

[Counsel listed on next page]

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MOISES NEGRETE, individually and
on behalf of all others similarly
situated,

Plaintiff,

vs.

CONAGRA FOODS, INC., et al.,
Defendants.

VALENTIN VILLAR, individually,
and on behalf of all others similarly
situated,

Plaintiffs,

vs.

CONAGRA FOODS, INC., et al.,
Defendants.

STEPHEN ANDERSON, et al.,
individually and on behalf of all others
similarly situated,

Plaintiff,

vs.

CONAGRA FOODS, INC., et al.,
Defendants.

JORDYN NJOROGUE, on behalf of
herself, all others similarly situated,
and the general public

Plaintiffs,

vs.

FIRST RATE STAFFING
CORPORATION, et al.,
Defendants.

Lead Case No. 2:16-cv-631-FMO-AJW

Consolidated with Case Nos. 2:16-cv-
02801 FMO-AJW; 5:16-cv-02219-
FMO-AJW; and 2:16-cv-08069-FMO-
AJW

**CONSOLIDATED FIRST
AMENDED CLASS ACTION
COMPLAINT**

1. Failure to Provide Meal Periods
2. Failure to Authorize and Permit Rest Periods
3. Failure to Pay Minimum Wages
4. Failure to Pay Overtime Wages
5. Failure to Pay All Wages Due to Discharged and Quitting Employees
6. Failure to Furnish Accurate Itemized Wage Statements
7. Failure to Maintain Required Records
8. Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties
9. Unfair and Unlawful Business Practices
10. Penalties under the Labor Code Private Attorneys General Act, as a Representative Action

DEMAND FOR JURY TRIAL

MATERN LAW GROUP, PC

MATTHEW J. MATERN (SBN 159798)

mmatern@maternlawgroup.com

LAUNA ADOLPH (SBN 227743)

ladolph@maternlawgroup.com

DEANNA S. LEIFER (SBN 265840)

dleifer@maternlawgroup.com

1230 Rosecrans Avenue, Suite 200

Manhattan Beach, CA 90266

Tel: (310) 531-1900

Facsimile: (310) 531-1901

Attorneys for Plaintiffs Moises Negrete, Stephen
Anderson, Felicia Avila, Ruben Maldonado, Felix
Villela, and Frank Perez, individually and on behalf
of all others similarly situated

FARZAD RASTEGAR (State Bar No. 155555)

farzad@rastegarlawgroup.com

DOUGLAS W. PERLMAN (State Bar No. 167203)

douglas@rastegarlawgroup.com

RASTEGAR LAW GROUP, APC

22760 Hawthorne Boulevard, Suite 200

Torrance, California 90505

Tel.: (310) 961-9600

Fax: (310) 961-9094

Attorneys for Plaintiff Valentin Villar, individually,
and on behalf of all others similarly situated

Shaun Setareh (SBN 204514)

shaun@setarehlaw.com

H. Scott Leviant (SBN 200834)

scott@setarehlaw.com

Setareh Law Group

9454 Wilshire Boulevard, Suite 907

Beverly Hills, California 90212

Telephone: (310) 888-7771

Fax: (310) 888-0109

Attorneys for Plaintiff
Jordyn Njoroge

1 Plaintiffs MOISES NEGRETE (“NEGRETE”), VALENTIN VILLAR
 2 (“VILLAR”), STEPHEN ANDERSON (“ANDERSON”), FELICIA AVILA
 3 (“AVILA”), RUBEN MALDONADO (“MALDONADO”), FELIX VILLELA
 4 (“VILLELA”), FRANK PEREZ (“PEREZ”), and JORDYN NJOROGÉ
 5 (“NJOROGÉ”) (collectively, “PLAINTIFFS”), individually and on behalf of all
 6 others similarly situated, hereby allege as follows:

7 **INTRODUCTION**

8 1. PLAINTIFFS bring this action on behalf of themselves and all other
 9 similarly-situated current and former non-exempt employees of defendants
 10 CONAGRA FOODS, INC. (“CONAGRA FOODS”); RALCORP HOLDINGS,
 11 INC. (“RALCORP HOLDINGS”); CONAGRA FOODS PACKAGED FOODS,
 12 LLC (“CONAGRA FOODS PACKAGED FOODS”); FIRST RATE STAFFING
 13 CORPORATION (“FIRST RATE STAFFING”) and DOES 1 through 10 inclusive
 14 (collectively, “DEFENDANTS”), in the State of California during the relevant
 15 statutory period to recover, among other things, unpaid compensation arising from
 16 DEFENDANTS’ failure to provide employees meal and rest periods (or
 17 compensation therefor) as required under California law, unpaid overtime
 18 compensation, unpaid minimum wages, and unreimbursed business expenses.
 19 PLAINTIFFS also seek penalties, interest, attorneys’ fees, costs and expenses, and
 20 equitable and restitutionary relief.

21 **JURISDICTION**

22 2. Pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. §
 23 1332(d)(2)(A), the United States District Court for the Central District of California
 24 has jurisdiction in this matter because the matter in controversy exceeds the sum
 25 value of \$5,000,000, exclusive of interests and costs, and this is a class action in
 26 which at least one member of the class of plaintiffs is a citizen of a state different
 27 from any defendant.
 28

3. Venue is proper in the Central District of California pursuant to 28 U.S.C. § 1391 because DEFENDANTS are subject to personal jurisdiction in this District, and/or a substantial part of the events or omissions giving rise to the claims occurred in this District.

THE PARTIES

4. Plaintiff NEGRETE is a resident of the State of California. NEGRETE was employed by DEFENDANTS as a non-exempt employee in the Production Department at DEFENDANTS' facility located in Azusa, California, in a variety of positions, including mixer, palletizer, and forklift driver, until approximately January 2015.

5. Plaintiff VILLAR is a resident of the State of California. VILLAR was employed by DEFENDANTS as a non-exempt employee at DEFENDANTS' facility located in Azusa, California, as a janitor, from approximately 2004 to March 28, 2015.

6. Plaintiff ANDERSON is a resident of the State of California. ANDERSON was employed by DEFENDANTS as a non-exempt lead operator at DEFENDANTS' facility located in Visalia, California, until approximately September 13, 2013.

7. Plaintiff AVILA is a resident of the State of California. AVILA was employed by DEFENDANTS as a non-exempt lab tech at DEFENDANTS' facility located in Colton, California, until approximately February 2016.

8. Plaintiff MALDONADO is a resident of the State of California. MALDONADO was employed by DEFENDANTS as a non-exempt food packaging worker at DEFENDANTS' facility located in Lodi, California, until approximately May 2016.

9. Plaintiff VILLELA is a resident of the State of California. VILLELA was employed by DEFENDANTS as a non-exempt production line worker at

1 DEFENDANTS' facility located in Oakdale, California, until approximately July
2 2016.

3 10. Plaintiff PEREZ is a resident of the State of California. PEREZ was
4 employed by DEFENDANTS as a non-exempt lead septic technician at
5 DEFENDANTS' facility located in Helm, California, until approximately March
6 2016.

7 11. Plaintiff NJOROGUE is a resident of the State of California.
8 NJOROGUE was employed by DEFENDANTS as a non-exempt palletizer at
9 DEFENDANTS' facility located in Azusa, California, until approximately July
10 2015.

11 12. PLAINTIFFS bring this action on behalf of themselves and the
12 following similarly situated classes of individuals ("CLASS MEMBERS"): all
13 persons employed by DEFENDANTS at ConAgra locations in the State of
14 California at any time from October 20, 2011 through the date this action settles
15 or proceeds to final judgment (the "CLASS PERIOD"). PLAINTIFFS reserve
16 the right to name additional class representatives.

17 13. PLAINTIFFS are informed and believe, and thereon allege, that
18 CONAGRA FOODS is, and at all times relevant hereto was, a corporation
19 organized and existing under the laws of the State of Delaware. PLAINTIFFS are
20 further informed and believe, and thereon allege, that CONAGRA FOODS is
21 authorized to conduct business in the State of California, and does conduct business
22 in the State of California. Specifically, CONAGRA FOODS maintains offices and
23 facilities, conducts business, and engages in illegal practices in the County of Los
24 Angeles.

25 14. PLAINTIFFS are informed and believe, and thereon allege, that
26 RALCORP HOLDINGS is, and at all times relevant hereto was, a corporation
27 organized and existing under the laws of the State of Missouri. PLAINTIFFS are
28 further informed and believe, and thereon allege, that RALCORP HOLDINGS is

1 authorized to conduct business in the State of California, and does conduct business
2 in the State of California. Specifically, RALCORP HOLDINGS maintains offices
3 and facilities, conducts business, and engages in illegal practices in the County of
4 Los Angeles.

5 15. PLAINTIFFS are informed and believe, and thereon allege, that
6 CONAGRA FOODS PACKAGED FOODS is, and at all times relevant hereto was,
7 a limited liability company organized and existing under the laws of the State of
8 Delaware. PLAINTIFFS are further informed and believe, and thereon allege, that
9 CONAGRA FOODS PACKAGED FOODS is authorized to conduct business in the
10 State of California, and does conduct business in the State of California.
11 Specifically, CONAGRA FOODS PACKAGED FOODS maintains offices and
12 facilities, conducts business, and engages in illegal practices in the County of Los
13 Angeles.

14 16. PLAINTIFFS are informed and believe, and thereon allege, that
15 FIRST RATE STAFFING is, and at all times relevant hereto was, a corporation
16 organized and existing under the laws of the State of Delaware. PLAINTIFFS are
17 further informed and believe, and thereon allege, that FIRST RATE STAFFING is
18 authorized to conduct business in the State of California, and does conduct business
19 in the State of California. Specifically, FIRST RATE STAFFING maintains offices
20 and facilities, conducts business, and engages in illegal practices in the County of
21 Los Angeles.

22 17. The true names and capacities of DOES 1 through 10, inclusive, are
23 unknown to PLAINTIFFS at this time, and PLAINTIFFS therefore sues such DOE
24 defendants under fictitious names. PLAINTIFFS are informed and believe, and
25 thereon allege, that each defendant designated as a DOE is in some manner highly
26 responsible for the occurrences alleged herein, and that PLAINTIFFS and CLASS
27 MEMBERS' injuries and damages, as alleged herein, were proximately caused by
28 the conduct of such DOE defendants. PLAINTIFFS will seek leave of the court to

1 amend this Complaint to allege their true names and capacities of such DOE
2 defendants when ascertained.

3 18. At all relevant times herein, DEFENDANTS were the joint employers
4 of PLAINTIFFS and CLASS MEMBERS. PLAINTIFFS are informed and believe,
5 and thereon allege, that at all times material to this complaint, DEFENDANTS
6 were the alter egos, divisions, affiliates, integrated enterprises, joint employers,
7 subsidiaries, parents, principals, related entities, co-conspirators, authorized agents,
8 partners, joint venturers, and/or guarantors, actual or ostensible, of each other.
9 Each defendant was completely dominated by his, her or its co-defendant, and each
10 was the alter ego of the other.

11 19. At all relevant times herein, PLAINTIFFS and CLASS MEMBERS
12 were employed by DEFENDANTS under employment agreements that were partly
13 written, partly oral, and partly implied. In perpetrating the acts and omissions
14 alleged herein, DEFENDANTS, and each of them, acted pursuant to, and in
15 furtherance of, their policies and practices of not paying PLAINTIFFS and CLASS
16 MEMBERS all wages earned and due, through methods and schemes which
17 include, but are not limited to, failing to provide meal and rest periods; failing to
18 properly maintain records; failing to pay overtime and minimum wages; failing to
19 provide accurate itemized statements; and failing to compensate PLAINTIFFS and
20 CLASS MEMBERS for necessary expenditures, in violation of the California
21 Labor Code and the applicable Industrial Welfare Commission ("IWC") Wage
22 Order.

23 20. PLAINTIFFS are informed and believe, and thereon allege, that each
24 and every one of the acts and omissions alleged herein were performed by, and/or
25 attributable to, all DEFENDANTS, each acting as agents and/or employees, and/or
26 under the direction and control of, each of the other DEFENDANTS, and that said
27 acts and failures to act were within the course and scope of said agency,
28 employment and/or direction and control.

21. As a direct and proximate result of the unlawful actions of DEFENDANTS, PLAINTIFFS and CLASS MEMBERS have suffered, and continue to suffer, from loss of earnings in amounts as yet unascertained, but subject to proof at trial, and within the jurisdiction of this Court.

CLASS ACTION ALLEGATIONS

22. This action is appropriately suited for class treatment because:

a. The potential class is of a significant number. Joinder of all current and former employees individually would be impracticable.

b. This action involves common questions of law and fact because the action focuses on DEFENDANTS' illegal policies and practices which were applied to all non-exempt employees in violation of the Labor Code, the applicable IWC Wage Order, and the Business and Professions Code which prohibits unfair business practices arising from such violations.

c. PLAINTIFFS' claims are typical of the claims of the CLASS MEMBERS because DEFENDANTS subjected all non-exempt employees to the same violations of the Labor Code, the applicable IWC Wage Order, and the Business and Professions Code.

d. PLAINTIFFS will fairly and adequately protect the interests of all CLASS MEMBERS, as they do not have any conflicts of interest with the CLASS MEMBERS and have retained counsel experienced in wage-and-hour class actions.

FIRST CAUSE OF ACTION

Failure to Provide Meal Periods

[Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 1-2001 § 11]

(Against all DEFENDANTS)

23. PLAINTIFFS incorporate herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 22.

1 24. During the CLASS PERIOD, DEFENDANTS have had, and continue
2 to have, a policy and practice of failing to provide PLAINTIFFS and CLASS
3 MEMBERS full and timely meal periods as required by California Labor Code §§
4 226.7 and 512 and IWC Wage Order No. 1-2001 § 11.

5 25. During the CLASS PERIOD, PLAINTIFFS and CLASS MEMBERS
6 often were not provided meal periods until after the fifth hour of work due to a lack
7 of adequate staffing levels. PLAINTIFFS and other CLASS MEMBERS were not
8 permitted to take their meal periods until their supervisors told them to take their
9 meal periods. PLAINTIFFS' and other CLASS MEMBERS' supervisors regularly
10 failed to relieve them of duty within the first five hours of their shifts. NEGRETE
11 was not provided a meal period until after the fifth hour of work approximately one
12 shift per week. PEREZ was not provided a meal period until after the fifth hour of
13 work most shifts that he worked.

14 26. During the CLASS PERIOD, DEFENDANTS have had a policy and
15 practice of failing to provide PLAINTIFFS and CLASS MEMBERS a second
16 thirty-minute uninterrupted meal period during shifts over ten hours. NEGRETE
17 worked shifts over ten hours approximately one day per week. VILLAR worked
18 shifts over ten hours approximately ten times per month. AVILA worked shifts
19 over ten hours approximately three or four times a month. PEREZ worked shifts
20 over ten hours approximately seven days a week during the fresh pack season.
21 PLAINTIFFS were not provided a second meal period during these shifts.

22 27. During the CLASS PERIOD, PLAINTIFFS and other CLASS
23 MEMBERS were often denied full thirty-minute meal periods. MALDONADO
24 and other CLASS MEMBERS were deprived of full thirty-minute breaks because
25 they were required to don and doff their work gear during their meal periods. After
26 leaving the production line and clocking out for their meal periods, MALDONADO
27 and other CLASS MEMBERS were required to remove their work uniforms and
28 protective gear, including goggles, laboratory coats, hard hats, ear plugs, hair nets,

1 beard nets, and gloves. Before clocking back in from their meal periods and
2 returning to the production line, MALDONADO and other CLASS MEMBERS
3 were required to put on their work uniforms and protective gear. MALDONADO
4 and other CLASS MEMBERS were subject to discipline, including but not limited
5 to being written up or orally reprimanded, if they were not at their work stations
6 thirty minutes after the start of their meal periods. The process of donning and
7 doffing their work uniforms and protective gear and walking to and from the break
8 rooms deprived MALDONADO and other CLASS MEMBERS of full thirty-
9 minute meal periods.

10 28. During the CLASS PERIOD, PLAINTIFFS and other CLASS
11 MEMBERS were often interrupted during their meal periods. AVILA was required
12 to wear a radio at all times while working and was frequently called on the radio
13 during her meal periods and asked to return to the lab to run tests or provide
14 information for loads to go out. AVILA was interrupted during her meal period
15 approximately once each week. PEREZ was required to wear a radio at all times
16 while working and was frequently called on the radio during his meal periods and
17 given instructions to pick up parts when they arrived. During the fresh pack season,
18 PEREZ's meal periods were interrupted approximately four times each week.
19 During the off season, PEREZ's meal periods were interrupted approximately once
20 each week.

21 29. During the CLASS PERIOD, VILLAR and other CLASS MEMBERS
22 were routinely instructed through their radios by DEFENDANTS to immediately
23 report back to work regardless of whether VILLAR and other CLASS MEMBERS
24 were finished with their meal periods. DEFENDANTS gave these orders knowing
25 they would result in VILLAR and other CLASS MEMBERS returning early from
26 their meal periods.

27 30. During the CLASS PERIOD, VILLELA and other CLASS
28 MEMBERS were not allowed to leave the premises during meal periods.

1 31. During the CLASS PERIOD, DEFENDANTS required NEGRETE
2 and other CLASS MEMBERS to execute On-the-Job Paid Meal Period
3 Agreements. However, the nature of NEGRETE's and other CLASS MEMBERS'
4 work did not prevent them from being relieved of all duty for their meal periods.

5 32. As a result of DEFENDANTS' policies and practices as alleged
6 herein, PLAINTIFFS and CLASS MEMBERS have regularly been denied, and
7 continue to be denied, the opportunity to take full, uninterrupted, and timely meal
8 periods as required under California Labor Code §§ 226.7 and 512 and IWC Wage
9 Order No. 1-2001 § 11.

10 33. DEFENDANTS have further violated and continue to violate
11 California Labor Code § 226.7 and IWC Wage Order No. 1-2001 § 11 by failing to
12 compensate PLAINTIFFS and CLASS MEMBERS who were not provided a meal
13 period, in accordance with the applicable Wage Order, one additional hour of
14 compensation at each employee's regular rate of pay for each workday that a meal
15 period was not provided.

16 34. As a direct and proximate result of the aforementioned violations,
17 PLAINTIFFS and CLASS MEMBERS have sustained economic damages,
18 including but not limited to unpaid wages and lost interest, in an amount according
19 to proof at trial, and are entitled to recover economic and statutory damages and
20 penalties and other appropriate relief due to DEFENDANTS' violation of the
21 California Labor Code and IWC Wage Order No. 1-2001.

22 **SECOND CAUSE OF ACTION**

23 **Failure to Authorize and Permit Rest Periods**

24 **[Cal. Labor Code § 226.7; IWC Wage Order No. 1-2001 § 12]**

25 **(Against all DEFENDANTS)**

26 35. PLAINTIFFS incorporate herein by specific reference, as though fully
27 set forth, the allegations in paragraphs 1 through 34.
28

1 36. During the CLASS PERIOD, DEFENDANTS have had, and continue
2 to have, a policy and practice of failing to authorize and permit PLAINTIFFS and
3 CLASS MEMBERS to take rest breaks as required by California Labor Code §
4 226.7 and IWC Wage Order No. 1-2001 § 12. As a result of DEFENDANTS'
5 policies and practices as alleged herein, PLAINTIFFS and CLASS MEMBERS
6 have regularly been denied, and continue to be denied, the opportunity to take full,
7 uninterrupted, and timely rest periods as required under California Labor Code §
8 226.7 and IWC Wage Order No. 1-2001 § 12.

9 37. During the CLASS PERIOD, PLAINTIFFS and other CLASS
10 MEMBERS often were unable to take rest breaks, as DEFENDANTS failed to staff
11 enough employees to relieve PLAINTIFFS and other CLASS MEMBERS for their
12 rest breaks. AVILA was not provided a ten-minute rest break each shift that she
13 worked. VILLELA was not provided a first ten-minute rest break each shift that he
14 worked. PEREZ was not provided a first ten-minute rest break approximately five
15 times a week during the fresh pack season

16 38. During the CLASS PERIOD, when PLAINTIFFS and other CLASS
17 MEMBERS were provided rest breaks, such breaks were often less than ten
18 minutes. MALDONADO and other CLASS MEMBERS were deprived of a full
19 ten minutes of rest because they were required to don and doff work uniforms and
20 protective gear and were required to walk to and from the break rooms during their
21 rest breaks. After leaving the production line, MALDONADO and other CLASS
22 MEMBERS were required to remove their work uniforms and protective gear,
23 including goggles, laboratory coats, hard hats, ear plugs, hair nets, beard nets, and
24 gloves. Before returning to the production line, MALDONADO and other CLASS
25 MEMBERS were required to put on their work uniforms and protective gear. As a
26 result, MALDONADO and other CLASS MEMBERS were denied a net ten
27 minutes of rest.

28

1 39. During the CLASS PERIOD, VILLAR and other CLASS MEMBERS
2 were routinely instructed through their radios by DEFENDANTS to immediately
3 report back to work regardless of whether VILLAR and other CLASS MEMBERS
4 were finished with their rest breaks. DEFENDANTS gave these orders knowing
5 they would result in VILLAR and other CLASS MEMBERS returning early from
6 their rest breaks.

7 40. During the CLASS PERIOD, DEFENDANTS have had a policy and
8 practice of failing to authorize and permit a third ten-minute rest break during shifts
9 over ten hours. During shifts over ten hours, PLAINTIFFS and other CLASS
10 MEMBERS were not provided a third ten-minute rest period. NEGRETE worked
11 shifts over ten hours approximately one day per week. VILLAR worked shifts over
12 ten hours approximately ten times per month. ANDERSON worked shifts over ten
13 hours approximately two times per week. AVILA worked shifts over ten hours
14 approximately three or four times per month. PEREZ worked shifts over ten hours
15 approximately seven days a week during the fresh pack season.

16 41. During the CLASS PERIOD, DEFENDANTS also had a policy and
17 practice of failing to provide rest periods in the middle of each work period “insofar
18 as practicable.” NEGRETE was not provided a ten-minute rest period until after
19 the fourth hour of work approximately two shifts per week. NEGRETE and other
20 CLASS MEMBERS were often not able to take their rest periods until near the end
21 of their shifts due to a lack of adequate staffing levels.

22 42. DEFENDANTS further violated and continue to violate California
23 Labor Code § 226.7 and IWC Wage Order No. 1-2001 § 12 by failing to pay
24 PLAINTIFFS and CLASS MEMBERS who were not provided a rest period, in
25 accordance with the applicable Wage Order, one additional hour of compensation at
26 each employee’s regular rate of pay for each workday that a rest period was not
27 provided.
28

43. As a direct and proximate result of the aforementioned violations, PLAINTIFFS and CLASS MEMBERS have sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount according to proof at trial, and are entitled to recover economic and statutory damages and penalties and other appropriate relief due to DEFENDANTS' violation of the California Labor Code and IWC Wage Order No. 1-2001.

THIRD CAUSE OF ACTION

Failure to Pay Minimum Wages

[Cal. Labor Code §§ 1194, 1197; IWC Wage Order No. 1-2001 § 4]

(Against all DEFENDANTS)

44. PLAINTIFFS incorporate herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 43.

45. Pursuant to California Labor Code §§ 1194 and 1197 and IWC Wage Order No. 1-2001 § 4, payment to an employee of less than the applicable minimum wage for all hours worked in a pay period is unlawful.

46. During the CLASS PERIOD, DEFENDANTS failed to, and continue to fail to, pay PLAINTIFFS and CLASS MEMBERS minimum wages for all hours worked.

47. PLAINTIFFS and other CLASS MEMBERS performed work for which they were not compensated. Prior to clocking in for a shift, MALDONADO and other CLASS MEMBERS were required to put on their work uniforms and protective gear, including goggles, laboratory coats, hard hats, ear plugs, hair nets, beard nets, and gloves. MALDONADO and other CLASS MEMBERS could not put on their work gear after clocking in because they were required to be on the production line at their scheduled start times and they were not allowed to clock in before their scheduled start times. MALDONADO and other CLASS MEMBERS were also required to remove their work gear after clocking out at the end of their scheduled shifts. MALDONADO and other CLASS MEMBERS spent

1 approximately ten minutes donning and doffing each day. MALDONADO and
2 other CLASS MEMBERS were not paid for this time.

3 48. Supervisors sometimes asked PLAINTIFFS and other CLASS
4 MEMBERS to perform work after they had clocked out at the end of their shifts or
5 during their meal periods. For example, NEGRETE's supervisors sometimes asked
6 him to pick up tools and put them away after NEGRETE had clocked out at the end
7 of his shift. On these occasions, NEGRETE spent approximately five to ten
8 minutes performing work for which he was not compensated. NEGRETE's
9 supervisors and co-workers also interrupted NEGRETE's meal periods by asking
10 him work-related questions while he was clocked out for his meal periods.

11 49. DEFENDANTS knew or should have known that PLAINTIFFS and
12 CLASS MEMBERS performed work for which they were not compensated, as
13 DEFENDANTS' supervisors directed PLAINTIFFS and other CLASS MEMBERS
14 to perform work after they clocked out at the end of their shifts and during their
15 meal periods.

16 50. DEFENDANTS failed to compensate PLAINTIFFS and other CLASS
17 MEMBERS for such work performed before they clocked in for their shifts, after
18 they clocked out at the end of their shifts and during their meal periods.

19 51. DEFENDANTS' conduct described herein violates California Labor
20 Code §§ 1194 and 1197 and IWC Wage Order No. 1-2001 § 4. As a proximate
21 result of the aforementioned violations, PLAINTIFFS and CLASS MEMBERS
22 have been damaged in an amount according to proof at trial. Therefore, pursuant to
23 California Labor Code §§ 200, 203, 226, 558, 1194, and 1197.1 and other
24 applicable provisions under the Labor Code and IWC Wage Orders, PLAINTIFFS
25 and CLASS MEMBERS are entitled to recover the unpaid balance of wages owed
26 to them by DEFENDANTS, plus interest, penalties, attorneys' fees, expenses, and
27 costs of suit.

28 ///

FOURTH CAUSE OF ACTION

Failure to Pay Overtime Wages

[Cal. Labor Code §§ 510, 1194; IWC Wage Order No. 1-2001 § 3]

(Against all DEFENDANTS)

52. PLAINTIFFS incorporate herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 51.

53. Pursuant to California Labor Code §§ 510 and 1194 and IWC Wage Order No. 1-2001 § 3, DEFENDANTS are required to compensate PLAINTIFFS and CLASS MEMBERS for all overtime at a rate of one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive workday and at a rate twice the regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in any workweek.

54. PLAINTIFFS and CLASS MEMBERS are current and former non-exempt employees entitled to the protections of California Labor Code §§ 510 and 1194 and IWC Wage Order No. 1-2001.

55. During the CLASS PERIOD, DEFENDANTS failed to compensate, and continue to fail to compensate, PLAINTIFFS and CLASS MEMBERS for all overtime hours worked as required under the foregoing provisions of the California Labor Code and IWC Wage Order.

56. During the CLASS PERIOD, DEFENDANTS failed to pay overtime at one and one-half (1 ½) times or twice the regular rate of pay, as provided by California Labor Code § 510. Specifically, DEFENDANTS failed to properly calculate the “regular rate of pay,” by failing to include all forms of remuneration, including but not limited to meal and rest break premium payments to which PLAINTIFFS and other CLASS MEMBERS were entitled (whether paid or unpaid

1 by DEFENDANTS), when calculating the regular rate of pay for overtime
2 purposes.

3 57. During the CLASS PERIOD, AVILA and other CLASS MEMBERS
4 regularly worked shifts that were over twelve hours in length, but were not paid at
5 the proper double time rate of two times the regular rate of pay for working over
6 twelve hours in a shift. Rather, AVILA and other CLASS MEMBERS were paid at
7 the overtime rate of one and one-half times the regular rate of pay when working
8 over twelve hours in a shift.

9 58. As alleged herein, PLAINTIFFS and other CLASS MEMBERS also
10 performed work for which they were not compensated. MALDONADO and other
11 CLASS MEMBERS were required to don and doff work uniforms and protective
12 gear prior to clocking in at the beginning of their shifts and after clocking out at the
13 end of their shifts. MALDONADO spent approximately ten minutes performing
14 work for which he was not compensated. On many of these occasions,
15 MALDONADO was entitled to overtime compensation, as he worked over eight
16 hours per day and/or over forty hours per week.

17 59. NEGRETE was sometimes required to perform work after he clocked
18 out at the end of his shift. On each occasion, he spent approximately five to ten
19 minutes performing work for which he was not compensated. NEGRETE was also
20 required to perform work during their meal periods. On many of these occasions,
21 NEGRETE was entitled to overtime compensation, as he worked over eight hours
22 per day and/or over forty hours per week.

23 60. DEFENDANTS knew or should have known that PLAINTIFFS and
24 other CLASS MEMBERS worked overtime for which they were not compensated.

25 61. DEFENDANTS failed to compensate PLAINTIFFS and other CLASS
26 MEMBERS for such overtime.

27 62. In violation of California law, DEFENDANTS have knowingly and
28 willfully refused, and continue to refuse, to perform their obligations to compensate

1 PLAINTIFFS and CLASS MEMBERS for all wages earned and all hours worked.
 2 As a direct and proximate result, PLAINTIFFS and other CLASS MEMBERS have
 3 suffered, and continue to suffer, substantial losses related to the use and enjoyment
 4 of such wages, lost interest on such wages, and expenses and attorneys' fees in
 5 seeking to compel DEFENDANTS to fully perform their obligations under state
 6 law, resulting in damages in amounts according to proof at time of trial and within
 7 the jurisdiction of this Court.

8 63. DEFENDANTS' conduct described herein violates, and continues to
 9 violate, California Labor Code §§ 510, 1194, and 1198 and IWC Wage Order No.
 10 1-2001 § 3. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558,
 11 1194, and 1197.1 and other applicable provisions under the California Labor Code
 12 and IWC Wage Orders, PLAINTIFFS and other CLASS MEMBERS are entitled to
 13 recover the unpaid balance of wages owed to them by DEFENDANTS, plus
 14 interest, penalties, attorneys' fees, expenses, and costs of suit.

15 **FIFTH CAUSE OF ACTION**

16 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

17 **[Cal. Labor Code §§ 201, 202, 203]**

18 **(Against all DEFENDANTS)**

19 64. PLAINTIFFS incorporate herein by specific reference, as though fully
 20 set forth, the allegations in paragraphs 1 through 63.

21 65. Pursuant to California Labor Code § 201, 202, and 203,
 22 DEFENDANTS are required to pay all earned and unpaid wages to an employee
 23 who is discharged. California Labor Code § 201 mandates that if an employer
 24 discharges an employee, the employee's wages accrued and unpaid at the time of
 25 discharge are due and payable immediately.

26 66. Furthermore, pursuant to California Labor Code § 202,
 27 DEFENDANTS are required to pay all accrued wages due to an employee no later
 28 than 72 hours after the employee quits his or her employment, unless the employee

1 provided 72 hours previous notice of his or her intention to quit, in which case the
2 employee is entitled to his or wages at the time of quitting.

3 67. As alleged herein, DEFENDANTS failed to pay PLAINTIFFS and
4 other CLASS MEMBERS who were not provided lawful meal and rest periods one
5 additional hour of compensation at the employee's regular rate of pay for each
6 workday that a meal or rest period was not provided; failed to pay PLAINTIFFS
7 and other CLASS MEMBERS all overtime and minimum wages; failed to properly
8 calculate the regular rate of pay for overtime purposes; and failed to reimburse
9 PLAINTIFFS and other CLASS MEMBERS for employment-related expenses.
10 These wages were not paid to PLAINTIFFS and other CLASS MEMBERS at the
11 time of discharge or within 72 hours of quitting.

12 68. California Labor Code § 203 provides that if an employer willfully
13 fails to pay, in accordance with California Labor Code §§ 201 and 202, any wages
14 of an employee who is discharged or who quits, the employer is liable for waiting
15 time penalties in the form of continued compensation to the employee at the same
16 rate for up to 30 workdays.

17 69. During the CLASS PERIOD, DEFENDANTS have willfully failed to
18 pay accrued wages and other compensation to PLAINTIFFS and other CLASS
19 MEMBERS, as alleged above, in accordance with California Labor Code §§ 201
20 and 202.

21 70. As a result, PLAINTIFFS and other CLASS MEMBERS are entitled
22 to all available statutory penalties, including the waiting time penalties provided in
23 California Labor Code § 203, together with interest thereon, as well as other
24 available remedies.

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SIXTH CAUSE OF ACTION

Failure to Furnish Accurate Itemized Wage Statements

[Cal. Labor Code §§ 226, 1174; IWC Wage Order No. 1-2001 § 7]

(Against all DEFENDANTS)

71. PLAINTIFFS incorporate herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 70.

72. During the CLASS PERIOD, DEFENDANTS routinely failed, and continue to fail, to provide PLAINTIFFS and other CLASS MEMBERS with timely, accurate itemized wage statements in writing showing each employee's gross wages earned, total hours worked, all deductions made, net wages earned, the name and address of the legal entity or entities employing PLAINTIFFS and other CLASS MEMBERS, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate, in violation of California Labor Code § 226 and IWC Wage Order No. 1-2001 § 7. Specifically, DEFENDANTS provided PLAINTIFFS and other CLASS MEMBERS wage statements which failed to show the correct hourly rate for overtime and double time hours; failed to accurately show the gross wages earned and total hours worked; and failed to show all meal and rest break premium wage payments to which PLAINTIFF and the CLASS MEMBERS were entitled.

73. During the CLASS PERIOD, PLAINTIFFS and other CLASS MEMBERS suffered injury as a result of DEFENDANTS' failure to provide timely and accurate itemized wage statements as PLAINTIFFS and other CLASS MEMBERS could not promptly and easily determine from the wage statement alone one or more of the following: the gross wages earned, the total hours worked, all deductions made, the net wages earned, the name and address of the legal entity or entities employing PLAINTIFFS and other CLASS MEMBERS, and/or all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate.

74. As a proximate result of DEFENDANTS' unlawful actions and omissions, PLAINTIFFS and other CLASS MEMBERS have been damaged in an amount according to proof at trial, and are entitled to all wages earned and due, plus interest thereon. Additionally, PLAINTIFFS and other CLASS MEMBERS are entitled to all available statutory penalties, including but not limited to civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5 and an award of costs, expenses, and reasonable attorneys' fees, including but not limited to those provided in California Labor Code § 226(e), as well as other available remedies.

SEVENTH CAUSE OF ACTION

Failure to Maintain Required Records

[Cal. Labor Code § 226; IWC Wage Order No. 1-2001 § 7]

(Against all DEFENDANTS)

75. PLAINTIFFS incorporate herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 74.

76. During the CLASS PERIOD, as part of DEFENDANTS' illegal policies and practices to deprive PLAINTIFFS and other CLASS MEMBERS of all wages earned and due, DEFENDANTS knowingly and intentionally failed to maintain records as required under California Labor Code §§ 226 and 1174 and IWC Wage Order No. 1-2001 § 7, including but not limited to the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods; time records showing when each employee begins and ends each work period; and accurate itemized statements.

77. As a direct and proximate result of DEFENDANTS' unlawful actions and omissions, PLAINTIFFS and other CLASS MEMBERS have been damaged in an amount according to proof at trial, and seek all wages earned and due, plus interest thereon. Additionally, PLAINTIFFS and other CLASS MEMBERS are entitled to all available statutory penalties, including but not limited to civil

1 penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5 and an
 2 award of costs, expenses, and reasonable attorneys' fees, including but not limited
 3 to those provided in California Labor Code § 226(e), as well as other available
 4 remedies.

5 **EIGHTH CAUSE OF ACTION**

6 **Failure to Indemnify Employees for Necessary Expenditures Incurred in**

7 **Discharge of Duties**

8 **[Cal. Labor Code § 2802, IWC Wage Order No. 1-2001 § 9]**

9 **(Against all DEFENDANTS)**

10 78. PLAINTIFFS incorporate herein by specific reference, as though fully
 11 set forth, the allegations in paragraphs 1 through 77.

12 79. California Labor Code § 2802(a) requires an employer to indemnify an
 13 employee for all necessary expenditures or losses incurred by the employee in
 14 direct consequence of the discharge of her his or her duties, or of his or her
 15 obedience to the directions of the employer.

16 80. Wage Order No. 1-2001 further provides that, when uniforms are
 17 required by the employer to be worn by the employee as a condition of
 18 employment, such uniforms shall be provided and maintained by the employer.

19 81. During the CLASS PERIOD, DEFENDANTS failed, and continue to
 20 fail, to indemnify PLAINTIFFS and other CLASS MEMBERS for all business
 21 expenses and/or losses incurred in direct consequence of the discharge of their
 22 duties while working under the direction of DEFENDANTS, including but not
 23 limited to expenses for uniforms, including slip-resistant, oil-resistant shoes, cell
 24 phone expenses, tools, and other employment-related expenses, in violation of
 25 California Labor Code § 2802.

26 82. During the CLASS PERIOD, DEFENDANTS failed, and continue to
 27 fail, to maintain uniforms worn by NEGRETE and other CLASS MEMBERS or to
 28 provide a maintenance allowance for uniforms requiring special laundering because

1 of heavy soiling. NEGRETE and other CLASS MEMBERS were required to
 2 launder their uniforms separate from their other clothing due to heavy soiling. Each
 3 week, NEGRETE separately laundered his uniform shirts so as to not get grime on
 4 his other clothing.

5 83. As a proximate result of DEFENDANTS' unlawful actions and
 6 omissions, PLAINTIFFS and other CLASS MEMBERS have been damaged in an
 7 amount according to proof at trial, and seek reimbursement of all necessary
 8 expenditures, plus interest thereon pursuant to California Labor Code § 2802(b).
 9 Additionally, PLAINTIFFS and other CLASS MEMBERS are entitled to all
 10 available statutory penalties and an award of costs, expenses, and reasonable
 11 attorneys' fees, including those provided in California Labor Code § 2802(c), as
 12 well as other available remedies.

13 **NINTH CAUSE OF ACTION**

14 **Unfair and Unlawful Business Practices**

15 **[Cal. Bus. & Prof. Code § 17200, et seq.]**

16 **(Against all DEFENDANTS)**

17 84. PLAINTIFFS incorporate herein by specific reference, as though fully
 18 set forth, the allegations in paragraphs 1 through 83.

19 85. Each and every one of DEFENDANTS' acts and omissions in
 20 violation of the California Labor Code and/or the applicable IWC Wage Order as
 21 alleged herein, including but not limited to DEFENDANTS' failure and refusal to
 22 provide required meal periods, DEFENDANTS' failure and refusal to authorize and
 23 permit required rest periods, DEFENDANTS' failure and refusal to pay minimum
 24 wages, DEFENDANTS' failure and refusal to pay overtime compensation,
 25 DEFENDANTS' failure and refusal to pay all wages due to discharged or quitting
 26 employees, DEFENDANTS' failure and refusal to furnish accurate itemized wage
 27 statements, DEFENDANTS' failure and refusal to maintain required records, and
 28 DEFENDANTS' failure and refusal to indemnify PLAINTIFFS and other CLASS

1 MEMBERS for necessary expenditures and/or losses incurring in discharging their
2 duties, constitutes an unfair and unlawful business practice under California
3 Business and Professions Code § 17200, et seq.

4 86. DEFENDANTS' violations of California wage and hour laws
5 constitute a business practice because DEFENDANTS' aforementioned acts and
6 omissions were done repeatedly over a significant period of time, and in a
7 systematic manner, to the detriment of PLAINTIFFS and other CLASS
8 MEMBERS.

9 87. DEFENDANTS have avoided payment of wages, overtime wages,
10 meal and rest break premium payments, and other benefits as required by the
11 California Labor Code, the California Code of Regulations, and the applicable IWC
12 Wage Order. Further, DEFENDANTS have failed to record, report, and pay the
13 correct sums of assessment to the state authorities under the California Labor Code
14 and other applicable regulations.

15 88. As a result of DEFENDANTS' unfair and unlawful business practices,
16 DEFENDANTS have reaped unfair and illegal profits during the CLASS PERIOD
17 at the expense of PLAINTIFFS, CLASS MEMBERS, and members of the public.
18 DEFENDANTS should be made to disgorge their ill-gotten gains and to restore
19 them to PLAINTIFFS and CLASS MEMBERS.

20 89. As a result of DEFENDANTS' unfair and unlawful business practices,
21 PLAINTIFFS seek order compelling DEFENDANTS to account for, disgorge, and
22 restore to PLAINTIFFS and other CLASS MEMBERS the wages and other
23 compensation unlawfully withheld from them. PLAINTIFFS and other CLASS
24 MEMBERS are entitled to restitution of all monies to be disgorged from
25 DEFENDANTS in an amount according to proof at the time of trial, but within the
26 jurisdiction of this Court.

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TENTH CAUSE OF ACTION

Representative Action for Civil Penalties

[Cal. Labor Code §§ 2698–2699.5]

(Against all DEFENDANTS)

90. PLAINTIFFS incorporate herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 89, with exception of the allegations in paragraph 25 and the subparagraphs thereto.

91. PLAINTIFFS NEGRETE, VILLAR, MALDONADO, AVILA, VILLELA, PEREZ, and NJORGE are “aggrieved employees” within the meaning of California Labor Code § 2699(c) and proper representatives to bring a civil action on behalf of themselves and other current and former non-exempt employees of DEFENDANTS pursuant to the procedures specified in California Labor Code § 2699.3, because PLAINTIFFS NEGRETE, VILLAR, MALDONADO, AVILA, VILLELA, PEREZ, and NJORGE were employed by DEFENDANTS and the alleged violations of the California Labor Code were committed against PLAINTIFFS NEGRETE, VILLAR, MALDONADO, AVILA, VILLELA, PEREZ, and NJORGE.

92. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2698–2699.5, PLAINTIFFS NEGRETE, VILLAR, MALDONADO, AVILA, VILLELA, PEREZ, and NJORGE seek to recover civil penalties, including but not limited to penalties under California Labor Code §§ 2699, 210, 226.3, 558, 1174.5, and 1197.1 and IWC Wage Order No. 1-2001 § 20, from DEFENDANTS in a representative action for the violations set forth above, including but not limited to violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802. PLAINTIFFS NEGRETE, VILLAR, MALDONADO, AVILA, VILLELA, PEREZ, and NJORGE are also entitled to an award of reasonable attorneys’ fees and costs pursuant to California Labor Code § 2699(g)(1).

1 93. Pursuant to California Labor Code § 2699.3, on August 10, 2015,
2 NEGRETE gave written notice by certified mail to the California Labor and
3 Workforce Development Agency (“LWDA”) and CONAGRA FOODS of the
4 specific provisions of the California Labor Code and IWC Wage Orders alleged to
5 have been violated, including the facts and theories to support the alleged
6 violations. On September 29, 2015, NEGRETE gave written notice by certified
7 mail to the LWDA and RALCORP HOLDINGS of the specific provisions of the
8 California Labor Code and IWC Wage Orders alleged to have been violated,
9 including the facts and theories to support the alleged violations. More than thirty-
10 three (33) calendar days of the postmark dates of NEGRETE’s notice letters has
11 passed and the LWDA has not provided notice to NEGRETE that it intends to
12 investigate the alleged violations.

13 94. On October 22, 2015, VILLAR notified CONAGRA FOODS and
14 CONAGRA FOODS PACKAGED FOODS via certified mail regarding the
15 California Labor Code violations set forth herein, including the supporting facts and
16 theories. VILLAR provided the same notice to the LWDA by certified mail on
17 October 22, 2015. VILLAR did not receive notice from the LWDA of intent to
18 investigate within 33 days, or at any time thereafter.

19 95. On September 20, 2016, MALDONADO gave written notice via
20 online filing to the LWDA and via certified mail to CONAGRA FOODS of the
21 specific provisions of the California Labor Code and IWC Wage Orders alleged to
22 have been violated, including the facts and theories to support the alleged
23 violations. More than sixty-five (65) calendar days have passed and the LWDA has
24 not provided notice to MALDONADO that it intends to investigate the alleged
25 violations.

26 96. On November 22, 2016, AVILA gave written notice by certified via
27 online filing to the LWDA and via certified mail to CONAGRA FOODS of the
28 specific provisions of the California Labor Code and IWC Wage Orders alleged to

1 have been violated, including the facts and theories to support the alleged
2 violations. More than sixty-five (65) calendar days have passed and the LWDA has
3 not provided notice to AVILA that it intends to investigate the alleged violations.

4 97. On November 22, 2016, VILLELA gave written notice via online
5 filing to the LWDA and via certified mail to CONAGRA FOODS of the specific
6 provisions of the California Labor Code and IWC Wage Orders alleged to have
7 been violated, including the facts and theories to support the alleged violations.
8 More than sixty-five (65) calendar days of the postmark date of VILLELA's notice
9 letter has passed and the LWDA has not provided notice to VILLELA that it
10 intends to investigate the alleged violations.

11 98. On November 23, 2016, PEREZ gave written notice via online filing
12 to the LWDA and via certified mail to CONAGRA FOODS of the specific
13 provisions of the California Labor Code and IWC Wage Orders alleged to have
14 been violated, including the facts and theories to support the alleged violations.
15 More than sixty-five (65) calendar days of the postmark dates of PEREZ's notice
16 letter has passed and the LWDA has not provided notice to PEREZ that it intends to
17 investigate the alleged violations.

18 99. On May 13, 2016, NJOROGÉ gave written notice by certified mail to
19 the LWDA, CONAGRA FOODS, and FIRST RATE STAFFING of the specific
20 provisions of the California Labor Code and IWC Wage Orders alleged to have
21 been violated, including the facts and theories to support the alleged violations.
22 More than thirty-three (33) calendar days of the postmark dates of NJOROGÉ's
23 notice letter has passed and the LWDA has not provided notice to NJOROGÉ that it
24 intends to investigate the alleged violations.

25 100. Therefore, PLAINTIFFS NEGRETE, VILLAR, MALDONADO,
26 AVILA, VILLELA, PEREZ, and NJOROGÉ have complied with all of the
27 requirements set forth in California Labor Code § 2699.3 to commence a
28 representative action under PAGA.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS, individually and on behalf of all others similarly situated, respectfully pray for relief against DEFENDANTS as follows:

1. For compensatory damages in an amount to be ascertained at trial;
2. For restitution of all monies due to PLAINTIFFS and CLASS MEMBERS, as well as disgorged profits from DEFENDANTS' unfair and unlawful business practices;
3. For meal and rest period compensation pursuant to California Labor Code § 226.7 and IWC Wage Order No. 1-2001;
4. For liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
5. For waiting time penalties pursuant to California Labor Code § 203;
6. For statutory and civil penalties according to proof, including but not limited to all penalties authorized by the California Labor Code §§ 226(e) and 2699;
7. For interest on the unpaid wages at 10% per annum pursuant to California Labor Code §§ 218.6, 1194, and 2802, California Civil Code §§ 3287 and 3288, and/or any other applicable provision providing for pre-judgment interest;
8. For reasonable attorneys' fees and costs pursuant to California Labor Code §§ 1194, 2699, and 2802, California Civil Code § 1021.5, 29 U.S.C. § 216(b), and any other applicable provisions providing for attorneys' fees and costs;
9. For declaratory relief;
10. For an order certifying the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth Causes of Action as a class action;
11. For an order appointing PLAINTIFFS as class representatives and PLAINTIFFS' counsel as class counsel; and
12. For such further relief that the Court may deem just and proper.

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Respectfully submitted,

DATED: January 20, 2017

MATERN LAW GROUP, P.C.

By: /s/ Matthew J. Matern
MATTHEW J. MATERN
LAUNA ADOPLH
DEANNA S. LEIFER
Attorneys for Plaintiffs Moises
Negrete, Stephen Anderson, Felicia
Avila, Ruben Maldonado, Felix Villela,
and Frank Perez, individually and on
behalf of all others similarly situated

DATED: January 20, 2017

RASTEGAR LAW GROUP, APC

By: /s/ Douglas W. Perlman
FARZAD RASTEGAR
DOUGLAS PERLMAN
Attorneys for Plaintiff
VALENTIN VILLAR, individually and
on behalf of all others similarly situated

DATED: January 20, 2017

SETAREH LAW GROUP

By: /s/ H. Scott Leviant
SHAUN SETAREH
H. SCOTT LEVIANT
Attorneys for Plaintiff
JORDYN NJOROGÉ, individually and
on behalf of all others similarly situated