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Attorneys for Plaintiffs ESMERALDA CASTANON and JOHN DURON,
on behalf of themselves and in their representative
capacity as private attorney general

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

ESMERALDA CASTANON and JOHN
DURON, on behalf of themselves and in their
representative capacity as private attorney
general,

Plaintiffs,

vs.

WINCO HOLDINGS, INC., an Idaho
Corporation, doing business as WINCO
FOODS; and DOES 1-10, inclusive,

Defendants.

Case No. **34-2020-00282233**
Assigned For All Purposes to:

COMPLAINT FOR:

- 1) Civil Penalties Under the Private
Attorneys' General Act, Labor Code
Section 2698 *et seq.*

JURY TRIAL DEMANDED

BY FAX

1 Plaintiffs ESMERALDA CASTANON and JOHN DURON (“Plaintiffs(s)”), individually
2 and on behalf of the general public as private attorneys general, hereby assert representative
3 claims against defendant WINCO HOLDINGS, INC., an Idaho Corporation, doing business as
4 WINCO FOODS; and DOES 1-10, inclusive, (“Defendant” or “Winco”) in this complaint as
5 follows:

6 **INTRODUCTION**

7 1. This is a representative action for recovery of penalties under the Private
8 Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits
9 “aggrieved employees” to bring a lawsuit as a representative action on behalf of themselves and
10 all other current and former employees, to recover civil penalties and address an employer’s
11 violations of the California Labor Code.

12 2. Plaintiffs bring this action pursuant to the PAGA on a representative basis. All
13 current and former hourly, non-exempt employees in Defendants’ California supermarkets or
14 retail stores, however titled, are aggrieved employees.

15 3. Plaintiffs bring this suit on behalf of themselves and all other current and former
16 non-exempt employees working for Defendants in their supermarkets in California during the
17 relevant time period to recover civil penalties and address the employer’s violations of the
18 California Labor Code (the “Aggrieved Non-Exempt Employees”).

19 4. In this case, Defendants violated various provisions of the California Labor Code
20 and relevant IWC Wage Orders. As set forth below, Defendants implemented policies and
21 practices which led to Defendants’ (1) failure to accurately calculate and pay all wages owed
22 including minimum wage, (2) failure to pay overtime; (3) failure to provide lawful meal periods,
23 (4) failure to provide compensation when lawful meal periods were not provided; (5) failure to
24 authorize and permit lawful rest periods; (6) failure to provide compensation when lawful rest
25 periods were not provided; (7) failure to timely pay wages owed upon separation from
26 employment; and (8) failure to furnish accurate itemized wage statements.

27 5. As set forth in greater detail herein, Defendants engaged in conduct and adopted
28 policies that were and continue to be in violation of the California Labor Code and applicable

1 law. Plaintiffs, on behalf of themselves and all other aggrieved employees, bring this PAGA
2 action and seek penalties for violations of the California Labor Code, including without
3 limitation sections 201, 202, 203, 204, 218.5, 218.6, 221-224, 226, 226.3, 226.7, 510, 512, 516,
4 558, 1174, 1194, 1194.2, 1195, 1197, 1198, 2802, applicable IWC California Wage Orders,
5 including Wage Order 7-2001, and California Code of Regulations, Title 8, section 11000 *et seq.*,

6 6. This action is timely because Plaintiffs suffered from a violation or numerous
7 violations of the California Labor Code within one year of the date on which a PAGA notice was
8 sent to the LWDA via online submission. More than 65 days have passed and no response has
9 been received by the LWDA. A copy of the letter sent to the LWDA with enclosure is attached
10 hereto as **Exhibit A**, thereby satisfying the notice requirement under the statute and permitting
11 Plaintiffs to proceed with this action in a representative capacity.

12 **JURISDICTION AND VENUE**

13 7. The California Superior Court has jurisdiction over this action pursuant to
14 California Constitution Article VI, Section 10, which grants the Superior Court "original
15 jurisdiction in all cases except those given by statute to other trial courts." The statutes under
16 which this action is brought do not give jurisdiction to any other court.

17 8. This Court has jurisdiction over this action pursuant to the California Constitution
18 Article VI §10, which grants the California Superior Court original jurisdiction in all causes
19 except those given by statute to other courts. The statutes under which this action is brought do
20 not give jurisdiction to any other court.

21 9. This Court has jurisdiction over Plaintiffs' claims for civil penalties under PAGA
22 on behalf of himself and the Aggrieved Employees.

23 10. This Court has jurisdiction over Defendants because, upon information and belief,
24 each Defendant is either a resident of California, has sufficient minimum contacts in California,
25 or otherwise intentionally avails itself of the California market so as to render the exercise of
26 jurisdiction over them by the California Courts consistent with traditional notions of fair play and
27 substantial justice. Defendants have done and are doing business throughout California.

28 11. The unlawful acts alleged herein have a direct effect on Plaintiffs and the other

1 similarly situated Aggrieved Employees within Orange County and it is believed that Defendants
2 have employed hundreds of Aggrieved Employees throughout the state.

3 12. The California Superior Court also has jurisdiction in this matter because the civil
4 penalties sought per aggrieved employee are presently believed to be under the seventy-five
5 thousand dollar (\$75,000.00) jurisdictional threshold for Federal Court diversity jurisdiction and
6 the aggregate potential damages and recovery by all of the claims of the aggrieved employees
7 placed in controversy by Plaintiffs' claims, is presently believed to be under the five million
8 dollar (\$5,000,000.00) threshold of the Class Action Fairness Act of 2005. Moreover, the
9 penalties sought may not be aggregated to satisfy diversity requirements. Further, there is no
10 federal question at issue, as the issues herein are based solely on California statutes and law,
11 including the Labor Code, IWC Wage Orders, the California Code of Civil Procedure, and the
12 California Civil Code.

13 13. Venue is proper in this Court because one or more of the Defendants reside,
14 transact business, or have offices in this County, and the acts or omissions alleged herein took
15 place in this County.

16 **THE PARTIES**

17 14. Upon information and belief Defendant, Winco Holdings, Inc., is an Idaho
18 Corporation, which does business in California as Winco Foods, is in good standing and
19 authorized to do business throughout the state. Winco Holdings, Inc.'s headquarters are located
20 at 650 N. Armstrong Pl., Boise, Idaho 83704.

21 15. Winco Holdings, Inc. operates approximately 37 supermarkets in California and
22 approximately 127 supermarkets nation wide, providing supermarket products to consumers.

23 16. Plaintiffs Esmeralda Castanon is, and during the liability period has been, a
24 resident of Chico, California. Ms. Castanon was employed by Defendant during the liability
25 period as a non-exempt customer service employee in the position of Loss Prevention Agent at
26 WINCO'S location at 2060 E 20th Street, Chico, CA 95928.

27 17. Plaintiffs John Duron is, and during the liability period has been, a resident of
28 Orangevale, California. Mr. Duron was employed by Defendant during the liability period as a

1 non-exempt customer service employee in the position of fryer in Defendant's deli at WINCO'S
2 location at 8701 Greenback Lane, Orangevale, CA 95662.

3 18. Plaintiffs and the members of the Aggrieved Employees were employed by
4 Defendant as non-exempt employees, however titled, in Defendant's supermarkets during the
5 liability period.

6 19. Whenever in this complaint reference is made to any act, deed, or conduct of
7 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or
8 through one or more of Winco's officers, directors, agents, employees, or representatives, who
9 was actively engaged in the management, direction, control, or transaction of the ordinary
10 business and affairs of Defendants.

11 20. Whenever reference in this Complaint reference is made to "Defendants," such
12 allegations shall be deemed to mean the acts of Defendants acting individually, jointly, and/or
13 severally.

14 21. The true names and capacities of Defendants, whether individual, corporate,
15 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to
16 Plaintiffs, who therefore sue Defendants by such fictitious names under Code of Civil Procedure
17 § 474. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and
18 capacities of the Defendants designated hereinafter as DOES when such identities become
19 known.

20 22. Plaintiff is informed and believes, and thereon allege, that the Doe Defendants are
21 the partners, agents, or principals and co-conspirators of Defendants and of each other; that
22 Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided
23 and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the
24 benefits of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent
25 of the liability of the Defendants as alleged herein.

26 23. Plaintiff is further informed and believes, and thereon alleges, that at all times
27 material herein, each Defendant was completely dominated and controlled by its co-Defendants
28 and each was the alter ego of the other. Whenever and wherever reference is made in this

1 complaint to any conduct by Defendant or Defendants, such allegations and references shall also
2 be deemed to mean the conduct of each of the Defendants, acting individually, jointly, and
3 severally. Whenever and wherever reference is made to individuals who are not named as
4 Defendants in this complaint, but were employees and/or agents of Defendants, such individuals,
5 at all relevant times acted on behalf of Defendants named in this complaint within the scope of
6 their respective employments.

7 **FACTUAL ALLEGATIONS**

8 24. This action is timely because Plaintiffs suffered from a violation or numerous
9 violations of the California Labor Code within one year of the date on which his PAGA notice
10 was sent to the LWDA.

11 25. During the relevant time frame, Defendants compensated Plaintiffs and the
12 Aggrieved Employees based upon an hourly wage.

13 26. Plaintiffs and the Aggrieved Employees were, and at all times pertinent hereto,
14 have been non-exempt employees within the meaning of the California Labor Code, and the
15 implementing rules and regulations of the IWC California Wage Orders. They are subject to the
16 protections of the IWC Wage Order 7-2001 and the Labor Code.

17 27. Plaintiff Castanon was employed as an hourly non-exempt Loss Prevention Agent
18 from approximately August 2001 through July 15, 2019. Plaintiff Castanon provided loss
19 prevention and customer services at Defendant's location in Chico, California as well as other of
20 Defendant's locations.

21 28. Plaintiff Duron was employed as an hourly non-exempt Fryer from approximately
22 April 2019 to May 2019. Plaintiff Duron worked in food and customer services at Defendant's
23 location in Orangevale, California.

24 29. The members of the aggrieved group are non-exempt employees of Defendant in
25 Defendant's retail stores or supermarkets throughout the state of California during the liability
26 period.

27 30. All Aggrieved Employees, including Plaintiffs, are similarly situated in that they
28 are all subject to Defendant' uniform policies and systemic practices as specified herein.

31. Plaintiffs and the Aggrieved Employees were required to clock in and out for their

1 shifts using an electronic time clock which recorded the exact time of the time punch. However,
2 Defendant improperly rounded Plaintiff and the Aggrieved Employees' time such that it resulted
3 in a lower pay over time.

4 32. Plaintiffs worked five days a week, averaging over 40 hours a week.

5 33. Plaintiffs and, upon information and belief, Aggrieved Employees frequently
6 worked in excess of eight (8) hours a day and/or over forty (40) hours in a workweek, but were
7 not properly paid for such time at a rate of time and one-half the employee's regular rate of pay
8 per hour.

9 34. Plaintiffs and the Aggrieved Employees also often worked in excess of twelve
10 (12) hours in one day and/or over eight (8) hours on the seventh day of the workweek, but were
11 not properly paid for such time at a rate of two times the employee's regular rate of pay per hour.

12 35. Plaintiffs and the Aggrieved Employees were regularly required to work shifts in
13 excess of five hours without being provided a lawful meal period and over ten hours in a day
14 without being provided a second lawful meal period as required by law.

15 36. Indeed, during the relevant time, as a consequence of Defendant's staffing and
16 scheduling practices, lack of coverage, work demands, and Defendant's policies and practices,
17 Defendant frequently failed to provide Plaintiffs and the Aggrieved Employees timely, legally
18 compliant uninterrupted 30-minute meal periods on shifts over five hours as required by law.

19 37. Moreover, Defendant's meal and rest break policy mandated that Aggrieved
20 Employees Employees were prohibited from leaving the supermarket/ retail store without prior
21 permission from a store manager.

22 38. In addition, Aggrieved Employees were prohibited from leaving their post or
23 position to take a meal or rest break without prior permission from a store manager.

24 39. Per Defendant's documents, its policy is that the break period begins when leaving
25 the work post and ends when returning to the work post. Employees were not permitted to leave
26 the retail store interior without the permission of store management or the person in charge of the
27 store. Employees were required to completed customer transactions before taking breaks.

28 40. On information and belief, Plaintiffs and the Aggrieved Employees did not waive
their rights to meal periods including second meal periods under the law.

1 41. Plaintiffs and the Aggrieved Employees were not provided with valid lawful on-
2 duty meal periods.

3 42. Despite the above-mentioned meal period violations, Defendant failed to
4 compensate Plaintiffs, and on information and belief, failed to compensate Aggrieved
5 Employees, one additional hour of pay at their regular rate as required by California law when
6 meal periods were not timely or lawfully provided in a compliant manner.

7 43. Plaintiffs are informed and believes, and thereon alleges, that Defendant know,
8 should know, knew, and/or should have known that Plaintiffs and the other Aggrieved
9 Employees were entitled to receive premium wages based on their regular rate of pay under
10 Labor Code §226.7 but were not receiving such compensation.

11 44. In addition, during the relevant time frame, Plaintiffs and the Aggrieved
12 Employees were systematically not authorized and permitted to take one net ten-minute paid, rest
13 period for every four hours worked or major fraction thereof, which is a violation of the Labor
14 Code and IWC wage order 7-2001.

15 45. Defendant maintained and enforced scheduling practices, policies, and imposed
16 work demands that frequently required Plaintiffs and Aggrieved Employees to forego their
17 lawful, paid rest periods of a net ten minutes for every four hours worked or major fraction
18 thereof. Such requisite rest periods were not timely authorized and permitted.

19 46. Despite the above-mentioned rest period violations, Defendant did not
20 compensate Plaintiffs, and on information and belief, did not pay Aggrieved Employees one
21 additional hour of pay at their regular rate as required by California law, including Labor Code
22 section 226.7 and the applicable IWC wage order, for each day on which lawful rest periods were
23 not authorized and permitted.

24 47. Defendant also failed to provide accurate, lawful itemized wage statements to
25 Plaintiffs and the Aggrieved Employees in part because of the above specified violations. In
26 addition, upon information and belief, Defendant omitted an accurate itemization of total hours
27 worked, the name and address of the legal entity that is the employer, gross pay and net pay
28 figures from Plaintiffs and the Aggrieved Employees' wage statements.

 48. Defendant have also made it difficult to determine applicable rates of pay and

1 account with precision for the unlawfully withheld wages and deductions due to be paid to Non-
2 exempt Aggrieved Employees, including Plaintiffs, during the liability period because they did
3 not implement and preserve a lawful record-keeping method to record all hours worked, meal
4 periods, and non-provided rest and meal periods owed to employees as required for non-exempt
5 employees by 29 U.S.C. section 211(c), California Labor Code section 226, and applicable
6 California Wage Orders.

7 49. Plaintiffs are informed and believes, and thereon alleges, that at all times herein
8 mentioned, Defendant knew that at the time of termination of employment (or within 72 hours
9 thereof for resignations without prior notice as the case may be) they had a duty to accurately
10 compensate Plaintiffs and Aggrieved Employees for all wages owed including minimum wages,
11 straight time wages, overtime, meal and rest period premiums, and that Defendant had the
12 financial ability to pay such compensation, but willfully, knowingly, recklessly, and/or
13 intentionally failed to do so in part because of the above-specified violations.

14 50. Plaintiffs and the Aggrieved Employees are covered by applicable California IWC
15 Wage Orders and corresponding applicable provisions of the California Code of Regulations,
16 Title 8, section 11000 et seq.

17 **Failure to Pay All Wages, Including Minimum Wages and Overtime**

18 51. Plaintiffs incorporate by reference each and every paragraph above, and reallege
19 each and every allegation contained above as though fully set forth herein.

20 52. At all times relevant, Labor Code §1194 provides that any employee receiving less
21 than the legal minimum wage or the legal overtime compensation applicable to the employee is
22 entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage
23 or overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of
24 suit.

25 53. Labor Code §1197 states: "The minimum wage for employees fixed by the
26 commission is the minimum wage to be paid to employees, and the payment of a less wage than
27 the minimum so fixed is unlawful."

28 54. Cal. Lab. Code § 1198 further states that the employment of an employee for

1 longer hours than those fixed by the Industrial Welfare Commission is unlawful.

2 55. The IWC Wage Order 7-2001 similarly require that employees be paid on the
3 established payday for the period involved, not less than the applicable minimum wage for all
4 hours worked in the payroll period, whether the remuneration is measured by time, piece,
5 commission, or otherwise.

6 56. At all times relevant, pursuant to Labor Code section 510, 1194, and the IWC
7 wage order 7-2001 applicable to Plaintiffs' and the Aggrieved Employees' employment by
8 Defendant provided that employees working for more than eight (8) hours in a day or forty (40)
9 hours in a work week are entitled to overtime compensation at the rate of one and one-half times
10 the *regular rate of pay* for all hours worked in excess of eight (8) hours in a day or forty (40)
11 hours in a work week. An employee who works more than twelve (12) hours in a day or in
12 excess of eight (8) hours in a day on the seventh day of work in a particular work week is entitled
13 to overtime compensation at a rate of twice the *regular rate of pay*.

14 57. The IWC Wage Order 7-2001 define "hours worked" as "the time during which
15 an employee is subject to the control of an employer, and includes all the time the employee is
16 suffered or permitted to work, whether or not required to do so."

17 58. As a consequence of Defendant's rounding policy and failure to properly pay
18 overtime based upon the regular rate, Plaintiffs and the Aggrieved Employees were
19 systematically undercompensated and were paid less than all wages earned for all hours worked.

20 59. In addition, because Defendant's meal and rest period policy required Aggrieved
21 Employees to remain on premises during unpaid meal periods, they were under Defendant's
22 control and thus should have been compensated for those hours.

23 60. In addition, Plaintiffs and the Aggrieved Employees worked in excess of eight (8)
24 hours in a day and/or forty (40) hours in a week, and on occasion over twelve hours in a day or
25 over eight hours on the seventh day of work in a particular workweek without being paid all
26 wages owed as required by law.

27 61. Upon information and belief, Defendant knew or should have known Plaintiffs
28 and the Aggrieved Employees were undercompensated.

1 62. Defendant' failure to pay Plaintiffs and Aggrieved Employees the unpaid balance
2 of wages owed violates the provisions of Labor Code §510, §1194, §1197, §1198, and the
3 applicable IWC wage order 7-2001 and is therefore unlawful.

4 63. Accordingly, Defendant owe Plaintiffs and Aggrieved Employees wages,
5 including minimum wages and overtime wages, and have failed and refused, and continue to fail
6 and refuse, to pay Plaintiffs and Aggrieved Employees the wages owed.

7 64. Pursuant to Labor Code §1194, Plaintiffs and Aggrieved Employees are entitled to
8 recover their unpaid compensation, as well as interest, costs, and attorneys' fees.

9 65. In addition, pursuant to Labor Code §1194.2(a), Plaintiffs and the Aggrieved
10 Employees are entitled to "recover liquidated damages in an amount equal to the wages
11 unlawfully unpaid and interest thereon."

12 66. Also, pursuant to Labor Code §1197.1, Plaintiffs and the Aggrieved Employees
13 are entitled to claim all applicable civil penalties as a direct result of Defendant's policy and
14 practice of paying a wage less than the minimum fixed by an order of the commission.

15 67. Accordingly, Plaintiffs and Aggrieved Employees are entitled to recover their
16 unpaid wages, including minimum wages, overtime compensation, as well as interest, costs, and
17 attorneys' fees.

18 **Failure to Provide Timely, Legally Compliant Meal Periods**

19 68. Plaintiffs incorporate by reference and reallege each and every allegation
20 contained above, as though fully set forth herein.

21 69. Pursuant to Labor Code § 512, no employer shall employ an employee for a work
22 period of more than five (5) hours without providing a meal break of not less than thirty (30)
23 minutes in which the employee is relieved of all of his or her duties, except that when a work
24 period of not more than six (6) hours will complete the day's work the meal period may be
25 waived by mutual consent of the employer and employee.

26 70. Similarly, pursuant to Labor Code § 512, no employer shall employ an employee
27 for a work period of more than ten (10) hours without providing a second meal break of not less
28 than thirty (30) minutes in which the employee is relieved of all of his or her duties. A second

meal break may only be waived by mutual consent, and if the employee did not waive his or her first meal period, and the employee's work day will not exceed twelve hours.

71. For the four (4) years preceding the filing of this lawsuit, Defendant failed to provide Plaintiffs and Aggrieved Employees timely and uninterrupted first meal periods of not less than thirty (30) minutes within the first five hours of a shift.

72. For the four (4) years preceding the filing of this lawsuit, Defendant also failed to provide Plaintiffs and Aggrieved Employees timely and uninterrupted second meal periods of not less than thirty (30) minutes on shifts longer than ten hours.

73. Indeed, during the relevant time, as a consequence of Defendant's staffing and scheduling practices, lack of coverage, work demands, and Defendant's policies and practices, Plaintiffs and the Aggrieved Employees were not provided with legally required meal periods.

74. On information and belief, Plaintiffs and Aggrieved Employees did not waive their rights to meal periods under the law.

75. Plaintiffs and the Aggrieved Employees were not provided with valid lawful on-duty meal periods.

76. Pursuant to Defendant's meal and rest period policy, Plaintiffs and the Aggrieved Employees were not allowed to leave the premises during meal periods without prior permission from a store manager.

77. Moreover, Plaintiffs and the Aggrieved Employees were not permitted to leave their posts to take meal periods without prior permission from a store manager.

78. Further, as a consequence of Defendant's policies and practices, Defendant's failed to relieve employees of all duty and employer control for 30 uninterrupted minutes for meal periods as required by law.

79. Plaintiffs and the Aggrieved Employees were not paid one hour of pay at their regular rate for each day that a first or second meal period was not lawfully provided.

80. Defendants violated Labor Code section 512 and the Wage Order by failing to provide lawful meal periods.

81. Defendants further violated Labor Code § 226.7 and the Wage Order by failing to

1 pay one (1) hour of premium pay for each day in which a meal period violation occurred.

2 **Failure to Authorize and Permit Legally Compliant Rest Breaks**

3 82. Plaintiffs incorporate by reference and reallege each and every allegation
4 contained above, as though fully set forth herein.

5 83. Pursuant to the IWC wage order 7-2001 applicable to Plaintiffs' and Aggrieved
6 Employees' employment by Defendant, "Every employer shall authorize and permit all
7 employees to take rest periods, which insofar as practicable shall be in the middle of each work
8 period.... [The] authorized rest period time shall be based on the total hours worked daily at the
9 rate of ten (10) minutes net rest time per four (4) hours worked or major fraction thereof....
10 Authorized rest period time shall be counted as hours worked, for which there shall be no
11 deduction from wages."

12 84. Labor Code §226.7(a) prohibits an employer from requiring any employee to work
13 during any rest period mandated by an applicable order of the IWC.

14 85. Defendants were required to authorize and permit employees such as Plaintiffs
15 and Aggrieved Employees to take rest periods during shifts in excess of 3.5 hours, based upon
16 the total hours worked at a rate of ten (10) minutes net rest per four (4) hours worked, or major
17 fraction thereof, with no deduction from wages.

18 86. Despite said requirements of the IWC wage order 7-2001 applicable to Plaintiffs'
19 and Aggrieved Employees Member's employment with Defendant, Defendant failed and refused
20 to authorize and permit Plaintiffs and Aggrieved Employees to take lawful, net ten (10) minute
21 rest periods for every four (4) hours worked, or major fraction thereof.

22 87. In addition, Plaintiffs and the Aggrieved Employees were not allowed to leave the
23 premises during rest periods, and were required to request permission before leaving their posts
24 or positions.

25 88. Further, as a consequence of Defendant's policies and practices, Defendant's
26 failed to relieve employees of all duty and employer control for a net ten minutes for rest periods
27 as required by law.

28 89. Defendant did not pay Plaintiffs one additional hour of pay at their regular rate of

1 pay for each day that a rest period violation occurred. On information and belief, the other
2 members of the Aggrieved Employees endured similar violations as a result of Defendant's rest
3 period policies and practices and Defendant did not pay said Aggrieved Employees premium pay
4 as required by law.

5 90. By their failure to authorize and permit Plaintiffs and the Aggrieved Employees to
6 take a lawful, net ten (10) minute rest period free from work duties every four (4) hours or major
7 fraction thereof worked, including failure to provide two (2) total rest periods on six to ten hour
8 shifts and three (3) total ten (10) minute rest periods on days on which Plaintiffs and the other
9 Aggrieved Employees work(ed) work a third rest period for shifts in excess of ten (10) hours,
10 Defendants willfully violated the provisions of Labor Code sections 226.7 and the applicable
11 IWC Wage Order 7-2001.

12 91. In addition, by their failure to provide compensation for such unprovided rest
13 periods as alleged herein, Defendants willfully violated the provisions of Labor Code sections
14 226.7 and the applicable IWC Wage Order 7-2001.

15 **Failure to Pay All Wages At the Time of Termination**

16 92. Plaintiffs incorporate by reference and reallege each and every allegation
17 contained above, as though fully set forth herein.

18 93. Labor Code §§ 201 and 202 require Defendants to pay their employees all wages
19 due within seventy-two (72) hours of separation of employment.

20 94. Section 203 of the Labor Code provides that if an employer willfully fails to
21 timely pay such wages the employer must, as a penalty, continue to pay the subject employee's
22 wages until the back wages are paid in full or an action is commenced. The penalty cannot
23 exceed 30 days of wages.

24 95. Plaintiffs and Aggrieved Employees are entitled to compensation for all forms of
25 wages earned, including but not limited to minimum wages, overtime, and premium meal and
26 rest period compensation, but to date have not received such compensation, therefore entitling
27 them to Labor Code § 203 penalties.

28 96. Defendants violated Labor Code sections 201 and 202 by failing to pay all wages

1 due at the statutorily prescribed times at termination.

2 97. Moreover, more than thirty (30) days have passed since affected Aggrieved
3 Employees have left Defendant's employ, and on information and belief, they have not received
4 payment pursuant to Labor Code § 203.

5 98. Plaintiffs and affected Aggrieved Employees are thus entitled to 30 days' wages
6 as a penalty under Labor Code § 203.

7 **Failure to Provide Accurate Compliant Wage Statements**

8 99. Plaintiffs repeat and incorporate herein by reference each and every allegation set
9 forth above, as though fully set forth herein.

10 100. Labor Code section 226(a) reads in pertinent part: "Every employer shall,
11 semimonthly or at the time of each payment of wages, furnish each of his or her employees,
12 either as a detachable part of the check, draft, or voucher paying the employee's wages, or
13 separately when wages are paid by personal check or cash, an accurate itemized statement in
14 writing showing (1) gross wages earned, (2) total hours worked by the employee... (4) all
15 deductions... (5) net wages earned, (6) the inclusive dates of the period for which the employee
16 is paid, (7) the name of the employee and only the last four digits of his or her social security
17 number or an employee identification number other than a social security number, (8) the name
18 and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect
19 during each the pay period and the corresponding number of hours worked at each hourly rate by
20 the employee....".

21 101. Further, the IWC Wage Order 7-2001 require in pertinent part: Every employer
22 shall keep accurate information with respect to each employee including the following: (3) Time
23 records showing when the employee begins and ends each work period. Meal periods, split shift
24 intervals, and total daily hours worked shall also be recorded...(5) Total hours worked in the
25 payroll period and applicable rates of pay..."

26 102. Labor Code section 1174 of the California also requires Defendant to maintain
27 and preserve, in a centralized location, among other items, records showing the names and
28 addresses of all employees employed and payroll records showing the hours worked daily by, and

1 the wages paid to, its employees. On information and belief and based thereon, Defendant have
2 knowingly and intentionally failed to comply with Labor Code section 1174, including by
3 implementing the policies and procedures and committing the violations alleged in the preceding
4 causes of action and herein. Defendant's failure to comply with Labor Code section 1174 is
5 unlawful pursuant to Labor Code section 1175.

6 103. Defendants have failed to record many of the items delineated in applicable
7 Industrial Wage Order 7-2001 and Labor Code section 226, and required under Labor Code
8 section 1174, including by virtue of the fact that each wage statement which failed to accurately
9 compensate Plaintiffs and Aggrieved Employees for all hours worked and for missed and non-
10 provided meal and rest periods, or which failed to include compensation for all minimum wages
11 earned or overtime hours worked, was an inaccurate wage statement.

12 104. On information and belief, Defendant failed to implement and preserve a lawful
13 record-keeping method to record all hours worked, meal periods, and non-provided meal and rest
14 periods owed to employees, as required for Non-Exempt Employees under California Labor
15 Code section 226 and applicable California Wage Order 7-2001. In order to determine if they
16 had been paid the correct amount and rate for all hours worked, Plaintiffs and Aggrieved
17 Employees have been, would have been, and are compelled to try to discover the required
18 information missing from their wage statements and to perform complex calculations in light of
19 the inaccuracies and incompleteness of the wage statements Defendant provided to them.

20 105. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC
21 Wage Order 7-2001, Defendant did not and still do not furnish each of the members of the Wage
22 Statement Class with an accurate itemized statement in writing accurately reflecting all of the
23 required information. Specifically, Defendant have also omitted accurate itemizations of total
24 hours worked, the name and address of the legal entity that is the employer, and gross pay from
25 Plaintiffs and the Class Members' wage statements. In addition, Defendant have failed to provide
26 accurate itemized wage statements as a consequence of the above-specified violations for failure
27 to accurately pay all wages owed, accurately record all hours worked, and failure to pay meal and
28 rest period premiums as required by law.

106. Moreover, upon information and belief, as a pattern and practice, in violation of Labor Code section 226(a) and the IWC Wage Order 7-2001, Defendant did not and do not maintain accurate records pertaining to the total hours worked for Defendant by the members of the Wage Statement Aggrieved Employees, including but not limited to, beginning and ending of each work period, meal period and split shift interval, the total daily hours worked, and the total hours worked per pay period and applicable rates of pay.

107. Plaintiffs and the Aggrieved Employees have suffered injury as a result of Defendant's failure to maintain accurate records for the members of the Wage Statement Aggrieved Employees in that the members of the Wage Statement Aggrieved Employees were not timely provided written accurate itemized statements showing all requisite information, such that the members of the Wage Statement Aggrieved Employees were misled by Defendant as to the correct information regarding various items, including but not limited to the identity of the employer, total hours worked by the employee, gross pay, net wages earned and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

FIRST CAUSE OF ACTION

THE PRIVATE ATTORNEYS GENERAL ACT - LABOR CODE §§ 2698, et. seq.

108. Plaintiffs incorporate by reference and reallege each and every allegation contained above, as though fully set forth herein.

109. Plaintiffs timely provided written notice by certified mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific violations of the California Labor Code that Defendants have violated and continue to violate, including the facts and theories that supported each alleged violation.

110. A copy of the LWDA's response to Plaintiffs is attached hereto as **Exhibit A**, indicating that the LWDA and Defendants were put on notice of the claims alleged here.

111. The LWDA did not provide notice of intention to investigate Winco's alleged violations within 65 calendar days of the notice. Labor Code section 2699.3(a)(2)A). Thus, this action is timely.

1 112. Accordingly, Plaintiffs have exhausted all administrative procedures required of
2 them under Labor Code §§2698, 2699 and 2699.3, and as a result, are justified as a matter of
3 right in bringing forward this cause of action.

4 113. Plaintiffs is an aggrieved employee as defined in Labor Code Section 2699(a). He
5 bring this cause of action on their own behalf and all current and former California employees of
6 Defendants.

7 114. Pursuant to Labor Code section 2698 et seq and 2699(a) Plaintiffs seeks to
8 recover civil penalties for which Defendants are liable due to numerous Labor Code and Wage
9 Order violations as set forth in this Complaint.

10 115. Specifically, Plaintiffs seeks penalties under Labor Code §2699, for, without
11 limitation, the following:

- 12 a. Defendants' failure to comply with the requirement of Labor Code §1194 to pay
13 all wages including minimum wages and overtime wages;
- 14 b. Defendants' failure to comply with the requirement of Labor Code §1197 to pay
15 all wages including minimum wages and overtime wages;
- 16 c. Defendants' failure to comply with the requirement of Labor Code §1198 to pay
17 all wages including minimum wages and overtime wages;
- 18 d. Defendants' failure to comply with the requirement of Labor Code §510 to pay
19 overtime wages;
- 20 e. Defendants' failure to comply with the requirement of the IWC Wage Order 7-
21 2001 to pay all wages including minimum wages and overtime wages;
- 22 f. Defendants' failure to comply with the requirement of Labor Code §216 to pay
23 wages after demand was made by Plaintiffs;
- 24 g. Defendants' failure to comply with the requirement of Labor Code §§204 and 210
25 to pay, without condition and within the time set by the applicable article, all
26 wages, or parts thereof, which Defendants conceded to be due;
- 27 h. Defendants' failure to comply with the requirement of Labor Code §225.5 to pay
28 wages due;

- 1 i. Defendants' failure to comply with the requirement of Labor Code §§201 and 202
2 to pay wages due to former employees;
- 3 j. Defendants' failure to comply with the requirement of Labor Code §203 to pay
4 waiting time penalties to former employees;
- 5 k. Defendants' failure to comply with the requirement of Labor Code §226.7, 512,
6 1198, and IWC Wage Order 7-2001 to provide lawful, timely uninterrupted 30
7 minute off-duty meal period;
- 8 l. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198,
9 and IWC Wage Order 7-2001 to pay one hour of premium pay for each statutorily
10 required meal break that was not provided;
- 11 m. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198,
12 and IWC Wage Order 7-2001 to authorize and permit lawful, timely ten (10)
13 minute rest breaks;
- 14 n. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198,
15 and IWC Wage Order 7-2001 to pay one hour of premium pay for each statutorily
16 required rest break that was not authorized and permitted;
- 17 o. Defendants' failure to maintain required records in violation of Labor Code § 226,
18 1174, and Wage Order 7-2001;
- 19 p. Defendants' failure to provide accurate compliant wage statements under Labor
20 Code § 226.

21 116. As a result of the acts alleged above, Plaintiffs seek penalties under Labor Code
22 §§2698 and 2699 because of Defendants' violation of numerous provisions of the California
23 Labor Code and IWC Wage Orders.

24 117. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code
25 §§2698 and 2699 because of Defendants' violation of numerous provisions of the California
26 Labor Code and IWC Wage Orders. Plaintiff seeks civil penalties for Defendants' violation of
27 Labor Code provisions for which a civil penalty is specifically provided, including but not
28 limited to the following:

1 q. Pursuant to Labor Code § 226.3, for violations of Labor Code §
2 226(a), Defendants are subject to a civil penalty in the amount of
3 two hundred and fifty dollars (\$250) per aggrieved employee for
4 the initial pay period where a violation occurs and one thousand
5 dollars (\$1,000) per aggrieved employee for violations in
6 subsequent pay periods.

7 r. Pursuant to Labor Code § 558(a), “[a]ny employer or other person
8 acting on behalf of an employer who violates, or causes to be
9 violated, a section of this chapter or any provision regulating hours
10 and days of work in any order of the Industrial Welfare
11 Commission,” including Labor Code §§ 510 and 512, shall be
12 subject to a civil penalty, in addition to any other penalty provided
13 by law, of fifty dollars (\$50) for initial violations for each
14 underpaid employee for each pay period for which the employee
15 was underpaid and one hundred dollars (\$100) for each subsequent
16 violation for each underpaid employee for each pay period for
17 which the employee was underpaid.

18 s. Pursuant to Labor Code § 1174.5, for violations of Labor Code §
19 1174(d), Defendants are subject to a civil penalty of five hundred
20 dollars (\$500).

21 118. Under Labor Code §2699(f), Plaintiff and the Aggrieved Employees are entitled to
22 \$100 for any initial violation and \$200 for all subsequent violations of the above-mentioned
23 provisions of the California Labor Code for which no other civil penalty is specifically provided.

24 119. Under Labor Code §2699, Plaintiff and the Aggrieved Employees should be
25 awarded twenty-five percent (25%) of all penalties due under California law, as well as interest,
26 attorneys’ fees and costs.

27 120. Under Labor Code §2699, the State of California should be awarded seventy-five
28 percent (75%) of the penalties due under California law.

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1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq. for the violations specified above;
2. For penalties under Labor Code sections 226.3, 558, 1174.5, and 2699(a) and (f);
3. For interest at the legal rate pursuant to Labor Code §§ 218.6, California Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;
4. For reasonable attorneys' fees, expenses and costs under Labor Code §§226, 2699, and/or Code of Civil Procedure §1021.5, and/or any other applicable provisions providing for attorneys' fees and costs; and
5. For such other and further relief as the Court deems proper.

Plaintiff, on behalf of the Aggrieved Group, respectfully demands a jury trial in this matter to the extent allowed by law.

JAMES HAWKINS APLC

N: Phyllis

Attorneys for Plaintiffs
Attorneys for Plaintiffs ESMERALDA CASTANON
and JOHN DURON, on behalf of themselves and in
their representative capacity as private attorney
general

EXHIBIT A

JAMES *JH* HAWKINS

A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

May 18, 2020

Via Online Filing (LWDA) and Certified Mail (Employers)

California Labor and Workforce Development Agency
Attn: PAGA Administrator

Winco Holdings, Inc.
650 N. Armstrong Pl
Boise, ID 83704
(Mailing Address:
P.O. Box 5756
Boise, ID 83705)
Certified Mail Receipt:
7018 1130 0001 8270 3763

Agent for Service of Process for Winco
Holdings, Inc.:
Corporation Service Company dba CSC-
Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833
Certified Mail Receipt:
7018 1130 0001 8270 3756

Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 *et seq.*

To Whom It May Concern:

PLEASE TAKE NOTICE that Plaintiffs ESMERALDA CASTANON and JOHN DURON, on behalf of themselves and all others similarly situated, hereby submit this notice to the LWDA of their Complaint against Defendants WINCO HOLDINGS, INC., an Idaho Corporation, doing business as WINCO FOODS, and DOES 1 through 10, inclusive, pursuant to Labor Code sections 2698 *et seq.*

Plaintiffs allege that Defendants committed the violations specified in the Complaint and those set forth herein against both themselves and the group of aggrieved employees that they will seek to represent: Any and all persons who are or were employed as non-exempt employees in Defendant's retail stores or supermarkets, however titled, by Defendants in the state of California (non-exempt employees).

Plaintiffs have attached their Complaint, and incorporate the allegations in the Complaint as though fully set forth herewith, setting out the specific provisions of the Labor Code that Plaintiffs allege have been violated, including the facts and relevant theories alleged against Defendants in the PAGA representative action complaint.

NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 et seq.

May 18, 2020

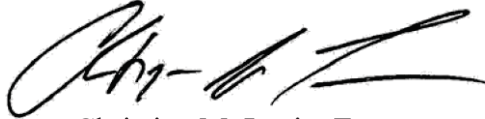
Page 2

All Labor Code and related Complaint allegations pertain to all entities or individuals named in the Complaint, even if not so specified.

Please advise by certified mail within sixty-five (65) days of the post mark on this letter if the LWDA intends to investigate these claims.

Thank you, and please contact me if you have any questions or require additional information.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Christina M. Lucio', with a stylized flourish at the end.

Christina M. Lucio, Esq.

Enclosure: Class Action Complaint