (6) hours, the meal period may be waived by mutual consent of both the
12 employer and the employee. Under California law, first meal periods must start after no
13 more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042
14 (Cal. 2012).

15 65. At all relevant times herein set forth, California Labor Code section 226.7 and
16 512(a), and 1198 provide that no employer shall require an employee to work during any
17 meal period mandated by an applicable order of the IWC.

18 66. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a),
19 1198 and the applicable IWC Wage Order also require employers to provide a second meal
20 break of not less than thirty (30) minutes if an employee works over ten (10) hours per day or
21 to pay an employee one (1) additional hour of pay at the employee's regular rate, except that
22 if the total hours worked is no more than twelve (12) hours, the second meal period may be
23 waived by mutual consent of the employer and the employee only if the first meal period was
24 not waived.

25 67. At all relevant times, as stated above, Defendants have, and continue to have, a
26 company-wide policy and/or practice of understaffing locations, which resulted in a lack of
27 meal break coverage and impeded Plaintiff and class members from taking all timely,
28 uninterrupted meal periods to which they were entitled. Plaintiff and class members had to

1 have their meal periods interrupted to return to work and/or wait extended periods of time
2 before taking meal periods in order to ensure their departments or the floor was covered.
3 Plaintiff was unable to take timely meal breaks, as he was required to ensure another
4 employee was present in his department before he could take a meal break.

5 68. In addition, as stated, Defendants did not schedule second meal periods and had
6 no policy for permitting Plaintiff and class members to take second 30-minute meal periods
7 on days that they worked in excess of ten (10) hours in one day. Plaintiff and class members
8 did not receive second 30-minute meal periods on days that they worked in excess of ten (10)
9 hours in one day. For example, when Plaintiff worked in excess of ten (10) hours in a day,
10 Defendants did not schedule him to take a second meal period and did not provide him with
11 the opportunity to take a second meal period. Instead, Plaintiff continued to work until he
12 clocked out for the day. Plaintiff and class members did not sign valid meal break waivers
13 on days that they were entitled to meal periods and were not relieved of all duties.

14 69. At all times herein mentioned, Defendants knew or should have known that, as
15 a result of understaffing and policy of failing to schedule second meal periods, Plaintiff and
16 class members have been required to perform some of their assigned duties during meal
17 periods and that Defendants did not pay Plaintiff and class members meal period premium
18 wages when meal periods were late, interrupted, and/or missed. As a result, Plaintiff and
19 class members had to work through some or all of their meal periods, have their meal periods
20 interrupted to return to work, and/or wait extended periods of time before taking meal
21 periods. Plaintiff and class members were made to work over five (5) hours before
22 Defendants permitted and authorized them to take their meal periods, and their meal periods
23 were cut short and/or taken late so that Plaintiff and class members could attend to their
24 assigned tasks.

25 70. Moreover, upon information and belief, Defendants engaged in a systematic,
26 company-wide practice and/or policy of not paying meal period premiums for Plaintiff and
27 class members, regardless of whether they were able to take a compliant meal break, in
28 violation of the applicable IWC Wage Order and Labor Code sections 226.7 and 512(a). To

1 the extent that Defendants did pay Plaintiff and class members one (1) additional hour of
2 premium pay for missed first or second meal periods, on information and belief, Defendants
3 did not pay Plaintiff and class members at the correct rate of pay for premium wages because
4 Defendants failed to include all forms of compensation, such as shift differential pay,
5 incentive pay, and/or nondiscretionary bonuses, in the regular rate of pay. As a result,
6 Defendants failed to provide Plaintiff and class members compliant meal periods in violation
7 of California Labor Code sections 226.7 and 512 and failed to pay the full meal period
8 premiums due.

9 71. Defendants' conduct violates the applicable IWC Wage Order, and California
10 Labor Code sections 226.7, 512(a), and 1198. Plaintiff and class members are therefore
11 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
12 rate of compensation for each work day that the meal period was not provided.

13 **FOURTH CAUSE OF ACTION**

14 **Violation of California Labor Code §§ 226.7 and 1198—Rest Break Violations**
15 **(Against all Defendants)**

16 72. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
17 and every allegation set forth above.

18 73. At all relevant times herein set forth, the applicable IWC Wage Order and
19 California Labor Code sections 226.7 and 1198 were applicable to Plaintiff and class
20 members' employment by Defendants.

21 74. At all relevant times, the applicable IWC Wage Order provides that "[e]very
22 employer shall authorize and permit all employees to take rest periods, which insofar as
23 practicable shall be in the middle of each work period" and that the "rest period time shall be
24 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
25 hours or major fraction thereof" unless the total daily work time is less than three and one-
26 half (3½) hours.

27 75. At all relevant times, California Labor Code section 226.7 provides that no
28 employer shall require an employee to work during any rest period mandated by an

1 applicable order of the California IWC. To comply with its obligation to provide rest periods
2 under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer
3 must “relinquish any control over how employees spend their break time, and relieve their
4 employees of all duties — including the obligation that an employee remain on call. A rest
5 period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal.
6 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and California Labor
7 Code section 226.7(b), Plaintiff and class members are entitled to recover from Defendants
8 one (1) additional hour of pay at their regular rates of pay for each work day that a required
9 rest period was not provided.

10 76. During the relevant time period, Defendants’ company-wide policy and practice
11 of understaffing prevented Plaintiff and class members from being relieved of all duty in
12 order to take compliant rest periods. When the store was busy with high customer demand,
13 Plaintiff missed his rest breaks, would be required to take them late, or would have his rest
14 breaks interrupted. Additionally, Defendants maintained and implemented a company-wide
15 practice and/or policy requiring that Plaintiff and class members remain on premises during
16 their rest breaks: “[r]etail employees are not permitted to leave the store interior on a rest
17 break” As a result, Plaintiff and class members were prevented from being relieved of
18 all duty in order to take compliant rest periods and instead would be required to continue
19 working. Because Defendants did not relinquish all control over Plaintiff and class members
20 during rest breaks, as a matter of company-wide policy, Plaintiff and class members were
21 denied rest breaks.

22 77. Plaintiff and class members worked shifts in excess of three and one-half (3 ½)
23 hours, in excess of six (6) hours, and/or in excess or ten (10) hours without receiving all
24 uninterrupted 10-minute rest periods to which they were entitled.

25 78. Defendants have also engaged in a systematic, company-wide practice and/or
26 policy of not paying rest period premiums owed when rest periods are not provided.
27 Alternatively, to the extent that Defendants did pay Plaintiff and class members one (1)
28 additional hour of premium pay for missed rest periods, on information and belief,

1 Defendants did not pay Plaintiff and class members at the correct rate of pay for premium
2 wages because Defendants failed to include all forms of compensation, such as shift
3 differential pay, incentive pay, and/or nondiscretionary bonuses, in the regular rate of pay.
4 As a result, to the extent Defendants paid Plaintiff and class members premium pay for
5 missed rest periods, it did so at a lower rate than required by law. As a result, Defendants
6 denied Plaintiff and class members rest periods and failed to pay them rest period premium
7 wages due, in violation of Labor Code section 226.7 and the applicable IWC Wage Order.

8 79. Defendants' conduct violates the applicable IWC Wage Order and California
9 Labor Code sections 226.7 and 1198. Plaintiff and class members are therefore entitled to
10 recover from Defendants one (1) additional hour of pay at the employee's regular rate of
11 compensation for each work day that the rest period was not provided.

12 **FIFTH CAUSE OF ACTION**

13 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage**
14 **Statements and Failure to Maintain Accurate Payroll Records**
15 **(Against all Defendants)**

16 80. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
17 and every allegation set forth above.

18 At all relevant times herein set forth, California Labor Code section 226(a) provides
19 that every employer shall furnish each of his or her employees an accurate and complete
20 itemized wage statement in writing, including, but not limited to, the name and address of the
21 legal entity that is the employer, the inclusive dates of the pay period, total hours worked, and
22 all applicable rates of pay.

23 81. At all relevant times, Defendants have knowingly and intentionally provided
24 Plaintiff and class members with uniform, incomplete, and inaccurate wage statements. For
25 example, Defendants issued uniform wage statements to Plaintiff and class members that fail
26 to correctly list: gross wages earned; net wages earned; and all applicable hourly rates in
27 effect during the pay period, including overtime rates of pay, the address of the legal entity
28 that is the employer; and the corresponding number of hours worked at each hourly rate.

1 82. Specifically, Defendants violated sections 226(a)(1), 226(a)(5), 226(a)(8), and
2 226(a)(9). Because Defendants did not calculate Plaintiff and class members' regular rate of
3 pay correctly for purposes of paying overtime, Defendants did not list the correct amount of
4 gross wages earned by Plaintiff and class members in compliance with section 226(a)(1).
5 Also, Defendants failed to list the correct amount of net wages earned by Plaintiff and class
6 members in violation of section 226(a)(5). Defendants also failed to correctly list all
7 applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay
8 and correct rates of pay for premium wages, in violation of section 226(a)(9).

9 83. Further, because Defendants failed to pay meal and rest period premiums to
10 Plaintiff and class members, Defendants did not list the correct amount of gross wages earned
11 by Plaintiff and class members in compliance with section 226(a)(1). For the same reason,
12 Defendants failed to list the correct amount of net wages earned by Plaintiff and class
13 members in violation of section 226(a)(5).

14 84. In addition, Defendants issued uniform wage statements to Plaintiff and class
15 members that listed "P.O. Box 5756, Boise, ID 83705" as the employing entity's legal
16 address, in violation of section 226(a)(8). Plaintiff's wage statements are confusing and vague
17 in that both WINCO FOODS, LLC and WINCO HOLDINGS, INC.'s entity address should be
18 "650 N Armstrong Pl, Boise, ID 83704," as they are listed on the Secretary of State's website.
19 Thus, it was and is not apparent and clear to Plaintiff and class members the actual address at
20 which they could contact their employer.

21 85. The wage statement deficiencies include, without limitation, failing to list total
22 hours worked by employees; failing to list the number of piece-rate units earned and any
23 applicable piece rate if the employee is paid on a piece-rate basis; failing to list all
24 deductions; failing to list the name of the employee and only the last four digits of his or her
25 social security number or an employee identification number other than a social security
26 number; failing to list the name of the legal entity that is the employer; failing to list the
27 inclusive dates of the period for which aggrieved employees were paid; and/or failing to state
28 all hours worked as a result of not recording or stating the hours they worked off-the-clock.

1 86. California Labor Code section 1198 provides that the maximum hours of work
2 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
3 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
4 employment of any employees for longer hours than those fixed by the order or under
5 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
6 Wage Order, employers are required to keep accurate time records showing when the
7 employee begins and ends each work period and meal period. At all relevant times,
8 Defendants failed, on a company-wide basis, to keep records of meal period start and stop
9 times for Plaintiff and class members in violation of section 1198. Also, in light of
10 Defendants’ failure to provide Plaintiff and class members with second 30-minute meal
11 periods to which they were entitled, Defendants kept no records of meal start and end times
12 for second meal periods.

13 87. California Labor Code section 1174(d) provides that “[e]very person employing
14 labor in this state shall ... [k]eep a record showing the names and addresses of all employees
15 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
16 plants or establishments at which employees are employed, payroll records showing the
17 hours worked daily by and the wages paid to, and the number of piece-rate units earned by
18 and any applicable piece rate paid to, employees employed at the respective plants or
19 establishments...” At all relevant times, and in violation of Labor Code section 1174(d),
20 Defendants willfully failed to maintain accurate payroll records for Plaintiff and class
21 members showing the daily hours they worked and the wages paid thereto as a result of
22 failing to record the off-the-clock hours that they worked.

23 88. Plaintiff and class members are entitled to recover from Defendants the greater
24 of their actual damages caused by Defendants’ failure to comply with California Labor Code
25 section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
26 employee.

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SIXTH CAUSE OF ACTION

**Violation of California Labor Code §§ 201, 202, and 203 – Wages Not Timely Paid Upon Termination
(Against all Defendants)**

89. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

90. At all times relevant herein set forth, Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

91. At all relevant times, Defendants willfully failed to pay Plaintiff and class members who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

92. Defendants' failure to pay Plaintiff and those class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

SEVENTH CAUSE OF ACTION

**Violation of California Labor Code § 2802 – Unpaid Business-Related Expenses
(Against all Defendants)**

93. Plaintiff incorporates by reference and re-alleges as if fully stated herein each

1 and every allegation set forth above.

2 94. At all times herein set forth, California Labor Code section 2802 provides that
3 an employer must reimburse employees for all necessary expenditures and losses incurred by
4 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
5 to prevent employers from passing off their cost of doing business and operating expenses on
6 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
7 (2014).

8 95. The applicable wage order, IWC Wage Order 7-2001, provides that: “[w]hen
9 the employer requires the use of tools or equipment or they are necessary to the performance
10 of a job, such tools and equipment shall be provided and maintained by the employer, except
11 that an employee whose wages are at least two (2) times the minimum wage may provide and
12 maintain hand tools and equipment customarily required by the particular trade or craft.”

13 96. During the relevant time period, as mentioned, Defendants required Plaintiff
14 and class members to travel to designated medical clinics or facilities to undergo drug testing
15 at or near their time of hire, and did not reimburse them for their travel expenses. For
16 example, as described above, Plaintiff drove for 30 minutes roundtrip to undergo mandatory
17 drug testing per Defendants’ instructions, but was not reimbursed for his mileage to and from
18 the medical facility.

19 97. Defendants had, and continue to have, a company-wide policy and/or practice
20 of not reimbursing employees for expenses necessarily incurred. Defendants could have
21 provided Plaintiff and class members reimbursed employees for their gas expenses and/or
22 provided company vehicles to be used for fulfilling work-related tasks, such as for obtaining
23 mandatory drug testing. Instead, Defendants passed these costs off on to Plaintiff and class
24 members. Defendants have, and continue to have, a company-wide policy and/or practice of
25 not reimbursing employees for expenses necessarily incurred. At all relevant times, Plaintiff
26 did not earn at least two (2) times the minimum wage.

27 98. Defendants’ company-wide policy and/or practice of passing on its operating
28 costs to Plaintiff and class members by failing to reimburse all travel expenses violates

1 California Labor Code section 2802. Defendants have intentionally and willfully failed to
2 fully reimburse Plaintiff and other class members for necessary business-related expenses and
3 costs.

4 99. Plaintiff and class members are entitled to recover from Defendants their
5 business-related expenses incurred during the course and scope of their employment, plus
6 interest.

7 **EIGHTH CAUSE OF ACTION**

8 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

9 **Unlawful Business Practices**

10 **(Against all Defendants)**

11 100. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
12 and every allegation set forth above.

13 101. Defendants are a “person” as defined by California Business & Professions
14 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies
15 and/or associations.

16 102. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
17 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
18 suffered injury in fact and has lost money as a result of Defendants’ unlawful business
19 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
20 meaning of Code of Civil Procedure section 1021.5.

21 103. Defendants’ activities, as alleged herein, are violations of California law, and
22 constitute unlawful business acts and practices in violation of California Business &
23 Professions Code sections 17200, *et seq.*

24 104. A violation of California Business & Professions Code sections 17200, *et seq.*
25 may be predicated on the violation of any state or federal law. In the instant case,
26 Defendants’ policies and practices have violated state law in at least the following respects:

- 27 (a) Requiring non-exempt employees, including Plaintiff and class members, to
28 work overtime without paying them proper compensation in violation of

1 California Labor Code sections 510 and 1198 and the applicable IWC Order, as
2 alleged herein;

3 (b) Failing to pay at least minimum wage to Plaintiff and class members in
4 violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
5 1198 and the applicable IWC Order, as alleged herein;

6 (c) Failing to provide uninterrupted meal and rest periods to Plaintiff and class
7 members in violation of California Labor Code sections 226.7, 512(a), 1198,
8 and the applicable IWC Order, as alleged herein;

9 (d) Failing to provide Plaintiff and class members with accurate wage statements
10 and failing to maintain accurate payroll records in violation of California Labor
11 Code sections 226(a), 1174(d), 1198, and the applicable IWC Order, as alleged
12 herein;

13 (e) Failing timely to pay all earned wages to Plaintiff and class members in
14 violation of California Labor Code section 204 and the applicable IWC Order,
15 as set forth below;

16 (f) Failing to pay the costs of mandatory pre-employment physical examinations
17 and drug testing in violation of California Labor Code section 222.5, as set
18 forth below;

19 (g) Failing to reimburse Plaintiff and class members for all business expenses
20 necessarily incurred in violation of California Labor Code section 2802, as
21 alleged herein; and

22 (h) Failing to provide written notice of information material to Plaintiff and class
23 members' employment with Defendants in violation of Labor Code section
24 2810.5(a)(1)(A)-(C), as set forth below.

25 105. At all times relevant herein, Labor Code section 204 provides that all wages
26 earned by any person in any employment between the first (1st) and the fifteenth (15th) days,
27 inclusive, of any calendar month, other than those wages due upon termination of an
28 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day

1 of the month during which the labor was performed.

2 106. At all times relevant herein, Labor Code section 204 provides that all wages
3 earned by any person in any employment between the sixteenth (16th) and the last day,
4 inclusive, of any calendar month, other than those wages due upon termination of an
5 employee, are due and payable between the first (1st) and the tenth (10th) day of the
6 following month.

7 107. At all times relevant herein, Labor Code section 204 provides that all wages
8 earned for labor in excess of the normal work period shall be paid no later than the payday
9 for the next regular payroll period. Alternatively, at all times relevant herein, Labor Code
10 section 204 provides that the requirements of this section are deemed satisfied by the
11 payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
12 more than seven (7) calendar days following the close of the payroll period.

13 108. At all relevant times herein, Defendants willfully failed to pay Plaintiff and
14 class members all wages due including, but not limited to, overtime wages, minimum wages,
15 and meal and rest period premium wages, within the time periods specified by California
16 Labor Code section 204.

17 109. At all relevant times herein, California Labor Code section 222.5 requires
18 employers to pay for the costs a prospective employee incurs for obtaining any pre-
19 employment medical or physical examination taken as a condition of employment.

20 110. During the relevant time period, Defendants implemented, on a company-wide
21 basis, an employer-imposed requirement that Plaintiff and class members undergo a
22 mandatory drug test as a condition of employment, but required them to do so at their own
23 expense. As stated, upon information and belief, Defendants had a company-wide policy
24 requiring that all new employees, including Plaintiff and class members, travel to a medical
25 clinic on their own time and using their own means of transportation to undergo drug testing
26 and/or physical examinations. At all times, upon information and belief, Defendants were in
27 control of scheduling the date and time for the drug testing, selecting the provider/facility
28 where the drug testing was to take place, and determining the scope of the physical

1 examination and drug test. However, Defendants did not compensate Plaintiff and class
2 members for the time they spent traveling to and from drug testing, for the time they spent
3 undergoing drug testing or for the travel expenses they incurred getting to and from the
4 medical clinic.

5 111. As stated, Defendants instructed Plaintiff to travel to a medical clinic and
6 obtain a drug test and/or physical examination. Plaintiff followed Defendants' instructions,
7 traveled approximately 30 minutes roundtrip to a medical facility in Apple Valley, and
8 underwent a drug test and/or physical examination. Plaintiff waited approximately one to two
9 hours at the clinic to obtain the mandatory drug test; in all, Plaintiff spent approximately 2.5
10 hours traveling to and from, waiting for, and undergoing the drug test. However, Defendants
11 did not compensate Plaintiff for this time or reimburse him for his travel expenses to and from
12 the clinic.

13 112. At all relevant times herein, California's Wage Theft Prevention Act was
14 enacted to ensure that employers provide employees with basic information material to their
15 employment relationship at the time of hiring, and to ensure that employees are given written
16 and timely notice of any changes to basic information material to their employment.
17 Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides
18 that at the time of hiring, an employer must provide written notice to employees containing
19 basic and material payroll information, including, among other things, the rate(s) of pay and
20 basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or
21 otherwise, including any rates for overtime, the regular payday designated by the employer,
22 and any allowances claims as part of the minimum wage, including meal or lodging
23 allowances. Labor Code § 2810.5(a)(1)(A)-(C).

24 113. At all relevant times, on information and belief, Defendants failed to provide
25 written notice to Plaintiff and class members that lists the requisite information set forth in
26 Labor Code section 2810.5(a)(1)(A)-(C) on a company-wide basis.

27 114. Defendants' failure to provide Plaintiff and class members with written notice
28 of basic information regarding their employment with Defendants is in violation of Labor

1 Code section 2810.5.

2 115. As a result of the violations of California law herein described, Defendants
3 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
4 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
5 herein.

6 116. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
7 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
8 Defendants during a period that commences four years prior to the filing of this complaint; a
9 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
10 class members; and an award of attorneys' fees pursuant to California Code of Civil
11 Procedure section 1021.5 and other applicable laws; and an award of costs.

12 **NINTH CAUSE OF ACTION**

13 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

14 **Unfair Business Practices**

15 **(Against all Defendants)**

16 117. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
17 and every allegation set forth above.

18 118. Defendants are a "person" as defined by California Business & Professions
19 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
20 and/or associations.

21 119. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
22 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered
23 injury in fact and has lost money as a result of Defendants' unfair business practices.
24 Plaintiff seeks to enforce important rights affecting the public interest within the meaning of
25 Code of Civil Procedure section 1021.5.

26 120. Defendants' activities, namely Defendants' company-wide practice and/or
27 policy of not paying Plaintiff and class members all meal and rest period premium wages due
28 to them under Labor Code section 226.7, deprived Plaintiff and class members of the

1 compensation guarantee and enhanced enforcement implemented by section 226.7. The
2 statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to
3 compensate employees, and secondarily to shape employer conduct. *Safeway, Inc. v.*
4 *Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7
5 were guaranteed to Plaintiff and class members as part of their employment with Defendants,
6 and thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an
7 unfair business practice in violation of California Business & Professions Code sections
8 17200, *et seq.* (Id.)

9 121. A violation of California Business & Professions Code sections 17200, *et seq.*
10 may be predicated on any unfair business practice. In the instant case, Defendants’ policies
11 and practices have violated the spirit of California’s meal and rest break laws and constitute
12 acts against the public policy behind these laws.

13 122. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
14 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
15 benefits implemented by section 226.7 withheld and retained by Defendants during a period
16 that commences four years prior to the filing of this complaint; a permanent injunction
17 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
18 Plaintiff and class members; an award of attorneys’ fees pursuant to California Code of Civil
19 Procedure section 1021.5 and other applicable laws; and an award of costs.

20 **REQUEST FOR JURY TRIAL**

21 Plaintiff requests a trial by jury.

22 **PRAYER FOR RELIEF**

23 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment
24 against Defendants, jointly and severally, as follows:

- 25 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys’ fees in
26 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
27 reserves the right to amend his prayer for relief to seek a different amount.
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Class Certification

- 2. That this case be certified as a class action;
- 3. That Plaintiff be appointed as the representative of the Class and subclass;
- 4. That counsel for Plaintiff be appointed as class counsel.

As to the First Cause of Action

- 5. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiff and class members;
- 6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;
- 7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due, or as otherwise provided by law;
- 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a); and
- 9. For such other and further relief as the Court may deem equitable and appropriate.

As to the Second Cause of Action

- 10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 by willfully failing to pay minimum wages to Plaintiff and class members;
- 11. For general unpaid wages and such general and special damages as may be appropriate;
- 12. For pre-judgment interest on any unpaid compensation from the date such amounts were due, or as otherwise provided by law;
- 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a);
- 14. For liquidated damages pursuant to California Labor Code section 1194.2; and
- 15. For such other and further relief as the Court may deem equitable and

1 appropriate.

2 **As to the Third Cause of Action**

3 16. That the Court declare, adjudge, and decree that Defendants violated California
4 Labor Code sections 226.7, 512(a), and 1198 and applicable IWC Wage Order(s) by willfully
5 failing to provide all meal periods to Plaintiff and class members;

6 17. That the Court make an award to the Plaintiff and class members of one (1)
7 hour of pay at each employee’s regular rate of pay for each workday that a meal period was
8 not provided;

9 18. For all actual, consequential, and incidental losses and damages, according to
10 proof;

11 19. For premiums pursuant to California Labor Code section 226.7(b);

12 20. For pre-judgment interest on any unpaid meal period premiums from the date
13 such amounts were due, or as otherwise provided by law;

14 21. For attorneys’ fees pursuant to California Code of Civil Procedure section
15 1021.5, or as otherwise provided by law; and

16 22. For such other and further relief as the Court may deem equitable and
17 appropriate.

18 **As to the Fourth Cause of Action**

19 23. That the Court declare, adjudge and decree that Defendants violated California
20 Labor Code sections 226.7 and 1198 and applicable IWC Wage Orders by willfully failing to
21 provide all rest periods to Plaintiff and class members;

22 24. That the Court make an award to the Plaintiff and class members of one (1) hour
23 of pay at each employee’s regular rate of pay for each workday that a rest period was not
24 provided;

25 25. For all actual, consequential, and incidental losses and damages, according to
26 proof;

27 26. For premiums pursuant to California Labor Code section 226.7(b);

28 27. For pre-judgment interest on any unpaid rest period premiums from the date

1 such amounts were due, or as otherwise provided by law;

2 28. For attorneys' fees pursuant to California Code of Civil Procedure section
3 1021.5, or as otherwise provided by law; and

4 29. For such other and further relief as the Court may deem equitable and
5 appropriate.

6 **As to the Fifth Cause of Action**

7 30. That the Court declare, adjudge and decree that Defendants violated the
8 recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage
9 Orders as to Plaintiff and class members, and willfully failed to provide accurate itemized
10 wage statements thereto;

11 31. For all actual, consequential and incidental losses and damages, according to
12 proof;

13 32. For injunctive relief pursuant to California Labor Code section 226(h);

14 33. For statutory penalties pursuant to California Labor Code section 226(e);

15 34. For attorneys' fees and costs pursuant to California Labor Code section
16 226(e)(1); and

17 35. For such other and further relief as the Court may deem equitable and
18 appropriate.

19 **As to the Sixth Cause of Action**

20 36. That the Court declare, adjudge and decree that Defendants violated California
21 Labor Code sections 201, 202, and 203 by willfully failing to pay overtime wages, minimum
22 wages, and meal and rest period premiums owed at the time of termination of the
23 employment of Plaintiff and other terminated class members;

24 37. For all actual, consequential and incidental losses and damages, according to
25 proof;

26 38. For waiting time penalties according to proof pursuant to California Labor
27 Code section 203 for all employees who have left Defendants' employ;

28 39. For pre-judgment interest on any unpaid wages from the date such amounts

1 were due, or as otherwise provided by law;

2 40. For attorneys' fees pursuant to California Code of Civil Procedure section
3 1021.5, or as otherwise provided by law; and

4 41. For such other and further relief as the Court may deem equitable and
5 appropriate.

6 **As to the Seventh Cause of Action**

7 42. That the Court declare, adjudge and decree that Defendants violated California
8 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-
9 related expenses and costs incurred by Plaintiff and class members;

10 43. For unpaid business-related expenses and such general and special damages as
11 may be appropriate;

12 44. For pre-judgment interest on any unpaid business-related expenses from the
13 date such amounts were due, or as otherwise provided by law;

14 45. For all actual, consequential, and incidental losses and damages, according to
15 proof;

16 46. For attorneys' fees and costs pursuant to California Labor Code section
17 2802(c), or as otherwise provided by law; and

18 47. For such other and further relief as the Court may deem equitable and
19 appropriate.

20 **As to the Eighth Cause of Action**

21 48. That the Court declare, adjudge and decree that Defendants conduct of failing
22 to provide Plaintiff and class members all overtime wages due to them, failing to provide
23 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and
24 class members all meal and rest periods, failing to provide Plaintiff and class members
25 accurate and complete wage statements, failing to maintain accurate payroll records for
26 Plaintiff and class members, failing timely to pay Plaintiff and class members all earned
27 wages during employment, failing to reimburse Plaintiff and class members for the costs of
28 mandatory pre-employment physicals and drug testing, and failing to provide written notice

1 of information material to employment, constitutes an unlawful business practice in violation
2 of California Business and Professions Code sections 17200, *et seq.*;

3 49. For restitution of unpaid wages to Plaintiff and all class members and
4 prejudgment interest from the day such amounts were due and payable;

5 50. For the appointment of a receiver to receive, manage and distribute any and all
6 funds disgorged from Defendants and determined to have been wrongfully acquired by
7 Defendants as a result of violations of California Business & Professions Code sections
8 17200 *et seq.*;

9 51. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
10 California Code of Civil Procedure section 1021.5; and

11 52. For such other and further relief as the Court may deem equitable and
12 appropriate.

13 **As to the Ninth Cause of Action**

14 53. That the Court declare, adjudge and decree that Defendants' conduct of denying
15 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
16 an unfair business practice in violation of California Business and Professions Code sections
17 17200, *et seq.*;

18 54. For restitution of the statutory benefits under section 226.7 unfairly withheld
19 from Plaintiff and class members and prejudgment interest from the day such amounts were
20 due and payable;

21 55. For the appointment of a receiver to receive, manage and distribute any and all
22 funds disgorged from Defendants and determined to have been wrongfully acquired by
23 Defendants as a result of violations of California Business & Professions Code sections
24 17200 *et seq.*;

25 56. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
26 California Code of Civil Procedure section 1021.5;

27 57. For pre-judgment and post-judgment interest as provided by law; and

28 58. For such other and further relief as the Court may deem equitable and

1 appropriate.

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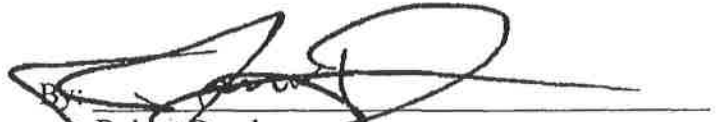
Dated: August 23, 2017

Respectfully submitted,

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Capstone Law APC

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By: _____
Robert Drexler
Jonathan Lee
Natalie Torbati

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Attorneys for Plaintiff Alfred Johnson

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COPY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

CIVDS 1716405

Alfred Johnson

CASE NO.: _____

vs.

CERTIFICATE OF ASSIGNMENT

Winco Foods, LLC, et al.

A civil action or proceeding presented for filing must be accompanied by this Certificate. If the ground is the residence of a party, name and residence shall be stated.

The undersigned declares that the above-entitled matter is filed for proceedings in the _____ District of the Superior Court under Rule 404 of this court for the _____

San Bernardino

checked reason: General

Collection

RECEIVED
AUG 23 2017
SUPERIOR COURT
SAN BERNARDINO COUNTY

Nature of Action	Ground
<input type="checkbox"/> 1. Adoption	Petitioner resides within the district
<input type="checkbox"/> 2. Conservator	Petitioner or conservatee resides within the district.
<input type="checkbox"/> 3. Contract	Performance in the district is expressly provided for.
<input type="checkbox"/> 4. Equity	The cause of action arose within the district.
<input type="checkbox"/> 5. Eminent Domain	The property is located within the district.
<input type="checkbox"/> 6. Family Law	Plaintiff, defendant, petitioner or respondent resides within the district.
<input type="checkbox"/> 7. Guardianship	Petitioner or ward resides within the district or has property within the district.
<input type="checkbox"/> 8. Harassment	Plaintiff, defendant, petitioner or respondent resides within the district.
<input type="checkbox"/> 9. Mandate	The defendant functions wholly within the district.
<input type="checkbox"/> 10. Name Change	The petitioner resides within the district.
<input type="checkbox"/> 11. Personal Injury	The injury occurred within the district.
<input type="checkbox"/> 12. Personal Property	The property is located within the district.
<input type="checkbox"/> 13. Probate	Decedent resided or resides within the district or had property within the district.
<input type="checkbox"/> 14. Prohibition	The defendant functions wholly within the district.
<input type="checkbox"/> 15. Review	The defendant functions wholly within the district.
<input type="checkbox"/> 16. Title to Real Property	The property is located within the district.
<input type="checkbox"/> 17. Transferred Action	The lower court is located within the district.
<input type="checkbox"/> 18. Unlawful Detainer	The property is located within the district.
<input type="checkbox"/> 19. Domestic Violence	The petitioner, defendant, plaintiff or respondent resides within the district.
<input checked="" type="checkbox"/> 20. Other <u>Employment</u>	
<input type="checkbox"/> 21. THIS FILING WOULD	NORMALLY FALL WITHIN JURISDICTION OF SUPERIOR COURT

The address of the accident, performance, party, detention, place of business, or other factor which qualifies this case for filing in the above-designed district is:

The defendants conduct business within the district at WinCo Foods	15350 Roy Rogers Drive
NAME - INDICATE TITLE OR OTHER QUALIFYING FACTOR	ADDRESS
Victorville	California
CITY	STATE
	92393
	ZIP CODE

I declare, under penalty of perjury, that the foregoing is true and correct and that this declaration was executed on August 23, 2017 at Los Angeles, California



Signature of Attorney/Party

CERTIFICATE OF ASSIGNMENT

COPY

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Robert Drexler (SBN 119119), Jonathan Lee (SBN 267146) Jonathan LeNatalie Torbati (SBN 301663) Capstone Law APC 1875 Century Park East, Suite 1000, Los Angeles, California 90067 TELEPHONE NO.: (310) 556-4811 FAX NO.: (310) 943-0396		FOR COURT USE ONLY FILED SUPERIOR COURT COUNTY OF SAN BERNARDINO SAN BERNARDINO DISTRICT AUG 23 2017
ATTORNEY FOR (Name): Plaintiff Alfred Johnson		BY: <u>Sandra Ortega</u> SANDRA ORTEGA DEPUTY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO STREET ADDRESS: 247 West Third Street MAILING ADDRESS: 247 West Third Street CITY AND ZIP CODE: San Bernardino, California 92415 BRANCH NAME: San Bernardino Justice Center		CASE NUMBER:
CASE NAME: Johnson v. Winco Food, LLC		JUDGE: CIVDS 7716405 DEPT:
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (48) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (38) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (28) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): Nine (9)
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-010.)

Date: August 23, 2017

Jonathan Lee
 (TYPE OR PRINT NAME)

[Signature]
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES**Auto Tort**

- Auto (22)—Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/W (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
 - Asbestos Property Damage
 - Asbestos Personal Injury/Wrongful Death
- Product Liability (*not asbestos or toxic/environmental*) (24)
- Medical Malpractice (45)
 - Medical Malpractice—Physicians & Surgeons
 - Other Professional Health Care Malpractice
- Other PI/PD/W (23)
 - Premises Liability (e.g., slip and fall)
 - Intentional Bodily Injury/PD/W (e.g., assault, vandalism)
 - Intentional Infliction of
 - Emotional Distress
 - Negligent Infliction of
 - Emotional Distress
 - Other PI/PD/W

Non-PI/PD/W (Other) Tort

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
 - Legal Malpractice
 - Other Professional Malpractice (*not medical or legal*)
- Other Non-PI/PD/W Tort (35)

Employment

- Wrongful Termination (36)
- Other Employment (15)

Contract

- Breach of Contract/Warranty (06)
 - Breach of Rental/Lease
 - Contract (*not unlawful detainer or wrongful eviction*)
 - Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
- Negligent Breach of Contract/Warranty
- Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
- Collection Case—Seller Plaintiff
- Other Promissory Note/Collections Case
- Insurance Coverage (*not provisionally complex*) (18)
 - Auto Subrogation
 - Other Coverage
- Other Contract (37)
 - Contractual Fraud
 - Other Contract Dispute

Real Property

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
 - Writ of Possession of Real Property
 - Mortgage Foreclosure
 - Quiet Title
- Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
 - Writ—Administrative Mandamus
 - Writ—Mandamus on Limited Court Case Matter
- Writ—Other Limited Court Case Review
- Other Judicial Review (39)
 - Review of Health Officer Order
 - Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

- Enforcement of Judgment (20)
 - Abstract of Judgment (Out of County)
 - Confession of Judgment (*non-domestic relations*)
 - Sister State Judgment
 - Administrative Agency Award (*not unpaid taxes*)
 - Petition/Certification of Entry of Judgment on Unpaid Taxes
 - Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

- RICO (27)
- Other Complaint (*not specified above*) (42)
 - Declaratory Relief Only
 - Injunctive Relief Only (*non-harassment*)
 - Mechanics Lien
 - Other Commercial Complaint Case (*non-tort/non-complex*)
 - Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

- Partnership and Corporate Governance (21)
- Other Petition (*not specified above*) (43)
 - Civil Harassment
 - Workplace Violence
 - Elder/Dependent Adult Abuse
 - Election Contest
 - Petition for Name Change
 - Petition for Relief From Late Claim
 - Other Civil Petition