

Exhibit 1

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Plaintiffs,

Y.

Defendants.

FIRST AMENDED COMPLAINT

CLASS ACTION

[Cal. Code Civ. Proc. § 382]

- 1) **Failure to Provide Mandated Meal Periods;**
- 2) **Failure to Provide Mandated Rest Periods;**
- 3) **Failure to Pay Regular and Overtime Wages;**
- 4) **Failure to Pay Vested Vacation Pay;**
- 5) **Failure to Make Payments Within the Required Time;**
- 6) **Failure to Provide Itemized Wage Statements;**
- 7) **Failure to Maintain Records;**
- 8) **Violation of Business and Professions Code § 17200, *et seq.***

- JURY TRIAL DEMANDED -

1 Plaintiff MANDI HOVATER for causes of action against Defendant, WINCO FOODS,
2 LLC., doing business as WINCO FOODS, INC. alleges as follows:

3 I.

4 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

5 1. Plaintiff MANDI HOVATER brings this putative class action against Defendant
6 WINCO FOODS, LLC., doing business as WINCO FOODS, INC. (herein referred to as
7 "WINCO") and DOES 1 through 10, inclusive (collectively referred to as "Defendants"),
8 individually and on behalf of a purported class of similarly situated employees employed by
9 WINCO in the State of California. Through this action, Plaintiff is alleging that Defendants
10 engaged in a systematic scheme of wage and hour violations and unlawful employment practices.

11 2. WINCO FOODS, LLC. is a Delaware limited liability company doing business as
12 WINCO FOODS, INC. WINCO FOODS, INC. is an Idaho corporation authorized to do
13 business and doing business in the State of California. WINCO is a large supermarket food retail
14 chain headquartered in Boise, Idaho, with approximately seventy (70) stores operating in five
15 states. Twenty-nine (29) of which are located in California. WINCO is engaged in the business
16 of maintaining supermarkets to sell groceries and bulk foods to the public.

17 3. On or about October 3, 1994, HOVATER commenced her employment with
18 WINCO in Beaverton, Oregon. On or about January 2006, HOVATER was transferred to
19 WINCO's Folsom, California facility in the county of Sacramento, where she was employed
20 until June 2008. In June 2008, HOVATER transferred to WINCO's Orangevale, California
21 location. HOVATER worked at the Orangevale location until November 6, 2008. HOVATER
22 was employed as a night shift Second Assistant Store Manager and later promoted to night shift
23 Assistant Store Manager and was classified as an exempt salaried employee while employed in
24 these positions.

25 4. WINCO engaged in a systematic pattern of wage and hour abuse towards Plaintiff
26 and other similarly situated current and former employees in California by denying specific
27 rights afforded to her under California law, including the Labor Code and rules promulgated by
28 the Industrial Welfare Commission (herein referred to as "IWC") Wage Orders. For example,

1 WINCO misclassified HOVATER as an exempt employee and failed to compensate her for all
2 overtime hours worked. WINCO failed to inform HOVATER of her right to take off-duty meal
3 periods and rest breaks. Additionally, WINCO failed to pay HOVATER and other similarly
4 situated employees all vested vacation pay upon termination of employment. By engaging in
5 these and other acts, WINCO has not complied with California laws mandating meal and rest
6 breaks, vacation pay, and overtime compensation.

7 5. Plaintiff is informed and believes and thereon alleges that Defendants have
8 increased their profits by violating state wage and hour laws by, among other things:

- 9 a. Failing to pay for missed or on-duty meal periods;
10 b. Failing to pay for missed or on-duty rest periods;
11 c. Failing to pay all regular and overtime wages;
12 d. Failing to pay vested vacation pay upon separation of employment;
13 e. Failing to immediately pay all wages due upon separation of employment;
14 f. Failing to provide itemized wage statements;
15 g. Failing to maintain accurate records.

16 6. Plaintiff brings this lawsuit seeking injunctive and monetary relief against
17 WINCO, on behalf of herself and all other similarly situated current and former employees of
18 WINCO in the State of California (herein referred to as "Plaintiffs") to recover, among other
19 things, unpaid wages and benefits, interest, attorneys' fees, penalties, costs and expenses
20 pursuant to California Labor Code §§ 201, 202, 203, 204b, 210, 218.5, 218.6, 226, 226.3, 226.7,
21 227.3, 510, 512, 558, 1174, and 1194. Plaintiff reserves the right to name additional class
22 representatives throughout California.

23 II.

24 PARTIES AND JURISDICTION

25 7. HOVATER is and at all relevant times, was a resident of Sacramento County.
26 HOVATER began her employment with WINCO in California in approximately January 2006 as
27 a night shift Second Assistant Store Manager in Folsom, California. In January 2008,
28 HOVATER transferred to WINCO's Orangevale, California location. In June 2008, the position

1 of Second Assistant Store Manager was eliminated and HOVATER became the night shift
2 Assistant Store Manager. HOVATER was classified as a salaried, exempt employee receiving
3 an annual salary of approximately \$65,000. Although HOVATER was classified as an exempt
4 employee, she primarily performed non-exempt duties including, but not limited to, unloading
5 delivery trucks, breaking down incoming freight and stocking merchandise onto store shelves.

6 8. WINCO's conduct, as hereinafter alleged, occurred in various Counties
7 throughout the State of California. Plaintiff is informed and believes and thereon alleges that
8 WINCO FOODS LLC. is, and at all relevant times was a limited liability company, doing
9 business as WINCO FOODS, INC., an Idaho corporation, authorized to do business and doing
10 business in the State of California, and are employers as defined in and subject to the California
11 Labor Code and IWC Wage Orders.

12 9. The true names and capacities of the Defendants named as DOE 1 through DOE
13 10, inclusive, are presently unknown to Plaintiff. Plaintiff will amend this Complaint, setting
14 forth the true names and capacities of these fictitious Defendants when they are ascertained.
15 Plaintiff is informed and believes and on that basis alleges that each of the fictitious Defendants
16 has participated in the acts alleged in this Complaint.

17 10. Plaintiff is further informed and believes and thereon alleges that at all relevant
18 times, each Defendant, whether named or fictitious, was the agent or employee of the
19 corporation, or the corporation itself, and in participating in the alleged acts in this Complaint,
20 acted within the scope of such agency or employment or ratified the acts of the other.

21 III.

22 GENERAL ALLEGATIONS

23 11. California's Labor Code and Industrial Welfare Commission ("IWC") Wage
24 Orders require employers, among other things, to pay to each employee wages for all hours
25 worked within the time proscribed by law, furnish each employee with itemized wage
26 statements, provide overtime compensation for all hours worked in excess of eight hours per day
27 and/or forty hours per week, provide each employee with legally compliant meal periods and rest
28 breaks, and pay employees a premium equal to one hour's pay at the employee's regular rate of

1 compensation for each missed, on-duty or interrupted meal period and/or rest break.

2 12. WINCO failed to provide legally compliant meal periods and rest breaks to
3 HOVATER and other similarly situated employees. During her employment, HOVATER was
4 unable to take off-duty and uninterrupted meal periods and rest periods, as required by California
5 law. WINCO classified HOVATER as an exempt salaried employee and as a result, HOVATER
6 never received off-duty meal periods and rest periods. WINCO failed to inform HOVATER of
7 her right to compensation for missed and/or interrupted meal periods and rest breaks and failed
8 to pay a premium equal to one hour's pay for missed and/or interrupted, on-duty meal periods
9 and rest breaks for each workday that the meal periods or rest break was not provided as
10 proscribed by IWC Wage Order 7-2001 §§ 11(D), 12(B) and Labor Code § 226.7. On
11 information and belief, WINCO committed these same violations with numerous other WINCO
12 employees in the State of California.

13 13. WINCO classified HOVATER as a salaried, exempt employee receiving an
14 annual salary of approximately \$65,000. HOVATER was employed as a Second Assistant Store
15 Manager and later as an Assistant Store Manager working exclusively the night shift. The night
16 shift Assistant Store Managers are also referred to as Freight Managers because they unload,
17 oversee and organize all of the freight delivered to the store at night. The freight must be loaded
18 onto the store shelves and off the floor by 8:00 a.m. the following morning. Although
19 HOVATER was classified as an exempt employee, she primarily performed non-exempt duties
20 such as unloading delivery trucks, breaking down incoming freight and stocking merchandise
21 onto store shelves. Based on her job duties, Plaintiff HOVATER was misclassified as exempt
22 and should have been classified as a non-exempt employee, eligible to receive overtime
23 compensation.

24 14. During her employment, WINCO required HOVATER to perform work in excess
25 of eight (8) hours per day and/or forty (40) hours per week. Because WINCO misclassified
26 HOVATER as an exempt employee, HOVATER was ineligible to receive overtime
27 compensation. WINCO failed to compensate HOVATER for any time spent working excess of
28 8 hours per day and/or 40 hours per week. HOVATER generally worked 10 to 11 hours per day,

1 five to six days a week, without receiving any overtime compensation. On information and
2 belief, WINCO committed these same violations with numerous other WINCO employees.

3 15. WINCO failed to pay HOVATER her vested vacation time upon termination of
4 her employment with WINCO. At the time of her termination, HOVATER had accrued
5 approximately 128 hours of vacation time. WINCO willfully failed to pay HOVATER her
6 vested vacation time pay, as required by California law. WINCO's company policy is to not pay
7 employees who are terminated for cause their accrued and unused vacation time pay. On
8 information and belief, WINCO committed these violations with numerous other WINCO
9 employees.

10 16. WINCO did not provide HOVATER and other similarly situated employees with
11 all wages due, including all regular and overtime wages, upon separation of employment because
12 it failed to pay HOVATER any wages, including regular and/or overtime wages for time spent
13 working in excess of 8 hours per day and/or 40 hours per week. Additionally, WINCO
14 intentionally failed to pay HOVATER her vested vacation time pay, as required by law. As a
15 result of these illegal practices, the paychecks WINCO provided HOVATER and other similarly
16 situated employees were non-compliant.

17 17. WINCO did not provide HOVATER and other similarly situated employees with
18 accurate itemized wage statements because HOVATER was not compensated for missed and/or
19 on-duty meal periods and rest breaks and for worked performed in excess of 8 hours per day
20 and/or 40 hours per week. As a result of this practice, the itemized wage statements WINCO
21 provided to HOVATER and other similarly situated employees were inaccurate and non-
22 compliant.

23 IV.

24 CLASS ACTION DESIGNATION

25 18. This action is appropriately suited for a Class Action because:

26 a. The potential class is a significant number because Plaintiff is informed
27 and believes and thereon alleges that at all relevant times, WINCO employed a significant
28 number of employees throughout the State of California, who were affected by the unlawful

1 employment practices alleged herein. Based on the potential class size, joinder of all employees
2 individually would be impractical. Plaintiff is authorized to bring this class action on behalf of
3 other similarly situated employees under Code of Civil Procedure § 382.

4 b. Plaintiff brings this action pursuant to Code of Civil Procedure § 382 on
5 behalf of the following classes:

6 i. **As to All Causes of Action:** All current and former *night shift* Assistant
7 Store Managers employed by WINCO in California and classified as
8 exempt, salaried employees, for the period February 9, 2006 to the present
9 ("Misclassified Class").

10 ii. **As to Causes of Action Four, Five, Six, Seven and Eight:** All current
11 and former California employees of WINCO, not subject to a Working
12 Conditions & Wages Agreement, who were not paid their accrued and
13 unused vacation time pay upon separation of employment, for the period
14 February 9, 2006 to the present ("Vacation Pay Class").

15 c. This action involves common questions of law and fact to the potential
16 class because the action focuses on WINCO's systematic course of illegal conduct with respect
17 to violating the California Labor Code and IWC Wage Orders.

18 d. Plaintiff is able to fairly and adequately protect the interests of all
19 members of the potential class because it is in her best interests to prosecute the claims alleged
20 herein to obtain full compensation due to her for all back pay, benefits, and other relief afforded
21 under the Labor Code and IWC Wage Orders.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

V.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE MANDATED MEAL PERIODS

(Violation of Labor Code § 226.7 and 512; Violation of Industrial Welfare Commission Wage Order 7-2001 § 11)

(Alleged by Plaintiff HOVATER, Individually and On Behalf of All Similarly Situated Current and Former Employees of WINCO and DOES 1 through 10, inclusive)

19. Plaintiff realleges and incorporates by this reference paragraphs 1 through 18, inclusive, as though fully set forth herein.

20. Plaintiff's first cause of action is alleged by employees in the Misclassified Class.

21. HOVATER was improperly classified as an exempt employee. Due to WINCO's misclassification of HOVATER as exempt, HOVATER did not receive off-duty and uninterrupted meal periods. Often times, HOVATER would be interrupted by the demands of her job during her meal periods. As a night shift Assistant Store Manager, HOVATER was required to remain on the store premises at all times, including during meal periods. HOVATER was routinely interrupted by the demands of her job during her meal periods. It was understood that the night shift Assistant Store Manager would remain on the store premises at all times in case a situation arose that the Assistant Store Manager needed to address. Due to WINCO's intense demands of her job, HOVATER never left the store during her meal periods. HOVATER routinely worked in excess of 10 hours per day. On days that HOVATER worked more than 10 hours, she was not provided with a second meal period, as required by law.

22. Labor Code § 226.7 requires employers, including Defendants, to provide to its employees meal periods as mandated by the Order of the Industrial Welfare Commission.

23. Labor Code § 512(a) provides, in part, that employers may not employ an employee for a work period of more than five hours per day without providing an employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and the employee. Employers may not employ an employee for a work period of

1 more than 10 hours per day without providing the employee with a second meal period of not
2 less than 30 minutes.

3 24. WINCO violated Labor Code §§ 226.7 and 512 and § 11 of IWC Wage Order 7-
4 2001 when it failed to provide uninterrupted and off-duty meal periods to HOVATER during the
5 time HOVATER worked for WINCO.

6 25. WINCO failed to provide payment of one hour of pay at the employee's regular
7 rate of compensation for each missed and/or interrupted, on-duty meal periods, as required by
8 Labor Code § 226.7(b) and by § 11(D) of IWC Wage Order 7-2001.

9 26. Pursuant to Labor Code § 226.7(b) and IWC Wage Order 7-2001§11(D), WINCO
10 shall pay HOVATER wages equal to one additional hour of pay at the employee's regular rate of
11 compensation for each day that the meal period was not provided or when HOVATER was
12 required to take an on-duty, interrupted meal period.

13 27. As a result of WINCO's failure to compensate HOVATER for on-duty meal
14 periods and failure to pay HOVATER one additional hour of pay for each day an off-duty meal
15 period was not provided, HOVATER suffered and continues to suffer a loss of wages and
16 compensation, all in an amount to be shown according to proof at trial and within the jurisdiction
17 of this Court.

18 28. In committing the violations of state law as herein alleged, WINCO knowingly
19 and willfully refused to perform its obligations to compensate HOVATER for all wages earned
20 and all hours worked. As a direct result, HOVATER has suffered and continues to suffer
21 substantial losses related to the use and enjoyment of such compensation, wages, lost interest on
22 such monies and expenses, including attorney's fees in seeking to compel WINCO to fully
23 perform its obligations under state law, all to their respective damage in amounts according to
24 proof at trial and within the jurisdiction of this Court.

25 29. Pursuant to Labor Code § 218.5, Plaintiff seeks from Defendants an award of
26 attorney's fees and costs incurred herein.

27 30. Plaintiff seeks and is entitled to interest on all due and unpaid wages pursuant to
28 Labor Code § 218.6.

1 31. Plaintiff seeks injunctive relief to enjoin and restrain WINCO from providing
2 non-compliant meal periods and/or failing to provide one hour of compensation in lieu of such
3 meal periods. Plaintiff also seeks to have WINCO amend and revise its policies to compensate
4 employees for missed, interrupted and/or on-duty meal periods by providing the additional hour
5 of pay to employees for each day employees are unable to take an off-duty, uninterrupted meal
6 period.

7 **SECOND CAUSE OF ACTION**

8 **FAILURE TO PROVIDE MANDATED REST PERIODS**

9 **(Violation of Labor Code § 226.7; Violation of Industrial Welfare Commission Wage Order**
10 **7-2001 § 12)**

11 **(Alleged by Plaintiff HOVATER, Individually and On Behalf of All Similarly Situated**
12 **Current and Former Employees of WINCO and DOES 1 through 10, inclusive)**

13 32. Plaintiff hereby realleges and incorporates by reference paragraphs 1 through 31,
14 inclusive, as though fully set forth herein.

15 33. Plaintiff's second cause of action is alleged by all employees in the Misclassified
16 Class.

17 34. Pursuant to Labor Code § 226.7 and Section 12 of IWC Wage Order 7-2001,
18 every employer, including WINCO and DOES 1 through 10, shall authorize and permit all
19 employees to take rest periods of ten (10) minutes per each period of four (4) hours worked, and
20 shall be counted as time worked. During this ten minute rest period, employees are to be
21 relieved of all work duties.

22 35. WINCO violated Labor Code § 226.7 and Section 12 of the IWC Wage Order
23 when it failed to provide Plaintiff with legally compliant rest periods. HOVATER did not
24 receive off duty rest periods because she was required to perform work duties during her rest
25 periods. Due to the demands of her job and labor intensive schedule, HOVATER did not have
26 time to take off-duty rest periods. HOVATER generally did not take off-duty rest periods. On
27 occasions when HOVATER did receive a rest break, she was required to be available to respond
28 to any issues that arose as she was the senior employee on duty. Therefore, HOVATER was
never provided with a compliant rest break as she was never relieved of all duties. HOVATER,

1 therefore, was never relieved of all duties and was unable to take off-duty rest periods as
2 required by law.

3 36. Pursuant to Labor Code § 226.7(b) and IWC Wage Order 7-2001 § 12(B), if an
4 employer, such as Defendants fails to provide an employee, such as Plaintiff, with the required
5 rest period, the employer shall pay the employee one (1) hour of pay at the employee's regular
6 rate of compensation for each workday that a rest period is not provided.

7 37. WINCO violated Labor Code § 226.7(b) and Section 12(B) of the IWC Wage
8 Order when it failed to compensate Plaintiff for the rest periods that were denied her, as required
9 by Labor Code § 226.7(b) and IWC Wage Order 7-2001 § 12(B).

10 38. As a consequence of WINCO's violation of the law in requiring Plaintiff to
11 perform work during legally required rest periods, and failing to compensate Plaintiff one hour
12 of additional pay for its failure to provide legally compliant rest periods, Plaintiff suffered and
13 continues to suffer a loss of wages and compensation, all in an amount to be shown according to
14 proof at trial and within the jurisdiction of this Court.

15 39. In committing the violations of state law as herein alleged, Defendants have
16 knowingly and willfully refused to perform their obligations to compensate Plaintiff for all
17 wages earned and all hours worked. As a direct result, Plaintiff has suffered and continues to
18 suffer substantial losses related to the use and enjoyment of such compensation, wages, lost
19 interest on such monies and expenses and attorney's fees in seeking to compel Defendants to
20 fully perform their obligations under state law, all to their respective damage in amounts
21 according to proof at trial and within the jurisdiction of this Court.

22 40. Pursuant to Labor Code § 218.5 Plaintiff seeks from Defendants, and each of
23 them, an award of attorney's fees and costs incurred herein.

24 41. Plaintiff seeks and is entitled to interest on all due and unpaid wages pursuant to
25 Labor Code § 218.6.

26 42. Plaintiff seeks injunctive relief to enjoin and restrain WINCO from failing to
27 provide legally compliant off-duty rest periods or one hour of pay in lieu thereof.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THIRD CAUSE OF ACTION

FAILURE TO PAY REGULAR AND OVERTIME WAGES

(Violation of Labor Code §§ 204b, 510 and 1198)

**(Alleged by Plaintiff HOVATER, Individually and On Behalf of All Similarly Situated
Current and Former Employees of WINCO and DOES 1 through 10, inclusive)**

43. Plaintiff realleges and incorporates by this reference paragraphs 1 through 42, inclusive, as though fully set forth herein.

44. Plaintiff's third cause of action is alleged by all employees in the Misclassified Employee Class.

45. During the time frame specified, and at all relevant times set forth in this Complaint, HOVATER and all similarly situated current and former employees were misclassified by WINCO as exempt employees and were not paid all regular and overtime compensation due them as required by law.

46. During the time frame specified, and at all relevant times set forth in this Complaint, WINCO required HOVATER to work longer hours than those fixed by the order of the Industrial Welfare Commission in violation of Labor Code § 1198.

47. HOVATER was often required to work over 8 hours per day and 40 hours per week. HOVATER regularly worked approximately 10 to 12 hours per day, five to six days per week. Due to the fact that HOVATER was classified as an exempt employee and was a night shift Assistant Store Manager, HOVATER was paid a salary and not compensated for any overtime hours worked.

48. During the time frame specified, and at all relevant times set forth in this Complaint, Defendants violated Labor Code §§ 204b and 510 when they failed to pay HOVATER all regular and overtime wages for any and all worked performed in excess of eight (8) hours per day and/or forty (40) hours per week.

49. During the time frame specified, and at all relevant times set forth in this Complaint, Defendants failed to pay HOVATER all wages including regular and overtime wages, thereby receiving an economic benefit.

50. At all material times, WINCO and Does 1 through 10 were and are Plaintiff's

1 employers or persons acting on behalf of Plaintiff's employers, within the meaning of California
2 Labor Code §§ 210 and 558, who violated or caused to be violated Labor Code § 204 and a
3 provision or provisions of Part 2, Chapter 1 of the California Labor Code regulating hours and
4 days of work respectively and, as such, are individually liable to each class member for each
5 such violation as set forth in the California Labor Code.

6 51. Labor Code §§ 210, 558, and 2699 *et seq.* imposes upon Defendants, and each of
7 them, a penalty for each pay period in which they failed to pay all wages including regular and
8 overtime wages to Plaintiff for violating Labor Code §§ 204 and 510. The exact amount of the
9 applicable penalty is in an amount to be proven at time of trial.

10 52. Plaintiff is informed and believes and thereon alleges that Defendants, and each of
11 them, knowingly and willfully refused to perform their obligations to compensate Plaintiff for all
12 wages earned and all hours worked. As a direct result, Plaintiff has suffered and continue to
13 suffer substantial losses related to the use and enjoyment of such compensation, wages, lost
14 interest on such monies and expenses and attorney's fees in seeking to compel Defendants to
15 fully perform their obligations under state law, all to their respective damage in amounts
16 according to proof at trial and within the jurisdiction of this Court.

17 53. Pursuant to Labor Code § 218.5 Plaintiff seeks from Defendants, and each of
18 them, an award of attorney's fees and costs incurred herein.

19 54. Plaintiff seeks and is entitled to interest on all due and unpaid wages pursuant to
20 Labor Code § 218.6.

21 55. Pursuant to Labor Code § 1194 Plaintiff seeks and is entitled to recover in a civil
22 action the unpaid balance of the full amount of the unpaid overtime compensation, including
23 interest thereon, reasonable attorney's fees and costs of suit.

24 56. Plaintiff seeks injunctive relief to enjoin and restrain WINCO from failing to
25 compensate Plaintiffs and other current and former employees all regular and overtime wages for
26 all hours worked.

27 ///

28 ///

64. In committing the violations of state law as herein alleged, Defendants have knowingly and willfully refused to perform their obligations to compensate Plaintiff for all wages earned and all hours worked. As a direct result, Plaintiff has suffered and continues to suffer substantial losses related to the use and enjoyment of such compensation, wages, lost interest on such monies and expenses and attorney's fees in seeking to compel Defendants to fully perform their obligations under state law, all to their respective damage in amounts according to proof at trial and within the jurisdiction of this Court.

65. Pursuant to Labor Code § 218.5 Plaintiff seeks from Defendants, and each of them, an award of attorney's fees and costs incurred herein.

66. Pursuant to Labor Code § 218.6 Plaintiff seeks and is entitled to interest on all due and unpaid wages.

67. Plaintiff seeks injunctive relief to enjoin and restrain WINCO from failing to pay accrued vested vacation pay to employees upon termination.

FIFTH CAUSE OF ACTION

FAILURE TO PAY WAGES WITHIN THE REQUIRED TIME

(Violation of Labor Code §§ 201, 202, 203, and 227.3)

(Alleged by Plaintiffs HOVATER, Individually and On Behalf of All Similarly Situated Current and Former Employees of WINCO and DOES 1 through 10, inclusive)

68. Plaintiff realleges and incorporates by this reference paragraphs 1 through 67, inclusive, as though fully set forth herein.

69. Plaintiff's fifth cause of action is alleged by all employees in the Misclassified Class and Vacation Pay Class.

70. Labor Code § 201 requires Defendants to immediately pay any wages without abatement or reduction to any employee who is discharged. For willful violations of Labor Code § 201, Labor Code § 203 causes the unpaid wages of the employee to continue as a penalty from the due date thereof at the same rate until paid or thirty days have elapsed.

71. On or about November 6, 2008, WINCO terminated HOVATER's employment. At the time of HOVATER's termination, WINCO did not provide HOVATER with all wages due and owing, including all regular and overtime wages and missed or on-duty meal and rest

1 period pay, by the time specified in Labor Code §§ 201 and 202. Consequently, pursuant to
2 Labor Code § 203, WINCO owes HOVATER and similarly-situated WINCO employees the
3 above-described waiting time penalty, all in an amount to be shown according to proof at trial
4 and within the jurisdiction of this Court.

5 72. Plaintiff is informed and believes and thereon alleges that, at all times material to
6 this action, Defendants, and each of them, maintained a planned pattern and practice of failing to
7 pay Plaintiff and other similarly situated employees all wages due and owing, including overtime
8 pay and vested vacation pay required pursuant to Labor Code § 226.7(b), within the time
9 specified by Labor Code §§ 201 and 202.

10 73. Pursuant to Labor Code § 218.5, Plaintiff seeks from Defendants, and each of
11 them, an award of attorney's fees and costs incurred herein for an action brought for the
12 nonpayment of wages not recoverable under Labor Code § 1194.

13 74. Plaintiff seeks and is entitled to interest on all due and unpaid wages pursuant to
14 Labor Code § 218.6.

15 75. Pursuant to Labor Code § 1194, Plaintiff seeks and is entitled to recover in a civil
16 action the unpaid balance of the full amount of the unpaid overtime compensation, including
17 interest thereon, reasonable attorney's fees and costs of suit.

18 76. Plaintiff seeks injunctive relief to enjoin and restrain WINCO from failing to
19 compensate Plaintiff and other current and former employees for all wages due and owing upon
20 termination of employment. Plaintiff also seeks to have WINCO amend and revise its policies to
21 compensate employees with all wages due and owing, including all regular and overtime wages
22 and vested vacation time pay, immediately and without abatement or reduction to any employee
23 who is discharged or resigns.

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS

(Violation of Labor Code § 226)

(Alleged by Plaintiffs HOVATER, Individually and On Behalf of All Similarly Situated
Current and Former Employees of WINCO and DOES 1 through 10, inclusive)

77. Plaintiff realleges and incorporates by this reference paragraphs 1 through 76, inclusive, as though fully set forth herein.

78. Plaintiff's sixth cause of action is alleged by all employees in the Misclassified Class and Vacation Pay Class.

79. Labor Code § 226(a) requires that employers, including WINCO, and Does 1 through 10, inclusive, furnish their employees with each wage payment an accurate itemized writing that shows gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the period for which the employee is paid, the name of the employee and the portions of his or her social security number as required by law, and all applicable hourly rates in effect during the pay period and the corresponding number or hours worked at each hourly rate by the employee.

80. During the time frame specified, and at all relevant times set forth in this Complaint, WINCO, and Does 1 through 10, inclusive, intentionally failed to provide Plaintiff with the fully itemized accurate wage statements as required by Labor Code § 226.

81. WINCO's and Does 1 through 10, inclusive, failure to provide accurate itemized wage statements deprived Plaintiff with the ability to know, understand, and question the calculation and rate of pay and hours used to calculate the wages paid by WINCO to each of them. Plaintiff, therefore, had no way to dispute the resulting miscalculation of wages, all of which resulted in an unjustified economic enrichment to WINCO, and Does 1 through 10, inclusive. As a direct result, Plaintiff suffered and continues to suffer substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees and costs in seeking to compel WINCO, and Does 1 through 10, inclusive, to fully perform their obligations under State law, all to their respective damage in amounts according to proof at trial and within the jurisdiction of this Court.

1 82. As a result of this knowing and intentional failure to comply with Labor Code §
2 226(a), Plaintiff suffered an injury in that she was prevented from knowing, understanding and
3 disputing the wage payments paid to her by WINCO. Labor Code § 226(e) requires WINCO,
4 and Does 1 through 10, inclusive, to pay the greater of all actual damages or fifty dollars
5 (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars
6 (\$100.00) per employee for each violation in subsequent pay periods, plus attorney's fees and
7 costs, to each Plaintiff who is injured by the failure to comply with Labor Code § 226(a). The
8 exact amount of the applicable penalty is all in an amount to be shown according to proof at trial.

9 83. Plaintiff seeks injunctive relief to enjoin and restrain WINCO from failing to
10 provide Plaintiffs and other similarly situated employees with accurate itemized wage
11 statements.

12 **SEVENTH CAUSE OF ACTION**
13 **FAILURE TO MAINTAIN RECORDS**

14 **(Violation of Labor Code § 1174)**
15 **(Alleged by Plaintiffs HOVATER, Individually and On Behalf of All Similarly Situated**
16 **Current and Former Employees of WINCO and DOES 1 through 10, inclusive)**

17 84. Plaintiff realleges and incorporates by this reference paragraphs 1 through 83,
18 inclusive, as though fully set forth herein.

19 85. Plaintiff's seventh cause of action is alleged by all employees in the Misclassified
20 Class and Vacation Pay Class.

21 86. Labor Code § 1174(d) requires in part that employers, including Defendants,
22 maintain payroll records showing the hours worked daily by their employees and wages paid to
23 their employees.

24 87. Pursuant to Labor Code § 1174.5, any person employing labor who willfully fails
25 to maintain the accurate and complete records required by Labor Code § 1174(d) is subject to a
26 penalty.

27 88. During the time frame specified and at all relevant times set forth in this
28 Complaint, WINCO and Does 1 through 10, inclusive, willfully failed to maintain records
pursuant to Labor Code § 1174 by failing to properly record all hours worked, including hours

1 worked by Plaintiff and other similarly situated employees during on-duty meal and/or rest
2 periods and hours worked in excess of 8 hours per day and/or 40 hours per week.

3 89. The failure to maintain accurate records deprived Plaintiff of the ability to know,
4 understand and dispute the calculation and rate of pay and hours used to calculate the wages paid
5 by WINCO, and Does 1 through 10, inclusive. Plaintiff, therefore, had no way to dispute the
6 resulting miscalculation of wages, all of which resulted in an unjustified economic enrichment to
7 WINCO, and Does 1 through 10, inclusive. As a direct result, Plaintiff has suffered and
8 continues to suffer substantial losses related to the use and enjoyment of such wages, lost interest
9 on such wages and expenses and attorney's fees in seeking to compel WINCO and Does 1
10 through 10, inclusive, to fully perform their obligation under State law, all to their respective
11 damage in amounts according to proof at trial and within the jurisdiction of this Court.

12 90. As a result of WINCO's, and Does 1 through 10, inclusive, knowing and willful
13 failure to comply with Labor Code § 1174, Plaintiff has suffered an injury in that she was
14 prevented from knowing, understanding and disputing the wage payments made to her.

15 91. Plaintiff seeks injunctive relief to enjoin and restrain WINCO from failing to
16 maintain accurate and complete records. Plaintiff also seeks to have WINCO amend and revise
17 its policies to maintain accurate and complete records pursuant to Labor Code § 1174.

18 EIGHTH CAUSE OF ACTION

19 **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200 et seq.**

20 **(Alleged by Plaintiffs HOVATER, Individually and On Behalf of All Similarly Situated**
21 **Current and Former Employees of WINCO and DOES 1 through 10, inclusive)**

22 92. Plaintiff realleges and incorporates by this reference paragraphs 1 through 91,
23 inclusive, as though fully set forth herein.

24 93. Plaintiff's eighth cause of action is alleged by all employees in the Misclassified
25 Class and Vacation Pay Class.

26 94. California Business & Professions Code § 17200 et seq. prohibits acts of unfair
27 competition, which include and "unlawful, unfair or fraudulent business act or practice ..."
28 Plaintiffs, as herein alleged, have suffered and continue to suffer injuries in fact due to the
unlawful business practices of WINCO and Does 1 through 10, inclusive.

1 95. As alleged herein, Defendants have systematically engaged in unlawful wage
2 practices.

3 96. From the time that Plaintiff was hired, WINCO failed to comply with the
4 California Labor Code and Industrial Welfare Commission Orders through their actions as herein
5 alleged, including but not limited to their failure to: (1) pay all wages due for all hours worked;
6 (2) provide accurate itemized wage statements; (3) pay all wages due and owing within the time
7 specified by the Labor Code; (4) provide its employees with legally compliant meal and rest
8 periods; (5) pay its employees for missed, interrupted and/or on-duty meal and rest periods; (6)
9 pay its employees vested vacation pay upon separation of employment; and (7) maintain accurate
10 and complete records as required by the Labor Code.

11 97. At all relevant times, Defendants avoided paying wages and other financial
12 obligations, thereby creating for Defendants an artificially lower cost of doing business, enabling
13 them to secure a greater foothold in the marketplace, all to the detriment of Plaintiffs and other
14 similarly situated employees.

15 98. At all relevant times herein, Plaintiff relied on and believed Defendants'
16 representations concerning its conformance with California wage and hour laws and their
17 provisions of competitive pay to be true, all to her detriment.

18 99. As a result of Defendants' intentional, willful, purposeful and illegal
19 misrepresentations of its offering of competitive pay and conformance with the Labor Code and
20 Industrial Welfare Commission Wage Orders, Plaintiff suffered a loss of wages and
21 compensation, all in an amount to be shown according to proof at trial and within the jurisdiction
22 of this Court. By violating the foregoing statutes and regulations as herein alleged, Defendants'
23 acts constitute unfair and unlawful business practices under the Business & Professions Code §
24 17200 *et seq.*

25 100. Defendants' violations of the California Labor Code and the Orders of the
26 Industrial Welfare Commission and their scheme to lower payroll costs as alleged herein
27 constitute unlawful business practices because these actions were done in a systematic manner
28 over a period of time to the detriment of Plaintiff and all other similarly situated current and

1 former employees of WINCO.

2 101. As a result of the unfair business practices of Defendants alleged herein, Plaintiff
3 and all similarly situated employees are entitled to injunctive relief, disgorgement and restitution
4 in an amount according to proof.

5 ///

6 ///

7 ///

8 ///

9 ///

10 ///

11 ///

12 ///

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- a. For general damages;
- b. For special damages;
- c. For reasonable attorney's fees, cost of suit, and interest to the extent permitted by law, including pursuant to Civil Code § 1021.5 and Labor Code §§ 218.5, 218.6, 1194;
- d. For liquidated damages pursuant to Labor Code § 1194.2;
- e. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and Orders of the Industrial Welfare Commission;
- f. For injunctive relief as provided by the Labor Code and Business and Professions Code § 17200 *et seq.*;
- g. For restitution as provided by Business and Professions Code § 17200 *et seq.*;
- h. For an order requiring Defendants to restore and disgorge all funds to each Plaintiff acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent and therefore constituting unfair competition under Business and Professions Code § 17200 *et seq.*;
- i. For an award of damages in the amount of unpaid compensation, including but not limited to, unpaid wages, benefits and penalties according to proof, including interest thereon;
- j. For an award of an additional hour of pay at each Plaintiffs' regular rate of compensation including, but not limited to, unpaid wages pursuant to Labor Code § 226.7(b);
- k. For pre and post-judgment interest; and
- l. For such other relief as the Court deems just and proper.

///

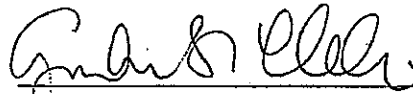
///

///

1 Dated: April 26, 2010

GRACEHOLLIS LLP

2
3 By:



4 Graham S.P. Hollis, Esq.
5 Marta Manus, Esq.
6 Attorneys for Plaintiffs
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28