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Superior Court of California
County of Stanislaus
Clerk of the Court
By: Joshua Teixeira, Deputy

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11 Attorneys for Plaintiff, the Putative Classes and Aggrieved Employees

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **FOR THE COUNTY OF STANISLAUS**

14 EVERARDO GARZA JR., on behalf of himself
15 and all others similarly situated,

16 Plaintiff,

17 v.

18 WINCO HOLDINGS, INC., *dba* WinCo Foods,
19 an Idaho Corporation; and DOES 1-50,
20 inclusive.

21 Defendants.

CASE NO.: CV-20-003604

**CLASS AND REPRESENTATIVE
ACTION COMPLAINT:**

- (1) FAILURE TO PAY OVERTIME WAGES;
- (2) FAILURE TO PAY MINIMUM WAGES;
- (3) REST PERIOD VIOLATIONS;
- (4) FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS;
- (5) WAITING TIME PENALTIES;
- (6) UNFAIR COMPETITION (BUS. & PROF CODE 17200); and
- (7) CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

DEMAND FOR JURY TRIAL

This case has been assigned to Judge Sandhu, Sonny S.
Dept. 24
Department _____, for all purposes including Trial.

1 Plaintiff Everardo Garza Jr. (“Plaintiff”) on behalf of himself, and all others similarly
2 situated non-exempt employees, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Defendant Winco Holdings Inc., an Idaho corporation, *dba* WincCo Foods, and
5 DOES 1-50 (collectively “Defendants”), operate 126 grocery stores and its own network of
6 distribution and transportation across California. Plaintiff brings this class action against Defendants
7 for alleged violations of the California Labor Code and Business and Professions Code. As set forth
8 below, Plaintiff alleges that Defendants’ uniform pay policies and practices failed to pay him and
9 all other similarly situated employees for all hours worked, including minimum and overtime wages.
10 Plaintiff further alleges that Defendants’ rest period policies and practices failed to provide him and
11 all other similarly situated employees with compliant rest periods, or premium wages in lieu thereof.
12 As a result of the foregoing, Plaintiff alleges that Defendants failed to provide non-exempt
13 employees with accurate written itemized wage statements and failed to timely pay all of their final
14 wages upon separation of employment. Based on these alleged violations, Plaintiff now brings this
15 class and representative action to recover unpaid wages, restitution, penalties, and other related relief
16 on behalf of himself and all others similarly situated.

17 **JURISDICTION AND VENUE**

18 2. Plaintiff, on behalf of himself and all others similarly situated non-exempt employees
19 hereby brings this class action for recovery of unpaid wages and penalties under California Labor
20 Code §§ 201-203, 204, 226a, 226.7, 510, 516, 512, 558, 1182.12, 1194, 1194.2, 1197, and Industrial
21 Welfare Commission Wage Order No. 1 (“Wage Order No. 1”) and all other applicable Wage
22 Orders, in addition to seeking declaratory relief and restitution pursuant to California Business and
23 Professions Code § 17200, *et. seq.* This class action is brought pursuant to California Code of Civil
24 Procedure § 382. This Court has jurisdiction over Defendants’ violations of the California Labor
25 Code and applicable Wage Orders because the amount in controversy exceeds this Court’s
26 jurisdictional minimum.

27 3. Venue is proper in this judicial district pursuant to California Code of Civil Procedure
28 §§ 395(a) and 395.5, as most of the acts and omissions complained of herein occurred in the City of

1 Modesto, County of Stanislaus. Defendants own, maintain offices, transact business, have an agent
2 or agents within the County of Stanislaus, and/or otherwise are found within the County of
3 Stanislaus, and Defendants are within the jurisdiction of this Court for purposes of service of
4 process.

5 **PARTIES**

6 4. At all relevant times herein, Plaintiff, who is over the age of 18, was and currently is
7 a California resident residing in the State of California. Defendants employed Plaintiff as a non-
8 exempt employee in Modesto, California in the County of Stanislaus.

9 5. Plaintiff is informed and believes and thereon alleges that defendant Winco
10 Holdings, Inc. is an Idaho corporation authorized to and doing business in Stanislaus County,
11 California, and is and/or was the legal employer of Plaintiff, the Class Members, and the Aggrieved
12 Employees during the applicable statutory periods. Plaintiff was, and is, a victim of Defendants'
13 policies and/or practices complained of herein, lost money and/or property, and has been deprived
14 of the rights guaranteed to him by California Labor Code §§ 201-203, 204, 226a, 226.7, 510, 512,
15 516, 558, 1182.12, 1194, 1194.2, 1197, and California Business and Professions Code § 17200 *et*
16 *seq.* (Unfair Competition), and applicable Wage Orders.

17 6. Plaintiff is informed and believes, and based thereon alleges, that during the four
18 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
19 continue to do) business in the State of California, County of Stanislaus. Defendants operate/manage
20 their business from 4400 Crows Landing Rd, Modesto, CA 95358.

21 7. Plaintiff does not know the true names or capacities, whether individual, partner, or
22 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
23 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
24 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
25 and believes, and thereon alleges, that each of said fictitious defendants, whether individual,
26 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
27 and proximately caused Plaintiff and the Classes to be subject to the unlawful employment practices,
28 wrongs, injuries and damages complained of herein.

1 8. Plaintiff is informed, and believes, and thereon allege, that at all times mentioned
2 herein, Defendants were and are the employers of Plaintiff and all members of the Classes. At all
3 times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter
4 alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of
5 them, were the agents, servants, and employees of each and every one of the other Defendants, as
6 well as the agents of all Defendants, and at all times herein mentioned were acting within the course
7 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
8 and/or otherwise ratified each and every one of the acts or omissions complained of herein.

9 9. At all times mentioned herein, Defendants, and each of them, were members of and
10 engaged in a joint venture, partnership, and common enterprise, and acting within the course and
11 scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
12 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
13 members of the Classes.

14 **COMMON FACTUAL ALLEGATIONS**

15 10. Defendants operate 126 grocery stores and its own distribution and transportation
16 network operating across California. Plaintiff worked for Defendants in its distribution
17 center/warehouse in Modesto California as a non-exempt employee. Plaintiff and other non-exempt
18 employees worked in a 24/7 operation, including nights, weekends, and holidays. Plaintiff and other
19 non-exempt employees were responsible for various roles (including stalker, clerk and warehouse
20 workers, forklift drivers) in all aspects of Defendants' distribution operations in California.

21 11. In performing their job duties, Plaintiff and other non-exempt employees were
22 regularly required to work daily overtime hours. However, Defendants routinely denied Plaintiff
23 and other non-exempt employees with the benefits they are entitled to under the California Labor
24 Code as further discussed in detail herein.

25 12. First, at all relevant times, Defendants has had a consistent policy of rounding
26 Plaintiff's and other non-exempt employees' time entries to the nearest 15 minutes. As a result of
27 this practice, Plaintiff and other non-exempt employees are not compensated for all the hours that
28 they work and all of the overtime hours they work, in violation of Labor Code §204, 510, 1194,

1 1197.1, 1199, and Wage Order No. 1. The Court in *See's Candy Shops v. Superior Court* (2012)
2 210 Cal. App. 4th 889, 907, held that rounding time policies can be lawful, "if the rounding policy
3 is fair and neutral on its face and 'it is used in such a manner that it will not result, over a period of
4 time, in failure to compensate the employees properly for all the time they have actually worked,'
5 (29 C.F.R. § 785.48; see DLSE Manual, supra, §§ 47.1, 47.2)."

6 13. Here, Defendant's rounding time policy is not neutral on its face as Plaintiff and other
7 non-exempt employees are subject to discipline, including termination for being tardy in reporting
8 to work, or returning from a meal period. Moreover, because Defendants are capable of tracking the
9 time worked by Plaintiff and other non-exempt employees to the minute, the policy itself exists not
10 for the convenience or benefit of the employees who are trying to report their time on timecards or
11 otherwise, but for Defendants' benefit. As a result, the policy is not neutral on its face, and over a
12 period of time, Plaintiff and other non-exempt employees were not properly paid for all hours
13 worked in violation of Labor Code §204, 510, 1194, 1197.1, 1199, and Wage Order No. 1. Further,
14 as a result of the unlawful rounding policy, Plaintiff and other non-exempt employees were not
15 properly paid at the correct overtime rate for hours worked in excess of eight hours per shift. (Labor
16 Code § 510 and IWC Wage Order No. 1-2001).

17 14. Labor Code § 1197.1 authorizes employees who are paid less than the minimum
18 fixed by an applicable state or local law, or by an order of the commission a civil penalty, restitution
19 of wages, and liquidate damages as follows: (1) for any initial violation that is intentionally
20 committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which
21 the employee is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense,
22 two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the
23 employee is underpaid regardless of whether the initial violation is intentionally committed. As set
24 forth above, Defendants failed to compensate Plaintiff and other non-exempt employees for all hours
25 worked. Accordingly, through PAGA and to the extent permitted by law Plaintiff and other non-
26 exempt employees are entitled to recover liquidated damages for violations of Labor Code § 1197.1.
27 Based upon these same factual allegations, Plaintiff and other non-exempt employees are entitled to
28 penalties under Labor Code § 1199.

1 15. Furthermore, all relevant times, Plaintiff and other non-exempt employees were also
2 not properly paid at the correct overtime rate for all hours worked in excess of eight hours per
3 workday or 40 hours per workweek. First, when Plaintiff and other non-exempt employees worked
4 the night shift, Defendants uniformly failed to adequately calculate Plaintiff's and other non-exempt
5 employees' overtime rate of pay. For example, during the pay period 09/08/2019-09/21/2019
6 Plaintiff worked the night shift (including overtime hours) with an hourly rate of \$31.21. However,
7 Defendants improperly calculated and paid Plaintiff an overtime rate of \$46.577, instead of \$46.815.
8 (Attached hereto as **Exhibit A** is a true and correct copy of Plaintiff's wage statement demonstrating
9 underpayment for night shift overtime hours)

10 16. Additionally, when Plaintiff and the other non-exempt employees worked overtime
11 hours, Defendants failed to include all compensation, including but not limited to non-discretionary
12 bonus payments, when calculating the regular rate of pay used in overtime calculations. For instance,
13 although Defendants consistently paid Plaintiff and other non-exempt employees a non-
14 discretionary bonus based on production, Defendants omitted the bonus payments when calculating
15 the regular rate of pay used in overtime calculations and when paying overtime to Plaintiff and the
16 other non-exempt employees.

17 17. Labor Code § 510 requires an employer to compensate an employee who works more
18 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
19 worked on the seventh consecutive day no less than one and one-half times the regular rate of pay
20 for an employee. In addition, Labor Code § 510 obligates employers to compensate employees at
21 no less than twice the regular rate of pay when an employee works more than twelve (12) hours in
22 a day or more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of
23 the applicable Wage Orders, employees shall not be employed more than eight (8) hours in any
24 workday or more than 40 hours in any workweek unless the employee receives one and one-half
25 (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the
26 workweek. By their policy of requiring Plaintiff and the other non-exempt employees to work in
27 excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating
28

1 them at the rate of one-half (1 1/2) their regular rate of pay, Defendants willfully violated the
2 provisions of Labor Code §§ 510 and Wage Order No. 1.

3 18. Labor Code § 1197.1 authorizes employees who are paid less than the minimum
4 fixed by an applicable state or local law, or by an order of the commission a civil penalty, restitution
5 of wages, and liquidated damages as follows: (1) for any initial violation that is intentionally
6 committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which
7 the employee is underpaid. . . [and] (2) [f]or each subsequent violation for the same specific offense,
8 two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the
9 employee is underpaid regardless of whether the initial violation is intentionally committed.

10 19. As set forth above, Defendants failed to compensate Plaintiff and other non-exempt
11 employees for all overtime wages or at the proper rates. Accordingly, to the extent permitted by law
12 Plaintiff and other non-exempt employees are entitled to recover liquidated damages for violations
13 of Labor Code § 1197.1.

14 20. Moreover, at all relevant times, Plaintiff and other non-exempt employees were not
15 also provided with rest periods of at least ten (10) ten minutes for each four (4) hour work period,
16 or major fraction thereof due to Defendants' invalid rest period policies and practices. Particularly,
17 Plaintiff and other non-exempt employees were often unable to take uninterrupted, duty-free rest
18 periods due to the operating requirements of the job, including but not limited to, time limits
19 imposed to complete certain tasks. Further, although Plaintiff and other non-exempt employees
20 regularly worked shifts in excess of 10.5 hours, Defendants often failed to provide aggrieved
21 employees with a third 10-minute uninterrupted rest period.

22 21. Under the applicable Wage order, an employer must authorize and permit all
23 employees to take ten (10) minute duty free rest periods for every major fraction of four hours
24 worked. This includes a third rest period for shifts in excess of 10.0 hours in a workday. See
25 *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 [concluding that “during rest
26 periods employers must relieve employees of all duties and relinquish control over how employees
27 spend their time.”]. In *Augustus*, the court expressly rejected the employers assertion that it could
28 provide an on-duty rest period to employees who worked as security guards and further explained

1 “that employers [must] relinquish any control over how employees spend their break time, and
2 relieve their employees of all duties.” *Id.* at 273.

3 22. As a result, Plaintiff and other non-exempt employees would remain working
4 through their third rest periods and could not take their third rest periods “relinquished from all
5 duties” as required by Labor Code § 226.7. Additionally, Defendants also failed to maintain any
6 mechanism for the payment of rest period premium payments as required by Labor Code § 226.7.
7 As a result of Defendants’ unlawful rest period policies and practices, Plaintiff seeks to recover on
8 behalf of himself and all aggrieved employees rest period premiums and penalties. Consequently,
9 Defendants has violated Labor Code §§ 226.7, 512 and Wage Order No. 1.

10 23. As a result of Defendants’ failure to pay Plaintiff and other non-exempt employees
11 all minimum and overtime compensation, and failure to provide all compliant rest periods or
12 compensation in lieu thereof, Defendants has also failed to pay Plaintiff and other non-exempt
13 employees all wages owed at their time of separation from employment with Defendants in violation
14 of Labor Code §§ 201-203 and applicable Wage Orders.

15 24. Finally, as to Plaintiff and other non-exempt employees, Defendants also failed to
16 provide accurate itemized wage statements in accordance with Labor Code § 226(a)(1, 2, 5, and 9).
17 Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an
18 itemized wage statement in writing showing:

- 19 (1) gross wages earned;
20 (2) total hours worked by the employee;
21 (3) the number of piece-rate units earned and any applicable piece rate if the
22 employee is paid on a piece rate;
23 (4) all deductions, provided that all deductions made on written orders of the
24 employee may be aggregated and shown as one item;
25 (5) net wages earned;
26 (6) the inclusive dates of the period for which the employee is paid;
27 (7) the name of the employee and only the last four digits of his or her social security
28 number or an employee identification number other than a social security number;
(8) the name and address of the legal entity that is the employer...; and
(9) all applicable hourly rates in effect during the pay period and the corresponding
number of hours worked at each hourly rate by the employee...

25 25. In light of Defendants’ Labor Code violations outlined above, the wage statements
28 issued by Defendants do not indicate the correct amount of gross wages earned, net wages earned,

1 or the applicable hourly rates in effect during the pay period and the corresponding number of hours
2 worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9). Thus, Plaintiff
3 is an aggrieved employee within the meaning of PAGA and Defendants has violated Labor Code
4 §226(a)(1), (2), (5), and (9) with respect to Plaintiff and other non-exempt employees.

5 26. Additionally, when Plaintiff and other non-exempt employees worked the night shift,
6 Defendants uniformly failed to properly calculate Plaintiff's and other non-exempt employees'
7 overtime rate of pay, and thus included the incorrect night shift overtime rate in violation of Labor
8 Code 226(a)(9).

9 27. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of
10 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
11 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
12 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
13 deduction statement or fails to keep the required in subdivision (a) of Section 226." Accordingly,
14 Plaintiff and other non-exempt employees may also recover Labor Code § 226.3 penalties from
15 Defendants for violations of Labor Code § 226(a).

16 **CLASS ACTION ALLEGATIONS**

17 28. Definition of Classes: Plaintiff brings this action on behalf of himself and the
18 following Classes pursuant to § 382 of the Code of Civil Procedure:

- 19 (1) All non-exempt employees who work or worked for Defendants in
20 California, in any of its warehouses/distribution facilities/centers during the
21 four years immediately preceding the filing of the Complaint through the date
22 of trial. ("Class" or "Class Members")
23 (2) All Class Members, who separated their employment with Defendants during
24 three years immediately preceding the filing of the Complaint through the
25 date of trial. ("Waiting Time Penalty Class")
26 (collectively "the Classes")

27 29. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
28 joinder of all members would be unfeasible and not practicable. The membership of the Classes is
unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than one

1 hundred (100) individuals. The identity of such membership is readily ascertainable via inspection
2 of Defendants' employment records.

3 30. **Common Questions of Law and Fact Predominate/Well Defined Community of**
4 **Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated
5 non-exempt employees, which predominate over questions affecting only individual members
6 including, without limitation to:

- 7 1. Whether Defendants failed to pay members of the Classes all wages for all hours
8 worked by virtue of their common rounding/time shaving policies/practices;
- 9 2. Whether Defendants failed to pay members of the Classes all overtime wages at the
10 appropriate premium rate;
- 11 3. Whether Defendants provided legally compliant rest periods or compensation in lieu
12 thereof to members of the Classes;
- 13 4. Whether Defendants furnished legally compliant wage statements to members of the
14 Classes pursuant to Labor Code § 226; and
- 15 5. Whether the timing and amount of payment of final wages to members of the Waiting
16 Time Penalty Class at the time of separation from employment were unlawful.

17 31. **Predominance of Common Questions:** Common questions of law and fact
18 predominate over questions that affect only individual members of the Classes. The common
19 questions of law set forth above are numerous and substantial and stem from Defendants' policies
20 and/or practices applicable to each individual class member, such as Defendants' uniform rounding
21 pay policies/practices, Defendants failure to pay the appropriate premium rate for all overtime hours
22 worked, Defendants' uniform policy of failing to provide complaint rest periods, Defendants' failure
23 to provide accurate itemized wage statements, and to pay for all wages due upon separation of
24 employment. As such, the common questions predominate over individual questions concerning
25 each individual class member's showing as to his or her eligibility for recovery or as to the amount
26 of his or her damages.

27 32. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
28 Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s)

1 of limitation applicable to each cause of action pled in the Complaint in this action. As alleged
2 herein, Plaintiff, like the members of the Classes was deprived of minimum and overtime wages as
3 a result of Defendants' unlawful timekeeping policy/practices which rounded their time entries and
4 failed to pay the appropriate overtime rate, and was deprived of rest period premium wages, was
5 subject to Defendants' uniform rest period policies/practices, and was not paid all wages owed at
6 the time of his separation of employment.

7 33. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
8 to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's
9 attorneys are ready, willing and able to fully and adequately represent the members of the Classes
10 and Plaintiff. Plaintiff's attorneys have prosecuted several wage-and-hour class actions in state court
11 in the past and are committed to vigorously prosecuting this action on behalf of the members of the
12 Classes.

13 34. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
14 important public interest in establishing minimum working conditions and standards in California.
15 These laws and labor standards protect the average working employee from exploitation by
16 employers who have the responsibility to follow the laws and who may seek to take advantage of
17 superior economic and bargaining power in setting onerous terms and conditions of employment.
18 The nature of this action and the format of laws available to Plaintiff and members of the Classes
19 make the class action format a particularly efficient and appropriate procedure to redress the
20 violations alleged herein.

21 35. If each employee were required to file an individual lawsuit, Defendants would
22 necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm
23 the limited resources of each individual plaintiff with their vastly superior financial and legal
24 resources. Moreover, requiring each member of the Classes to pursue an individual remedy would
25 also discourage the assertion of lawful claims by employees who would be disinclined to file an
26 action against their former and/or current employer for real and justifiable fear of retaliation and
27 permanent damages to their careers at subsequent employment. Further, the prosecution of separate
28 actions by the individual class members, even if possible, would create a substantial risk of

1 inconsistent or varying verdicts or adjudications with respect to the individual class members against
2 Defendants herein; and which would establish potentially incompatible standards of conduct for
3 Defendants; and/or legal determinations with respect to individual class members which would, as
4 a practical matter, be dispositive of the interest of the other class members not parties to
5 adjudications or which would substantially impair or impede the ability of the class members to
6 protect their interests.

7 36. Further, the claims of the individual members of the class are not sufficiently large
8 to warrant vigorous individual prosecution considering all of the concomitant costs and expenses
9 attending thereto. As such, the Class identified in Paragraph 28 are maintainable as Classes under §
10 382 of the Code of Civil Procedure.

11 **FIRST CAUSE OF ACTION**

12 **FAILURE TO PAY ALL OVERTIME WAGES**

13 **(AGAINST ALL DEFENDANTS)**

14 37. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

15 38. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
16 and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime
17 hours worked and provide a private right of action for the failure to pay all overtime compensation
18 for overtime work performed.

19 39. At all times relevant herein, Defendants were required to properly pay Plaintiff and
20 members of the Classes for all overtime hours worked pursuant to California Labor Code § 1194
21 and the applicable Wage Orders. Section 3 of the applicable Wage Order requires an employer to
22 pay an employee “one and one-half (1 1/2) times the employee’s regular rate of pay” for work in
23 excess of 8 hours per workday and/or in excess of 40 hours of work in the workweek. The same
24 section also requires an employer to pay an employee double the employee’s regular rate of pay for
25 work in excess of twelve hours each workday and/or for work in excess of 8 hours on the seventh
26 consecutive day of work in the workweek. Defendants caused Plaintiff to work overtime and hours
27 but did not compensate Plaintiff or members of the Classes at one and one-half times their regular
28 rate of pay for such hours.

40. Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes but is not limited to Defendants' uniform and unlawful policy/practice of rounding/altering the members of the Classes' time entries, which resulted in these individuals not being paid for all hours actually worked, and Defendants' uniform practice/policy of failing to appropriately calculate and pay overtime wages. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the members of the Class in a civil action for the unpaid amount of overtime premiums owing, including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor Code §§ 204, 510, 558, 1194, and 1198, the applicable Wage Orders, and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

(AGAINST ALL DEFENDANTS)

41. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

42. Section 4 of the applicable Wage Orders and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon.

43. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes but is not limited to Defendants' uniform and unlawful practice of rounding Plaintiff's and members of the Classes' time entries, which resulted in these individuals not being paid for all hours actually worked. Accordingly, Plaintiff and members of the Classes were not compensated for all hours worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and applicable Wage Orders.

44. Labor Code § 1198 makes unlawful the employment of an employee under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an

1 employer who has failed to pay its employees the legal minimum wage is liable to pay those
2 employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal
3 to the wages due and interest thereon.

4 45. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,
5 Plaintiff and the Classes have sustained economic damages, including but not limited to unpaid
6 wages and lost interest, in an amount to be established at trial, and they are entitled to recover
7 economic and statutory damages and penalties and other appropriate relief as a result of Defendants'
8 violations of the California Labor Code and applicable Wage Orders.

9 46. Defendants' practice and uniform administration of corporate policy regarding
10 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
11 members of the Classes in a civil action for the unpaid amount of minimum wages, liquidated
12 damages, including interest thereon, statutory penalties, attorney's fees, and costs of suit according
13 to Labor Code §§ 204, 558, 1194 *et seq.*, 1197, 1198, and Code of Civil Procedure § 1021.5.

14 **THIRD CAUSE OF ACTION**

15 **REST PERIOD VIOLATIONS**

16 **(AGAINST ALL DEFENDANTS)**

17 47. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

18 48. Section 12 of the applicable Wage Orders and Labor Code §§ 226.7 and 516 establish
19 the right of non-exempt employees to be provided with a rest period of at least ten (10) minutes for
20 each four (4) hour period worked, or major fraction thereof.

21 49. Due to their unlawful rest period policy and practices, Defendants did not authorize
22 and permit Plaintiffs and members of the Classes to take any rest periods to which they were legally
23 entitled. Despite Defendants' violations, Defendants have not paid an additional hour of pay to
24 Plaintiffs and members of the Classes at their respective regular rates of pay for each violation, in
25 accordance with California Labor Code § 226.7.

26 50. The foregoing violations create an entitlement to recovery by Plaintiffs and members
27 of the Classes in a civil action for the unpaid amount of rest period premiums owing, including
28

1 interest thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor
2 Code §§ 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

3 **FIFTH CAUSE OF ACTION**

4 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
5 **(AGAINST ALL DEFENDANTS)**

6 51. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

7 52. Labor Code 226(a) states in pertinent part the following:

8 “(a) An employer, semimonthly or at the time of each payment of wages,
9 shall furnish to his or her employee, either as a detachable part of the check,
10 draft, or voucher paying the employee’s wages, or separately if wages are
11 paid by personal check or cash, an accurate itemized statement in writing
12 showing (1) gross wages earned, (2) total hours worked by the employee,
13 except as provided in subdivision (j), (3) the number of piece-rate units
14 earned and any applicable piece rate if the employee is paid on a piece-rate
15 basis, (4) all deductions, provided that all deductions made on written orders
16 of the employee may be aggregated and shown as one item, (5) net wages
17 earned, (6) the inclusive dates of the period for which the employee is paid,
18 (7) the name of the employee and only the last four digits of his or her social
19 security number or an employee identification number other than a social
20 security number, (8) the name and address of the legal entity that is the
21 employer and, if the employer is a farm labor contractor, as defined in
22 subdivision (b) of Section 1682, the name and address of the legal entity that
23 secured the services of the employer, and (9) all applicable hourly rates in
24 effect during the pay period and the corresponding number of hours worked
25 at each hourly rate by the employee. . .”

26 53. As set forth above, during the Class Period, Defendants issued continues to issue wage
27 statements to its employees including Plaintiff and members of the Classes which are inadequate
28 under Labor Code Section 226(a). Here, by failing to pay Plaintiff and the Classes for all hours
worked, including, but not limited to, minimum and overtime wages, and missed rest period
premiums, Defendants failed to include required information on Plaintiff and the Classes’ wage
statements, including, but not limited to, the gross wages earned, the net wages earned in violation of
Labor Code section 226a.

54. Additionally, Defendants have failed to list the appropriate night pay overtime rate on

1 the wage statements of Plaintiff and other non-exempt employees in violation of Labor Code Section
2 226(a)(9).

3 55. Defendants' failure to comply with section 226(a) of the Labor Code was knowing
4 and intentional.

5 56. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiff
6 and members of the Classes in violation of section 226(a) of the California Labor Code, Plaintiff and
7 members of the Classes are each entitled to recover an initial penalty of \$50, and subsequent penalties
8 of \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per Plaintiff and per every
9 member of the Classes from Defendants pursuant to section 226(e) of the Labor Code, costs and
10 reasonable attorneys' fees.

11 **SIXTH CAUSE OF ACTION**

12 **WAITING TIME PENALTIES**

13 **(AGAINST ALL DEFENDANTS)**

14 57. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

15 58. The actionable period for this cause of action is three years prior to the filing of this
16 Complaint through the present, and on-going until the violation are corrected or the class is
17 certified.

18 59. Sections 201 and 202 of the Labor Code require Defendants to pay all compensation
19 due and owing to Plaintiff and the Waiting Timeline Penalty Class during the actionable period for
20 this cause of action at or around the time that their employment is or was terminated, or ended.

21 60. Section 203 of the Labor Code provides that if an employer willfully fails to pay
22 compensation promptly upon discharge or resignation, as required by Sections 201 and 202, then
23 the employer is liable for penalties in the form of continued compensation up to thirty (30) work
24 days.

25 61. Defendants willfully failed to pay Plaintiff and the Waiting Timeline Penalty Class
26 for all hours worked, including minimum and overtime wages, and their meal period premiums,
27 prior to or upon termination or separation from employment with Defendants as required by Labor
28 Code §§ 201 and 202.

62. As a result, Defendants are liable to Plaintiff and the Waiting Timeline Penalty Class for waiting time penalties amounting to thirty (30) days wages for Plaintiff and the Waiting Timeline Penalty Class pursuant to Labor Code § 203. *See, e.g. DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon termination entitles an employee to recover waiting time penalties).*

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION BUSINESS & PROFESSIONS CODE § 17200 *et seq.*

(AGAINST ALL DEFENDANTS)

63. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

64. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by failing to pay for all hours worked, including minimum and overtime wages, by failing to provide all legally required rest periods or make premium payments in lieu thereof, by failing to provide accurate wage statements, and by failing to pay Plaintiff and members of the Waiting Time Class all earned wages at the time of their separation from employment.

65. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiff and continues to deprive members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

66. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

67. The acts complained of herein occurred within the last four years immediately preceding the filing of the Complaint in this action.

68. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current hourly non-exempt employees and to enforce important rights affecting the

1 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which
2 he is entitled to recover under Code of Civil Procedure § 1021.5.

3 **EIGHTH CAUSE OF ACTION**

4 **PRIVATE ATTORNEYS GENERAL ACT**
5 **(AGAINST ALL DEFENDANTS)**

6 69. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

7 70. Defendants have committed several Labor Code violations against Plaintiff and other
8 aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698
9 *et seq.*, acting on behalf of himself and other similarly aggrieved employees, brings this representative
10 action against Defendants on behalf of the following group of "aggrieved employees":

11 All non-exempt employees who work or worked for Defendants in
12 California, in any of its warehouses/distribution facilities/centers
13 during the one year immediately preceding the filing of the PAGA
14 Notice Letter through the date of trial. ("Aggrieved Employees")

15 71. Plaintiff brings this representative action to recover the civil penalties due to Plaintiff,
16 other non-exempt employees, and the State of California according to proof pursuant to Labor Code
17 § 2699 (a) and (f) including, but not limited to (1) \$100 for each initial violation and \$200 for each
18 subsequent violation per employee per pay period for those violations of the Labor Code for which
19 no civil penalty is specifically provided based on the following Labor Code violations:

- 19 a. Failing to Pay Plaintiff and other non-exempt employees all earned minimum
20 wages and overtime compensation in violation of Labor Code §§ 204, 510,
21 1194, and 1198 *et seq.*;
- 22 b. Failing to authorize and permit Plaintiff and other non-exempt employees with
23 all of their statutorily-mandated rest periods in violation of Labor Code §§
24 226.7 and 516.
- 25 d. Failing to furnish Plaintiff and other non-exempt employees with complete,
26 accurate, itemized wage statements in violations of Labor Code § 226 *et*
27 *seq.*;and
- 28 e. Failing to compensate Plaintiff and other non-exempt employees with all

1 earnings at their separation of employment in violation of Labor Code §§ 201-
2 203.

3 72. Plaintiff is currently complying with the procedures for bringing suit specified in
4 California Labor Code § 2699.3. On or about August 20, 2020, Plaintiff notified Defendant Winco
5 Holdings, Inc. (“Defendant”) via certified mail, and the California Labor and Workforce
6 Development Agency (“LWDA”) via its website of Defendants’ violations of the California Labor
7 Code § 2698 *et. seq.* with respect to violations of the California Labor Code identified in Paragraph
8 71 (a)-(e) (“PAGA Notice”). This Complaint will be deemed amended when more than sixty-five
9 (65) days have passed since the PAGA Notice was mailed to Defendants and the LWDA, if the
10 LWDA chooses not to investigate the allegations herein.

11 73. Plaintiff was compelled to retain the services of counsel to file this court action to
12 protect his interests and the interests of other non-exempt employees, and to assess and collect the
13 civil penalties owed by Defendants. Plaintiff has therefore incurred attorneys’ fees and costs, which
14 he is entitled to receive under Labor Code § 2699.

15 **PRAYER FOR RELIEF**

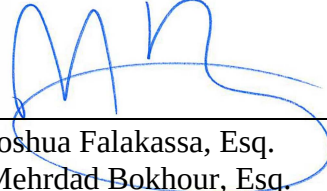
16 **WHEREFORE**, Plaintiff prays for judgment for himself and for all others on whose behalf
17 this suit is brought against Defendants, as follows:

- 18 1. For an order certifying the proposed Classes;
- 19 2. For an order appointing Plaintiff as representative of the Classes;
- 20 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 21 4. Upon the First Cause of Action, for compensatory, consequential, general and
22 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194,
23 and 1198;
- 24 5. Upon the Second Cause of Action, for payment of minimum wages, liquidated
25 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194,
26 1194.2 and 1197;
- 27 6. Upon the Third Cause of Action, for compensatory, consequential, general and
28 special damages according to proof pursuant to Labor Code §§ 226.7 and 512;

- 1 7. Upon the Fourth Cause of Action, penalties pursuant to Labor Code § 226(a), and
2 reasonable costs and attorneys' fees;
- 3 8. Upon the Fifth Cause of Action, for statutory waiting time penalties pursuant to
4 Labor Code §§ 201-203.
- 5 9. Upon the Sixth Cause of Action, for restitution to Plaintiff and members of the
6 Classes of all money and/or property unlawfully acquired by Defendants by means
7 of any acts or practices declared by this Court to be in violation of Business and
8 Professions Code § 17200 *et seq.*;
- 9 10. Upon the Seventh Cause of Action, for civil penalties due to Plaintiff, other non-
10 exempt employees, and the State of California according to proof pursuant to Labor
11 Code § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial
12 violation and \$200 for each subsequent violation per employee per pay period for
13 those violations of the Labor Code for which no civil penalty is specifically provided
14 under the Labor Code;
- 15 11. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
16 § 218.6 and Civil Code §§ 3287 and 3289;
- 17 12. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
18 218.5, 226, and Code of Civil Procedure § 1021.5.
- 19 13. For such other and further relief, the Court may deem just and proper.

1 Dated: August 21, 2020

2 **FALAKSSA LAW, P.C.**
3 **BOKHOUR LAW GROUP, P.C.**

4
5 By: 

6 Joshua Falakassa, Esq.

7 Mehrdad Bokhour, Esq.

8 Attorneys for Plaintiff and the Putative Classes
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EXHIBIT “A”

EMPLOYER INFORMATION
WINCO HOLDINGS, INC. 650 N ARMSTRONG PL BOISE, IDAHO 83704 208.377.0110
EMPLOYEE INFORMATION
GARZA JR, EVERARDO SALDANA 3566 WHITE WOLF CT MERCED, CA 95340 Employee Number: 123893 Job Title: WAREHOUSE Department: 76 Store: 89

WinCo FOODS

ADVICE
Pay Period: 09/08/2019 - 09/21/2019
Date: 09/27/2019
Number: *NONE*
Run ID: 10707
Run Type: REGULAR
TAX FILING STATUS
Federal Status: M
Federal Allow: EXEMPT
Federal Additional: .00
State (CA) Status: M
State Allow: EXEMPT
State Additional: .00

EARNINGS					
Description	Miles	Hours	Pay Rate	Current Amount	YTD Amount
DAY		37.25	30.6000	1139.85	
NIGHT		13.00	31.2100	405.73	
DAY OVERTIME		3.50	45.9670	160.88	
NIGHT OVERTIME		.50	46.5770	23.29	
Total Gross Pay:		54.25		1729.75	52389.29
Federal Taxable Wages:				1632.86	50611.49
PRE-TAX DEDUCTIONS					
Description				Current Amount	YTD Amount
HEALTH INSURANCE (PRE-TAX)				45.00	405.00
401(K) CONTRIBUTIONS				51.89	1371.00
401(K)CONTRIBUTIONS BONUS				.00	1.80
Total Pre-Tax:				96.89	1777.80
PAYROLL TAX DEDUCTIONS					
Description		Taxable Wages		Current Amount	YTD Amount
FEDERAL INCOME TAX		1632.86		.00	19.38
SOCIAL SECURITY		1684.75		104.45	3223.02
MEDICARE TAX		1684.75		24.43	753.80
CALIFORNIA STATE INCOME TAX		1632.86		.00	9.01
CALIFORNIA S.D.I.		1684.75		16.86	519.85
Total Taxes:				145.74	4525.06
AFTER-TAX DEDUCTIONS					
Description				Current Amount	YTD Amount
ADVANCE CASH/SALARY				1475.58	1475.58
MET LIFE INSURANCE WITHHOLDING				11.54	1269.06
UNION DUES #89 LOCAL 386				.00	675.00
Total After-Tax:				1487.12	3419.64
DIRECT DEPOSITS					
Description	Account Type			Current Amount	YTD Amount
DIRECT DEPOSIT	Checking			.00	42614.86
CHECKS / GIFT CARDS					
Description				Current Amount	YTD Amount
NET CHECK AMOUNT				.00	51.93
NET AMOUNTS					
Description				Current Net Amount	YTD Net Amount
NET AMOUNT				.00	42666.79
LEAVE TIME					
Description				Current Hours Due	
Vacation				.00	
Sick				36.00	
Personal Holiday				.00	
ESOP INFORMATION					
Current Plan Year: 03/31/2019 - 03/28/2020			Participation Date: 07/26/2009		
			Years vested: 10		