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Sherri R. Carter, Executive Officer/Clerk of Court

By: Kristina Vargas, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SPRING STREET COURTHOUSE

MARIA GUADALUPE ALONSO and
RAYMUNDO GONZALEZ, as individuals
and on behalf of all similarly situated
employees,

Plaintiffs,

vs.

T FRESH COMPANY dba YES PRODUCE;
and DOES 1-50, inclusive,

Defendants.

Case No.: **20STCV48580**

CLASS ACTION

COMPLAINT FOR DAMAGES

1. Failure to Pay All Wages, Including Overtime Wages and Minimum Wage;
2. Failure to Provide Meal Periods;
3. Failure to Provide Rest Periods;
4. Failure to Maintain and Provide Accurate Itemized Wage Statements;
5. Failure to Pay Wages Upon Ending Employment;
6. Failure to Indemnify for Business Expenditures; and
7. Unfair Competition (Business and Professions Code § 17200 et seq.).

DEMAND FOR JURY TRIAL

Plaintiffs MARIA GUADALUPE ALONSO and RAYMUNDO GONZALEZ (“Plaintiffs”), as individuals and on behalf of all others similarly situated, complain, and allege as follows:

INTRODUCTION

1. This is a class action brought on behalf of Plaintiffs and the class of similarly situated former and current employees they seek to represent (“Plaintiff Class” or “Class Members”). Class Members consist of all non-exempt, hourly-paid employees currently and/or formerly employed by Defendants T FRESH COMPANY dba YES PRODUCE and DOES 1 through 50 (collectively, “Defendants”), during the Class Period. The term “Class Period” is defined as four (4) years prior to the filing of the complaint through the date of judgment. Plaintiffs reserve the right to amend this complaint to reflect a different “Class Period” as further discovery is conducted.

2. Plaintiffs, individually, and on behalf of Class Members seek to represent and relief against Defendants for: (1) the failure to pay all wages due in violation in accordance with Labor Code sections 510 and 1194, as well as California Code of Regulations (“CCR”), Title 8, section 11160, subdivision (3), including both regular and overtime wages; (2) the failure to provide meal periods or compensation in lieu thereof pursuant to Labor Code sections 226.7 and 512, as well as 8 CCR section 11160, subdivision (10); (3) the failure to provide legally compliant rest periods pursuant to Labor Code sections 226.7 and 512, as well as 8 CCR section 11160, subdivision (11); (4) the failure to maintain and provide accurate itemized wage statements upon payment of wages pursuant to Labor Code sections 226, subdivision (a), 1174, and 1175; (5) the failure to pay wages of terminated or resigned employees pursuant to Labor Code sections 201, 202, and 203; and (6) failure to indemnify/reimburse employer-related business expenditures pursuant to Labor Code section 2802.

3. Plaintiffs further seek equitable remedies in the form of declaratory relief and injunctive relief, and relief under the Business and Professions Code sections 17200 et seq. for unfair business practices.

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1 4. At all times relevant herein, Defendants have consistently maintained and enforced
2 against Plaintiffs and Plaintiff Class the unlawful practices and policies set forth therein.

3 **JURISDICTION AND VENUE**

4 5. Venue is proper in this judicial district and the County of Los Angeles, pursuant to
5 the Code of Civil Procedure (“Code Civ. Proc.”) sections 395 and 395.5, because the Defendant
6 maintains its location in this county, transacts business in this county, and the obligations and
7 liability arise in this county, making the subject of this action in the County of Los Angeles,
8 California.

9 6. The wages, statutory penalties, monetary damages, and restitution sought by
10 Plaintiffs and Plaintiff Class exceed the minimal jurisdictional limits of the Superior Court and
11 will be established according to proof at trial. This Court has jurisdiction over this action pursuant
12 to California Constitution, Article VI, section 10. The statutes under which this action is brought
13 do not specify any other basis for jurisdiction.

14 7.  The California Superior Court has jurisdiction in the matter because the individual
15 claims are under the seventy-five thousand dollar (\$75,000.00) individual claim threshold and five
16 million dollar (\$5,000,000) aggregated jurisdictional threshold for federal court, and, upon
17 information and belief, Plaintiffs and Defendants are residents of and/or domiciled in the State of
18 California. Further, there is no federal question at issue as the issues herein are based solely on
19 California Statutes and law including the California Labor Code, Industrial Welfare Commission
20 (“IWC”) Wage Orders, Code Civ. Proc., Rules of Court, and Business and Professions Code.

21 **ADMINISTRATIVE REMEDIES**

22 8. Under Labor Code section 2699.3, subdivision (a), a plaintiff may bring a cause of
23 action under PAGA only after giving the Labor and Workforce Development Agency ("LWDA")
24 and the employer notice of the Labor Code sections alleged to have been violated, and after
25 receiving notice from the LWDA of its intention not to investigate, or after sixty-five (65) days
26 have passed without notice from the LWDA.

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9. Prior to filing this Complaint, Plaintiff Maria Guadalupe Alonso (“Ms. Alonso”) gave written notice on December 17, 2020, by electronic filing to the LWDA and by certified mail to Defendant of the specific provisions she alleges Defendant violated, including the facts and theories to support these alleged violations as required by Labor Code section 2699.3. Please see a true and correct copy of Ms. Alonso’s December 17, 2020 letter to the LWDA attached hereto as “Exhibit A.”

10. Under Labor Code section 2699.3, subdivision (a)(2)(C), "Notwithstanding any other provision of law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising under this part at any time within sixty (60) days of the time periods specified in this part." Therefore, Plaintiff intends on amending his complaint upon the expiration of the sixty-five (65) day period for the LWDA to provide notice of its intent to investigate Plaintiff's claims, if the LWDA fails to provide notice.

THE PARTIES

A. The Plaintiffs

11. Ms. Alonso was employed by Defendants as a non-exempt employee from approximately 2013 through December 19, 2019, at Defendants' City of Industry, California location. Plaintiff Raymundo Gonzalez ("Mr. Gonzalez") was employed by Defendants in the Orders department from approximately November 2011 to June 2020, at Defendants' City of Industry, California location. At all relevant times herein, they were employed by Defendants during the defined Class Period in a non-exempt hourly capacity. Plaintiffs are entitled to compensation for: (1) all hours worked including overtime compensation and minimum wage; (2) non-compliant rest periods; (3) non-complaint meal periods; (4) inaccurate wage statements; (5) failure to pay wages upon ending employment; and (6) failure to indemnify for necessary business expenditures. Each of the Class Members is an identifiable, current, and/or former similarly situated person who was employed in non-exempt hourly position in California for Defendants during the defined Class Period.

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1 **B. The Defendants**

2 12. Plaintiffs are informed and believe, and based thereon allege, that Defendant T
3 FRESH COMPANY dba YES PRODUCE is a California corporation. Defendant T FRESH
4 COMPANY dba YES PRODUCE is duly licensed and in the business of produce delivery to
5 American, Asian, and Mexican markets. On information and belief, Defendant T FRESH
6 COMPANY dba YES PRODUCE was and/or is the employer of Plaintiffs and Plaintiff Class
7 during the Class Period. Plaintiffs also allege that T FRESH COMPANY dba YES PRODUCE is
8 conducting business in good standing in California.

9 13. Plaintiffs are ignorant of the true names, capacities, relationships and extent of
10 participation in the conduct herein alleged, of the Defendants sued herein as DOES 1 through 50,
11 inclusive, but on information and belief allege that said Defendants are legally responsible for the
12 payment of minimum wage and/or overtime compensation, rest and meal period compensation,
13 and/or Labor Code section 203 penalties to the Plaintiff Class members by virtue of their unlawful
14 practices, and therefore sue these Defendants by such fictitious names. Plaintiffs will amend this
15 complaint to allege the true names and capacities of the DOE Defendants when ascertained.

16 14. Plaintiffs are informed and believe, and based thereon allege, that each Defendant
17 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
18 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
19 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
20 employer and/or joint employer of Plaintiffs and Plaintiff Class.

21 15. Plaintiffs are informed and believe, and based thereon allege, that each Defendant
22 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
23 managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned
24 below was acting, at least in part, within the course and scope of that authority as such agent,
25 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
26 permission and consent of the co-Defendants. Plaintiffs also allege the acts of each Defendant are
27 legally attributable to the other Defendants.

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16. Plaintiffs are informed and believe, and based thereon allege, that each of the Defendants sued herein was, at all times relevant hereto, the employer, owner, shareholder, principal, joint venture, proxy, agent, employee, supervisor, representative, manager, managing agent, joint employer and/or alter-ego of the remaining Defendants, and was acting, at least in part, within the course and scope of such employment and agency, with the express and implied permission, consent, and knowledge, approval and/or ratification of the other Defendants.

17. The above Defendants, managing agents, and supervisors aided, abetted, condoned, permitted, approved, authorized and/or ratified the unlawful acts described herein.

GENERAL ALLEGATIONS

18. Labor Code section 1194 provides that notwithstanding any agreement to work for a lesser wage, an employee receiving less than the legal overtime compensation is entitled to recover in a civil action the unpaid balance of their overtime compensation, including interest thereon, reasonable attorneys' fees and costs of suit.

19. Further, Business and Professions Code section 17203 provides that any person who engages in unfair competition may be enjoined in any court of competent jurisdiction. Business and Professions Code section 17204 provides that any person who has suffered actual injury and has lost money or property as a result of the unfair competition may bring an action in a court of competent jurisdiction.

20. During all, or a portion of the Class Period, Plaintiffs and each member of the Plaintiff Class were employed by Defendants in the State of California.

21. Plaintiffs and Class Members were non-exempt employees covered under one or more IWC Wage Order(s), and Labor Code section 510, and/or other applicable Wage Orders, regulations and statutes, and each Class Member was not subject to an exemption for executive, administrative or professional employees, which imposed obligations on the part of Defendants to pay Plaintiffs and Class Members lawful overtime compensation.

22. Plaintiffs and Plaintiff Class were covered by one or more IWC Wage Order(s), and Labor Code sections 512, 226.7 and other applicable Wage Orders, regulations and statutes which imposed an obligation on the part of Defendants to pay Plaintiffs and Plaintiff Class meal

1 period compensation.

2 23. Plaintiffs and Plaintiff Class were covered by one or more IWC Wage Order(s),
3 and Labor Code section 226.7 and other applicable Wage Orders, regulations and statutes which
4 imposed an obligation on the part of Defendants to pay Plaintiffs and Plaintiff Class rest period
5 compensation.

6 24. During the Class Period, Defendants were obligated to pay Plaintiffs and Class
7 Members for all hours worked. However, Defendants had a policy and practice of not paying
8 Plaintiffs and Class Members for all hours worked by requiring its employees to work off-the-
9 clock. This includes, but is not limited to, uncompensated time worked beyond regularly
10 scheduled shift hours and during meal periods.

11 25. Similarly, during the Class Period, Defendants were obligated to pay Plaintiffs and
12 Class Members overtime compensation for all hours worked in excess of eight (8) hours of work
13 in one (1) day or forty (40) hours in one (1) week and double-time compensation for hours worked
14 in excess of twelve (12) hours in one (1) day or eight (8) hours worked on the seventh (7th)
15 consecutive day of work in one (1) week. However, Defendants did not pay Plaintiffs and Class
16 Members proper overtime and/or double-time rates for overtime hours worked off-the-clock as
17 required by law. Specifically, Plaintiffs and Plaintiff Class were required to continue working after
18 they had clocked out following their scheduled 8-hour shifts. This was due to the fact that
19 Defendants had requested Plaintiffs and Plaintiff Class to return to work to finish up assignments
20 and duties following their scheduled shifts.

21 26. During the Class Period, Defendants were obligated to provide Plaintiffs and
22 putative Class Members with a 30-minute meal period for each and every work shift exceeding
23 five (5) hours, commencing no later than the end of the fifth (5th) hour of the shift. Although
24 Plaintiffs and Plaintiff Class were occasionally given their 30-minute meal periods, most of those
25 meal periods were non-compliant due to: 1) the meal periods being interrupted as Defendants
26 would require Plaintiffs and Plaintiff Class to return to work prior to the expiration of the thirty
27 (30) minutes in order to finish packing orders; and/or 2) on occasion, Plaintiffs and Plaintiff Class
28 were not permitted to take their meal periods till after their fifth (5th) hour of work as Defendants

1 emphasized the completion of work before taking a meal break. This was due in part to
2 Defendants' policy and practice of requiring employees to prioritize completion of work tasks
3 ahead of timely meal period compliance. Defendants scheduled more work than could be
4 completed if all employees took their compliant meal periods.

5 27. During the Class Period, Defendants were obligated to provide Plaintiffs and Class
6 Members with a 10-minute rest break for every four (4) hours, or major fraction thereof, worked
7 each day. Although Plaintiffs and Plaintiff Class were regularly scheduled to work 8-hour shifts,
8 they were either not given any rest periods in a workday or were only given one (1) rest period for
9 the workday. This was due in part to Defendants' policy and practice of scheduling employees to
10 work through their rest periods, as well as Defendants' policy and practice of putting pressure on
11 employees to complete work assignments regardless of mandatory rest breaks.

12 28. In order to facilitate their violations of wage and hour laws pertaining to payment
13 of wages and providing meal and rest periods, Defendants failed to comply with statutes and
14 regulations requiring Defendants to accurately document the beginning and end times for each
15 work shift and the start/end times for each meal period, pursuant to Labor Code section 1174, as
16 well as 8 CCR section 11160 (6).

17 29. Furthermore, Defendants failed and/or refused to pay Plaintiffs and Plaintiff Class
18 one (1) hour's pay at the employees' regular rate of pay as premium compensation for Defendants'
19 failure to provide timely 30-minute meal periods and lawful 10-minute rest periods within the
20 statutory time frames.

21 30. Plaintiffs and Class Members performed non-exempt work, including, but not
22 limited to, packing produce in order to be shipped, often in excess of the maximum regular rate
23 hours set forth in the applicable IWC Wage Order(s), regulations or statutes, and therefore entitled
24 the Plaintiffs and Class Members to overtime compensation at the rate of one and a half (1 & ½)
25 times their regular rate of pay and, when applicable, double time compensation as set forth by the
26 applicable IWC Wage Order(s), regulations and/or statutes.

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31. During the Class Period, Defendants required Plaintiffs and Plaintiff Class to work regular hours, off the clock hours, and overtime hours without lawful compensation in violation of the applicable IWC Wage Order(s), regulations and statutes, and Defendants: (1) willfully failed and refused, and continues to fail and refuse to pay compensation for all hours worked, including lawful regular time and overtime compensation, as well as meal and rest period premiums, to Class Members; and (2) willfully failed and refused, and continues to fail and refuse to pay due and owing wages promptly upon termination of employment to Plaintiffs and affected Class Members.

32. Class Members who ended their employment with Defendants during the Class Period but were not paid the above due compensation for all hours worked timely upon the termination of their employment as required by Labor Code sections 201, 202, 203 are entitled to penalties as provided by Labor Code section 203. As a result of Defendants' failure to pay Plaintiffs and Plaintiff Class all wages due during the Class Period, Defendants failed to provide Plaintiffs and Plaintiff Class with accurate itemized wage statements, since said statements did not set forth all regular and overtime hours worked, the compensation owed for said hours, nor did the statements set forth the premiums owed for non-compliant meal and rest periods.

33. During the Class Period, Defendants were obligated to keep and maintain accurate payroll records for Plaintiffs and all Class Members. Defendants' failure to keep and maintain said records as described above, constitutes violations of Labor Code section 226.7, thereby incurring statutory penalties.

34. During the Class Period, Defendants were obligated to reimburse Plaintiffs and Class Members for all reasonable expenditures incurred by Plaintiffs and Class Members for the purpose of fulfilling their job duties. Defendants failed to reimburse Plaintiffs and Class Members for the cost associated with purchasing gloves and face coverings, as well as using their personal cellphones outside of work in violation of Labor Code section 2802.

CLASS ALLEGATIONS

35. Plaintiffs bring this action on behalf of themselves and Class Members as a class action pursuant to Code Civ. Proc. section 382.

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1 36. The Plaintiff Class is composed of and defined as follows: All persons who are
2 employed or have been employed by Defendants, as non-exempt hourly employee, in the State of
3 California, within the four (4) years of the filing of this complaint through the date of judgment.

4 37. Plaintiffs further propose the following subclasses:

- 5 a. All persons who are employed or have been employed by Defendants in the
6 State of California, and who, within the four (4) years of the filing of this
7 complaint to the present, have worked as non-exempt employees and were
8 entitled to be paid all wages owed, including but not limited to, the legally
9 requisite minimum wage, wages at the regular time rate, overtime rate and/or
10 double-time rate;
- 11 b. All persons who are employed or have been employed by Defendants in the
12 State of California, and who, within the four (4) years of the filing of this
13 complaint to the present, have worked as non-exempt employees and were
14 entitled to be provided a rest period for every four (4) hours, or major fraction
15 thereof, worked per day, and were not provided compensation of one (1) hour's
16 pay for each day on which such rest period(s) was not provided;
- 17 c. All persons who are employed or have been employed by Defendants in the
18 State of California, and who, within the three (3) years of the filing of this
19 complaint to the present, have worked as non-exempt employees and have been
20 terminated or resigned, and were entitled to be paid all wages owed pursuant to
21 Labor Code section 203 and are owed restitution and waiting time penalties for
22 unpaid wages;
- 23 d. All persons who are employed or have been employed by Defendants in the
24 State of California, and who, within the one (1) year of the filing of this
25 complaint to the present have worked as non-exempt employees and were
26 entitled to be provided accurate payroll records or wage statement as required
27 under Labor Code sections 226 and 1174;

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- 1 e. All persons who are employed or have been employed by Defendants in the
2 State of California, and who, within the four (4) years of the filing of this
3 complaint to the present, have worked as non-exempt employees and for whom
4 Defendants failed to keep accurate payroll records;
- 5 f. All persons who are employed or have been employed by Defendants in the
6 State of California, who, within the four (4) years of the filing of this complaint
7 to the present and, have worked as non-exempt employees and were entitled to
8 be indemnified for business expenditures incurred in the scope of their
9 employment;
- 10 g. All persons who are employed or have been employed by Defendants in the
11 State of California, and who, within the four (4) years of the filing of this
12 complaint to the present, have worked as non-exempt employees and were
13 subjected to unlawful and unfair business practices within the meaning of
14 California's Unfair Competition Law and who suffered injury, including lost
15 money, as a result of Defendants' unlawful and unfair business practices; and

16 38. Plaintiffs reserve the right under Rule 1855, subdivision (b) of the California Rules
17 of Court, to amend or modify the Plaintiff Class description with greater specificity or further
18 division into subclasses or limitation to particular issues.

19 39. This action has been brought and may be maintained as a class action pursuant to
20 Code Civ. Proc. section 382 because there is a well-defined common interest of many persons and
21 it is impractical to bring them all before the court.

22 40. This Court should permit this action to be maintained as a class action pursuant to
23 Code of Civil Procedure section 382 because:

- 24 a. **Commonality** – The questions of law and fact common to the Plaintiff Class
25 predominate over any question affecting only individual members;
- 26 b. **Typicality** – The claims of the Plaintiffs are typical of the claims for the
27 Plaintiff Class, all of whom have incurred and/or will incur damages, as a
28 result of Defendants' common course of conduct and common policies and

1 practices. The claims of Plaintiffs are typical because Defendants subjected all
2 of its non-exempt employees to the identical violations of the IWC Wage
3 Orders, Code of Regulations, Labor Code, and Business and Professions
4 Code, among other statutes;

- 5 c. **Superiority of Class Action** – A class action is superior to any other available
6 method for the fair and efficient adjudication of the claims of the members of
7 the Plaintiff Class;
- 8 d. **Numerosity** – The Plaintiff Class is so numerous that it is impractical to bring
9 all members of the Plaintiff Class before the Court;
- 10 e. **Adequacy of Representation** – Plaintiffs will fairly and adequately represent
11 and protect the interests of the Plaintiff Class. Plaintiffs’ interests are not in
12 conflict with those of the Plaintiff Class. Plaintiffs’ attorneys are competent,
13 well-versed, and experienced in litigating employment class actions and other
14 complex litigation matters;
- 15 f. Plaintiffs and the other members of the Plaintiff Class will not be able to obtain
16 effective and economic legal redress unless the action is maintained as a class
17 action;
- 18 g. There is a community of interest in obtaining appropriate legal and equitable
19 relief for the common law and statutory violations and other improprieties, and
20 in obtaining adequate compensation for the damages and injuries which
21 Defendants’ actions have inflicted upon the Plaintiff Class;
- 22 h. There is a community of interest in ensuring that the combined assets and
23 available insurance of the Defendants are sufficient to adequately compensate
24 members of the Plaintiff Class for the injuries sustained;
- 25 i. Without class certification, the prosecution of separate actions by individual
26 members of the Plaintiff Class would create a risk of:

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- 1 i. Inconsistent or varying adjudications with respect to individual
2 members of the Plaintiff Class which would establish incompatible
3 standard of conduct for the Defendants; and/or
4 ii. Adjudications with respect to the individual members which would, as
5 a practical matter, be dispositive of the interests of other members not
6 parties to the adjudications, or would substantially impair or impede
7 their ability to protect their interests, including but not limited to the
8 potential for exhausting the funds available from those parties who is,
9 or may be, responsible Defendant(s); and
10 j. Defendants have acted or refused to act on grounds generally applicable to the
11 Class, thereby making final injunctive relief appropriate with respect to the
12 Class as a whole.

13 **FIRST CAUSE OF ACTION**

14 **FAILURE TO PAY ALL WAGES**

15 **(Labor Code §§ 204, 206, 510, 1182.12, 1194, 1194.2, 1197, 1197.1)**

16 **(Plaintiffs and Plaintiff Class Members against all Defendants)**

17 41. Plaintiffs and Plaintiff Class reallege and incorporate by reference all preceding
18 paragraphs of this complaint as though fully set forth herein.

19 42. Labor Code section 204 establishes the fundamental right of all employees in the
20 State of California to be paid wages, including straight time and overtime, in a timely fashion for
21 their work.

22 43. Labor Code section 510, subdivision (a) provides that “[a]ny work in excess of
23 eight (8) hours in one (1) workday and any work in excess of forty (40) hours in any one (1)
24 workweek and the first eight (8) hours worked on the seventh (7th) day of work in any one (1)
25 workweek shall be compensated at the rate of no less than one and one-half (1 & ½) times the
26 regular rate of pay for an employee.”

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1 44. Labor Code section 510, subdivision (a) further provides that “[a]ny work in excess
2 of twelve (12) hours in one (1) day shall be compensated at the rate of no less than twice the regular
3 rate of pay for an employee.”

4 45. Labor Code section 1194 and applicable IWC Wage Orders make it unlawful for
5 employers not to make required minimum wage payments, including minimum prevailing wage
6 governed by Labor Code sections 1720 et seq, as well as overtime and double time payments
7 identified in the preceding paragraphs, and that employees not paid such payments can recover
8 any monies owed through a civil action.

9 46. Defendants have willfully violated the Labor Code by failing to pay Plaintiffs and
10 Plaintiff Class all wages. Plaintiffs and Plaintiff Class were denied wages as a result of
11 Defendants’ policy and practice of failing to compensate Plaintiffs and Plaintiff Class for all
12 regular and overtime hours worked. Further, Defendants have regularly violated the Labor Code
13 with respect to meeting the requirements of paying wages earned, including regular time, overtime,
14 double-time, when calculating the employees’ regular rate of pay, as herein alleged. Defendants
15 have intentionally excluded remuneration that must be included in all employees’ minimum,
16 regular and overtime rates of pay in order to avoid payment of wages and other benefits in violation
17 of the Labor Code and the applicable IWC Wage Order(s). Defendants are thereby able to reduce
18 its overhead and operating expenses and gain an unfair advantage over competing companies who
19 comply with state law.

20 47. Additionally, Plaintiffs and Plaintiff Class members regularly worked in excess of
21 eight (8) hours per day. Defendants failed to pay Plaintiffs and Plaintiff Class members overtime
22 premium for hours worked in excess of eight (8) hours. Defendants failed to schedule Plaintiffs
23 and Plaintiff Class members in such a manner that allowed Plaintiffs and Plaintiff Class members
24 to be relieved of their shift immediately, thereby causing Plaintiffs and Plaintiff Class members to
25 work in excess of eight (8) hours per day. Specifically, Plaintiffs and Plaintiff Class were required
26 to continue working after they had clocked out following their scheduled 8-hour shifts. This was
27 due to the fact that Defendants had requested Plaintiffs and Plaintiff Class to return to work to
28 finish up assignments and duties following their scheduled shifts. As such, Plaintiffs and Plaintiff

1 Class seek overtime in an amount according to proof. Pursuant to Labor Code section 1194, the
2 Plaintiff Class members seek the payment of all overtime compensation which they earned and
3 accrued four (4) years prior to filing this Complaint, according to proof.

4 48. Moreover, Defendants also required Plaintiffs and Plaintiff Class to perform work
5 during meal periods. On occasion, Plaintiffs and Plaintiff Class were required to cut their 30-
6 minute meal periods short in order to tend to work-related duties. Therefore, whenever Defendants
7 needed produce to be packed in a time-urgent fashion, Plaintiffs and Plaintiff Class were required
8 to remain on duty to satisfy Defendants' requests but were still required by the Defendants to
9 record the 30-minute meal period on their time records and were precluded from recording the
10 time worked during meal periods. Because Plaintiffs and Plaintiff Class worked during their meal
11 periods, the time worked in a workday exceeded eight (8) hours and thus, this time worked during
12 meal periods would constitute overtime.

13 49. Additionally, Plaintiffs and Plaintiff Class members are entitled to attorneys' fees,
14 costs, pursuant to Labor Code section 1194 and prejudgment interest.

15 **SECOND CAUSE OF ACTION**

16 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**

17 **(Labor Code §§ 226.7, 512)**

18 **(Plaintiffs and Plaintiff Class against all Defendants)**

19 50. Plaintiffs and Plaintiff Class reallege and incorporate by reference all preceding
20 paragraphs of this complaint as though fully set forth herein.

21 51. Labor Code section 512 and 8 CCR section 11160 (10) provides that employers
22 authorize and permit all employees to take meal periods or at least thirty (30) duty-free minutes
23 commencing no later than at the end of fifth (5th) hour of work, when the work shift exceeds five
24 (5) hours.

25 52. Labor Code section 226.7, subdivision (b) provides that if an employer fails to
26 provide an employee meal periods in accordance with Labor Code section 512 and/or 8 CCR
27 section 11160 (10), the employer shall pay the employee one (1) hour of pay at the employee's
28 regular rate of compensation for each workday that the meal period is not provided in a compliant

1 manner.

2 53. During the Class Period, Defendants were obligated to provide Plaintiffs and Class
3 Members with a 30-minute meal period for each and every work shift exceeding five (5) hours,
4 commencing no later than the end of the fifth (5th) hour of the shift. Although Plaintiffs and
5 Plaintiff Class were occasionally given their 30-minute meal periods, most of those meal periods
6 were non-compliant due to: 1) the meal periods being interrupted as Defendants would require
7 Plaintiffs and Plaintiff Class to return to work prior to the expiration of the thirty (30) minutes in
8 order to finish packing orders; and/or 2) Plaintiffs and Plaintiff Class were not permitted to take
9 their meal periods till after their fifth (5th) hour of work as Defendants emphasized the completion
10 of work before taking a meal break.

11 54. Defendants' prioritization of work completion ahead of lawful meal period
12 compliance resulted in this unlawful practice.

13 55. At all times relevant hereto, Plaintiffs and Plaintiff Class have worked more than
14 five (5) hours in a workday.

15 56. By virtue of the Defendants' unlawful failure to provide legally compliant meal
16 periods to Plaintiffs and Plaintiff Class as a result of their scheduling and shift relief system,
17 Plaintiffs and Plaintiff Class have suffered, and will continue to suffer, damages, in amounts which
18 are presently unknown, but which exceed the jurisdictional limits of this Court and which will be
19 ascertained according to proof at trial.

20 57. Plaintiffs, themselves and on behalf of employees similarly situated, request
21 recovery of meal period compensation pursuant to Labor Code section 226.7, which they are owed
22 beginning four (4) years prior to filing this complaint as well as the assessment of any statutory
23 penalties against Defendants, and each of them, in a sum as provided by the Labor Code and/or
24 any other statute.

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THIRD CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF

(Labor Code § 226.7)

(Plaintiffs and Plaintiff Class against all Defendants)

58. Plaintiffs and Plaintiff Class reallege and incorporate by reference all preceding paragraphs of this complaint as though fully set forth herein.

59. Labor Code section 226.7 and California 8 CCR section 11160 (11) provides that employers authorize and permit all employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours.

60. Labor Code section 226.7, subdivision (b) provides that if an employer fails to provide an employee rest periods in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

61. Although Plaintiffs and Plaintiff Class were regularly scheduled to work 8-hour shifts, they were either not given any rest periods in a workday or were only given one (1) rest period for the workday. This was due in part to Defendants' policy and practice of scheduling employees to work through their rest periods, as well as Defendants' policy and practice of putting pressure on employees to complete work assignments regardless of mandatory rest breaks. Due to the 8-hour shifts scheduled by Defendants, Plaintiffs and Plaintiff Class were entitled to two (2) 10-minute rest breaks; however, they were either not given or they only received one (1) of the two (2) due to Defendants' unlawful policies.

62. At all times relevant hereto, Plaintiffs and Plaintiff Class have worked more than four (4) hours in a workday.

63. By virtue of the Defendants' unlawful failure to provide compliant rest periods to Plaintiffs and Plaintiff Class as a result of their scheduling and shift relief system, Plaintiffs and Plaintiff Class have suffered, and will continue to suffer, damages, in amounts which are presently unknown, but which exceed the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

1 64. Plaintiff, themselves and on behalf of employees similarly situated, request
2 recovery of rest period compensation pursuant to Labor Code section 226.7, which they are owed
3 beginning four (4) years prior to filing this complaint as well as the assessment of any statutory
4 penalties against Defendants, and each of them, in a sum as provided by the Labor Code and/or
5 any other statute.

6 **FOURTH CAUSE OF ACTION**

7 **FAILURE TO MAINTAIN AND PROVIDE ACCURATE ITEMIZED WAGE**

8 **STATEMENTS**

9 **(Labor Code §§ 226, 226.3, 1174, 1174.5)**

10 **(Plaintiffs and Plaintiff Class against all Defendants)**

11 65. Plaintiffs and Plaintiff Class reallege and incorporate by reference all preceding
12 paragraphs of this complaint as though fully set forth herein.

13 66. Labor Code section 1174, subdivision (d), requires an employer to keep at a central
14 location in California or at the plant or establishment at which the employee is employed, payroll
15 records showing the hours worked daily, and the wages paid to each employee. Labor Code section
16 226, subdivision (a), requires an employer to provide employees—either as a detachable part of
17 the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by
18 personal check or cash—an accurate itemized wage statement in writing, including specified
19 information, including, but not limited to: “(1) gross wages earned; (2) total hours worked by the
20 employee; (3) the number of piece-rate units earned and applicable piece rate to employee; (4) all
21 deductions; (5) net wages; (6) the inclusive dates of the period for which the employee is paid; (7)
22 the name of the employee and only the last four digits of his or her social security number or an
23 employee identification number other than a social security number; (8) the name and address of
24 the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay
25 period and corresponding number of hours worked at each hourly rate by the employee.”

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1 67. IWC Wage Order Number 16-2002, paragraph 6(a) requires that every employer
2 shall keep accurate information with respect to each employee, including time records showing
3 when each employee begins and ends each work period, the total daily hours worked by each
4 employee and the total hours worked in each payroll period, and applicable rates of pay. Plaintiffs
5 are informed and believe that Defendants willfully and intentionally failed to make and/or keep
6 records which accurately reflect the hours worked by Plaintiffs and Plaintiff Class. Specifically,
7 Plaintiffs believe that Defendants' records do not accurately reflect the hours Plaintiffs and
8 Plaintiff Class worked off-the-clock, which amounted to work in excess of eight (8) hours per
9 workday, the wages owed for said off-the-clock and overtime hours, as well as the wages owed in
10 the form of unpaid minimum (prevailing) wages, unpaid off-the-clock wages, unpaid overtime and
11 statutory premiums for non-compliant meal and rest periods.

12 68. An employee is deemed to suffer injury if the employer fails to provide an accurate
13 wage statement containing all of the required information set forth in Labor Code section 226,
14 subdivision (a). (Lab. Code, section 226, subdivision (e)(2).) In addition, the omission of time
15 worked, proper rates of pay, records of missed meal and rest breaks, and/or premium pay make it
16 difficult for employees to determine whether they were paid all wages due without complicated
17 calculations and/or reconstruction of records required to be maintained by the employer.

18 69. Labor Code section 226, subdivision (e), provides that if an employer knowingly
19 and intentionally fails to provide a statement itemizing, inter alia, the gross and net wages earned,
20 the total hours worked by the employee and the applicable hourly overtime rates, causing the
21 employee injury, then the employee is entitled to recover the greater of all actual damages or fifty
22 dollars (\$50.00) for the initial violation and one hundred dollars (\$100.00) for each subsequent
23 violation, up to four thousand dollars (\$4,000.00). Plaintiffs are informed and believe that
24 Defendants willfully failed to make or keep accurate records for Plaintiffs and Plaintiff Class.

25 70. Plaintiffs are informed and believe, and based thereon allege, that Defendants'
26 failure to keep and maintain accurate records and information and provide to Plaintiffs and Class
27 Members accurate itemized wage statements, as described above, was knowing and intentional,
28 and Plaintiffs and Plaintiff Class are entitled to statutory penalties for each pay period in which a

violation occurred. Plaintiffs further seek recovery of attorneys' fees and costs pursuant to Labor Code section 226, subdivision (e), and as otherwise permitted by law.

FIFTH CAUSE OF ACTION

FAILURE TO PAY WAGES UPON ENDING EMPLOYMENT

(Labor Code §§ 201, 202, 203)

(Plaintiffs and Plaintiff Class against all Defendants)

71. Plaintiffs and Plaintiff Class reallege and incorporate by reference all preceding paragraphs of this complaint as though fully set forth herein.

72. Plaintiffs, and certain members of the Plaintiff Class who ended their employment with Defendants during the Class Period, were entitled to be promptly paid lawful minimum (prevailing) wages, wages for all hours worked, overtime compensation and other premiums, as required by Labor Code sections 201, 202, and 203. Defendants refused and/or failed to promptly compensate Plaintiffs and Plaintiff Class wages owed as a result of their failure to provide meal and rest periods as well as pay minimum (prevailing) wages, off-the-clock and/or overtime compensation. Pursuant to Labor Code section 203, such Plaintiffs and Plaintiff Class seek the payment of penalties pursuant to Labor Code section 203, according to .

73. Accordingly, Plaintiffs and Plaintiff Class are entitled to attorney's fees and costs, pursuant to Labor Code section 1194 for the underlying claims related to this claim, including but not limited to the recovery of unpaid overtime.

SIXTH CAUSE OF ACTION

FAILURE TO INDEMNIFY FOR BUSINESS EXPENDITURES

(Labor Code § 2802)

(Plaintiffs and Plaintiff Class against all Defendants)

74. Plaintiffs and Plaintiff Class reallege and incorporate by reference all preceding paragraphs of this complaint as though fully set forth herein.

75. Labor Code section 2802 states, "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties" (Lab. Code section 2802.)

1 76. As detailed above, Plaintiffs and the Plaintiff Class were not reimbursed by
2 Defendants for necessary expenditures as a direct consequence of the discharge of their duties.

3 77. Defendants knowingly, willingly, and intentionally attempted to offset the cost of
4 doing business on the Plaintiffs and Plaintiff Class.

5 78. Defendants have and or had a corporate practice and policy of requiring Plaintiffs
6 and Plaintiff Class to shoulder the burden of Defendants' cost of doing business by failing to
7 reimburse Plaintiffs and Plaintiff Class for necessary expenditures. Specifically, Defendants failed
8 to reimburse Plaintiffs and Plaintiff Class for the cost associated with purchasing gloves and face
9 coverings, as well as using their personal cellphones outside of work.

10 79. Accordingly, Plaintiffs and Plaintiff Class are entitled to an award of "necessary
11 expenditures or losses" in accordance with Labor Code section 2802, which shall also include all
12 reasonable costs, including, but not limited to, attorneys' fees and interest.

13 **SEVENTH CAUSE OF ACTION**

14 **UNFAIR/UNLAWFUL BUSINESS PRACTICES**

15 **(Bus. & Prof. Code, §§ 17200 et seq.)**

16 **(Plaintiffs and Plaintiff Class against all Defendants)**

17 80. Plaintiffs and Plaintiff Class reallege and incorporate by reference all preceding
18 paragraphs of this complaint as though fully set forth herein.

19 81. Business and Professions Code section 17200 et. seq. (also referred to herein as the
20 "Unfair Business Practices Act" or "Unfair Competition Law") prohibits unfair competition in the
21 form of any unlawful, unfair or fraudulent business act or practice.

22 82. Business and Professions Code section 17204 allows "any person who has suffered
23 injury in fact and has lost money or property as a result of such unfair competition" to prosecute a
24 civil action for violation of the Unfair Competition Law ("UCL"). (Bus. & Prof. Code, section
25 17204.)

26 83. Labor Code section 90.5, subdivision (a) states that it is the public policy of
27 California to vigorously enforce minimum labor standards in order to ensure employees are not
28 required to work under substandard and unlawful conditions, and to protect employers who comply

1 with the law from those who attempt to gain competitive advantage at the expense of their workers
2 by failing to comply with minimum labor standards.

3 84. Beginning at an exact date unknown to Plaintiffs, but at least four (4) years prior to
4 the filing of this lawsuit, Defendants have committed acts of unfair competition as defined by the
5 Unfair Business Practices Act, by engaging in the unlawful, unfair and fraudulent business
6 practices and acts described in this complaint, including, but not limited to, violations of Labor
7 Code sections 201, 202, 203, 204, 206, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1182.12, 1194,
8 1194.2, 1197, 1197.1, 2802, as well as other statutes.

9 85. The violations of these laws and regulations, as well as of the fundamental
10 California public policies protecting workers, serve as unlawful predicate acts and practices for
11 purposes of Business and Professions Code section 17200 et. seq.

12 86. The acts and practices described above constitute unfair, unlawful and fraudulent
13 Business Practices, and unfair competition, within the meaning of Business and Professions Code
14 section 17200 et. seq. Among other things, the acts and practices have forced Plaintiffs and other
15 similarly situated employees to labor for many hours without receiving rest periods and overtime
16 compensation, to which they are entitled by law, while enabling Defendants to gain an unfair
17 competitive advantage over law-abiding employers and competitors.

18 87. As a result of Defendants' acts, Plaintiffs and Plaintiff Class have suffered injury
19 in fact in being denied their statutorily entitled rest periods and full compensation for hours of
20 labor. As a result of Defendants' unlawful acts of unfair competition, Plaintiffs and Plaintiff Class
21 have lost money and property in the form of a loss of wages in an amount to be proven at trial.

22 88. As a direct and proximate result of the aforementioned acts and practices, Plaintiffs
23 and Plaintiff Class have suffered lost wages in an amount to be proven at trial.

24 89. Business and Professions Code section 17203 provides that a court may make such
25 orders or judgments as may be necessary to prevent the use or employment by any person of any
26 practice which constitutes unfair competition. Injunctive relief is necessary and appropriate to
27 prevent Defendants from repeating their unlawful, unfair and fraudulent business acts and business
28 practices alleged above.

90. Business and Professions Code section 17203 provides that the Court may restore to any person in interest any money or property that may have been acquired by means of such unfair competition. Plaintiffs and Plaintiff Class are entitled to restitution pursuant to Business and Professions Code section 17203 for all wages and payments unlawfully withheld from employees, including the fair value of the rest periods taken away from them, during the four-year period prior to the filing of this Complaint.

91. Business and Professions Code section 17202 provides, “Notwithstanding section 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty, forfeiture, or penal law in a case of unfair competition.” (Bus. & Prof. Code, section 17202.) Plaintiffs and Plaintiff Class are entitled to enforce all applicable penalty provisions of the Labor Code pursuant to Business and Professions Code section 17202.

92. Plaintiffs' success in this action will enforce important rights affecting public interest, and in that regard, Plaintiffs sue on behalf of the general public, as well as themselves and other similarly situated employees. Plaintiffs and Plaintiff Class seek and are entitled to restitution, civil penalties, declaratory and injunctive relief, and all other equitable remedies owing them.

93. Plaintiffs herein take upon themselves enforcement of these laws and lawful claims. There is a financial burden involved in pursuing this action, the action is seeking to vindicate a public right, and it would be against the interests of justice to penalize Plaintiffs by forcing them to pay attorneys' fees from the recovery in this action. Attorneys' fees are appropriate pursuant to Code Civ. Proc. section 1021.5 and otherwise.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and Plaintiff Class pray for judgment as follows:

1. That the Court determine that this action may be maintained as a class action under Code of Civil Procedure section 382;
2. The Court appoint Plaintiff as Class Representative;
3. The Court appoint Mahoney Law Group, APC as class counsel;
4. For compensatory and statutory damages;

/ / /

5. For restitution of all monies due to Plaintiff and Plaintiff Class from the unlawful/unfair business practices of Defendant;
6. For injunctive relief;
7. For statutory and penalties according to proof;
8. For reasonable attorneys' fees and costs pursuant to Labor Code section 226, subdivision (e), and section 1194, 2802; Code of Civil Procedure section 1021.5, and/or other applicable laws statutes; and
9. That the Court award such other and further relief as this Court may deem appropriate.

Dated: December 18, 2020

MAHONEY LAW GROUP, APC



Kevin Mahoney, Esq.
Attorneys for Plaintiffs MARIA
GUADALUPE ALONSO and
RAYMUNDO GONZALEZ, as
individuals and on behalf of all
similarly situated employees

1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs MARIA GUADALUPE ALONSO and RAYMUNDO GONZALEZ hereby
3 demand a jury trial on all issues to triable.

4
5
6 Dated: December 18, 2020

MAHONEY LAW GROUP, APC

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9
10 Kevin Mahoney, Esq.
11 Attorneys for Plaintiffs
12 MARIA GUADALUPE ALONSO
13 and RAYMUNDO GONZALEZ, as
14 individuals and on behalf of all
15 similarly situated employee
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