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WINCO HOLDINGS, INC.

8
9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

11
12 SHIRLEY JACO on behalf of herself and all
others similarly situated,

13 Plaintiff,

14 v.

15 WINCO HOLDINGS, INC. and Does 1
16 through 50, inclusive.

17 Defendants.

Case No.

**DEFENDANT WINCO HOLDINGS,
INC.'S NOTICE OF REMOVAL OF
CIVIL ACTION TO THE UNITED
STATES DISTRICT COURT**

18
19
20 **TO THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF**
21 **CALIFORNIA AND TO PLAINTIFF AND HER ATTORNEY OF RECORD:**

22 PLEASE TAKE NOTICE that Defendant WinCo Holdings, Inc. ("WinCo") files this Notice of
23 Removal pursuant to 28 U.S.C. §§ 1331, 1332, 1441, 1446, and 1453 and removes the above-captioned
24 matter from the Superior Court of the State of California for the County of Stanislaus to the United
25 States District Court for the Eastern District of California, Fresno Division. This Court has jurisdiction
26 over the action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1332(a)
27 (diversity of citizenship jurisdiction), and 28 U.S.C. § 1332 (the Class Action Fairness Act ("CAFA")),
28 and removal is proper for the following reasons:

BACKGROUND & TIMELINESS

1
2 1. On November 22, 2017, Plaintiff Shirley Jaco (“Plaintiff”) noticed WinCo and the Labor
3 and Workforce Development Agency of her intent to file a representative action under the California
4 Private Attorneys General Act of 2004 (“PAGA”). The letter alleges that WinCo failed to pay
5 employees accrued vacation time upon termination in violation of Labor Code sections 201, 203, 204,
6 226, and 227.3. A true and correct copy of Plaintiff’s letter to the LWDA is attached as **Exhibit A**.

7 2. On November 27, 2017, Plaintiff filed a Class Action Complaint in the Superior Court of
8 the State of California, County of Stanislaus, entitled, “SHIRLEY JACO on behalf of herself and all
9 others similarly situated, Plaintiff, v. WINCO HOLDINGS, INC. and Does 1 through 50, inclusive,
10 Defendants.” The Complaint was assigned Stanislaus County Superior Court Case No. 2027761.

11 3. The Complaint alleged causes of action for: (1) Failure to Pay Accrued Vacation Wages
12 upon Termination (Labor Code §§ 201, 203, 227.7); (2) Failure to Provide Accurate Wage Statements
13 (Labor Code §§ 226(a)(1) &(5)); (3) Unlawful, Unfair, and Fraudulent Business Practices regarding
14 wage-related allegations (Bus. & Prof. Code §§ 17200, *et seq.*); (4) Disability Discrimination (Cal. Gov.
15 Code § 12940(a)); (5) Failure to Prevent Discrimination (Cal. Gov. Code § 12940(k)); (6) Failure to
16 Provide Reasonable Accommodations (Cal. Gov. Code § 12940(m)); (7) Failure to Engage in the
17 Interactive Process (Cal. Gov. Code § 12940(n); and (8) Wrongful Termination in Violation of Public
18 Policy.

19 4. This Complaint was never served.

20 5. On January 26, 2018, Plaintiff filed a First Amended Class Action Complaint in the
21 Superior Court of the State of California, County of Stanislaus. A true and correct copy of the Summons
22 and First Amended Complaint, as well as other materials served therewith, is attached as **Exhibit B**.

23 6. The First Amended Complaint (“Am. Compl.”) alleges causes of action for: (1) Failure to
24 Pay Accrued Vacation Wages upon Termination (Labor Code §§ 201, 203, 227.7); (2) Failure to Provide
25 Accurate Wage Statements (Labor Code §§ 226(a)(1) &(5)); (3) Unlawful, Unfair, and Fraudulent
26 Business Practices regarding wage-related allegations (Bus. & Prof. Code §§ 17200, *et seq.*); (4) Labor
27 Code Private Attorney General Act claim regarding wage-related allegations (Labor Code §§ 2698, *et*
28 *seq.*); (5) Disability Discrimination (Cal. Gov. Code § 12940(a)); (6) Failure to Prevent Discrimination

1 (Cal. Gov. Code § 12940(k)); (7) Failure to Provide Reasonable Accommodations (Cal. Gov. Code §
2 12940(m)); (8) Failure to Engage in the Interactive Process (Cal. Gov. Code § 12940(n); and (9)
3 Wrongful Termination in Violation of Public Policy.

4 7. On January 31, 2018, WinCo was served with Plaintiff's Summons and First Amended
5 Complaint and accompanying documents.

6 8. This Notice of Removal is timely as it is filed within 30 days of the first receipt by
7 WinCo of a copy of the summons and complaint in this matter. 28 U.S.C. § 1446(b).

8 **FEDERAL QUESTION JURISDICTION**
9 **BASED ON THE LABOR MANAGEMENT RELATIONS ACT**

10 9. This action is a civil action of which this court has original jurisdiction under 28 U.S.C.
11 Section 1331 and is one which may be removed to this court by WinCo pursuant to the provisions of 28
12 U.S.C. Section 1441, in that the relief sought in the complaint arises under and is preempted by section
13 301 of the Labor Management Relations Act (29 U.S.C. § 185) ("LMRA").

14 10. Section 301 of the LMRA provides federal jurisdiction over "suits for violation of
15 contracts between an employer and a labor organization." 29 U.S.C. § 185(a). "The preemptive force of
16 section 301 is so powerful as to displace entirely any state claim based on a collective bargaining
17 agreement, and any state claim whose outcome depends on analysis of the terms of the agreement."
18 *Young v. Anthony's Fish Grottos, Inc.*, 830 F.2d 993, 997 (9th Cir. 1987) (citations omitted) (emphasis
19 added).

20 11. Although the language of section 301 [of the LMRA] is limited to "suits for violation of
21 contracts," it has been construed quite broadly to cover state-law actions that require interpretation of
22 labor agreements. *Allis Chalmers Corp. v. Lueck*, 471 U.S. 202, 220 (1985) ("When resolution of a state
23 law claim is substantially dependent upon analysis of the terms of an agreement made between the
24 parties in a labor contract, that claim must either be treated as a § 301 claim, or dismissed as preempted
25 by federal labor-contract law." (internal citations omitted)).

26 12. Accordingly, even if a claim is brought under state law, when resolution of the claim is
27 "substantially dependent on analysis of a collective-bargaining agreement," the claim is preempted by
28 section 301 of the LMRA. *Paige v. Henry J. Kaiser Co.*, 826 F.2d 857, 861 (9th Cir. 2001) (citing

1 *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 394 (1987)); *see also Hyles v. Mensing*, 849 F.2d 1213,
2 1215-1216 (9th Cir. 1988); *Young*, 830 F.2d at 997, 999.

3 13. These claims must be recharacterized as section 301 claims and, as such, are removable
4 to federal court. *Associated Builders*, 109 F.3d at 1356; *Young*, 830 F.3d at 997, 1002 (because section
5 301 of the LMRA completely preempts a state claim, a complaint coming within the scope of the federal
6 claim necessarily arises under federal law and is removable). “Mere omission of reference to Section
7 301 in the complaint does not preclude federal subject matter jurisdiction.” *Fristoe v. Reynolds Metals*
8 *Co.*, 615 F.2d 1209, 1212 (9th Cir. 1990).

9 14. Plaintiff alleges claims for unpaid vacation-time wages and derivative claims under
10 several theories of recovery, all of which depend on her core allegation that she and other employees
11 were not paid accrued vacation time as wages upon termination. (*See Am. Compl.* ¶¶ 2, 4, 19–34.)
12 Specifically, Plaintiff asserts violations of California Labor Code section 227.3, which provides that,
13 “[u]nless otherwise provided by a collective-bargaining agreement,” an employer must pay “all vested
14 vacation time” to employees “as wages at his final rate” if an employee is terminated. (*See Am. Compl.*
15 ¶¶ 19-22.)

16 15. Plaintiff bases her claims for failure to provide accurate wage statements, in violation of
17 Labor Code section 226, and for unlawful, unfair, and fraudulent business practices, in violation of
18 Business & Professions Code section 17200, *et seq.*, on this alleged failure to pay accrued vacation time
19 upon termination. (*See Am. Compl.* ¶¶ 23-31.) Plaintiff also alleges claims under the Private Attorneys
20 General Act of 2005 (“PAGA”) based on this same theory. (*See Am. Compl.* ¶¶ 32-34.)

21 16. All of these claims are a direct challenge to the collectively bargained waiver of Labor
22 Code section 227.3 that is included in a collectively-bargained wage agreement and benefits package.
23 As a result, Plaintiff’s claims necessarily rest upon and require interpretation of the CBA.

24 17. Labor Code section 227.3 states that an employee may waive the right to receive accrued
25 vacation time as wages in a collective-bargaining agreement:

26 *Unless otherwise provided by a collective-bargaining agreement*, whenever a contract of
27 employment or employer policy provides for paid vacations, and an employee is
28 terminated without having taken off his vested vacation time, all vested vacation shall be
paid to him as wages at his final rate in accordance with such contract of employment or
employer policy respecting eligibility or time served; provided, however, that an

1 employment contract or employer policy shall not provide for forfeiture of vested
2 vacation time upon termination. (emphasis added).

3 18. In accordance with this section, WinCo and non-party WinCo Foods #21, which
4 represents the employees of WinCo's location in Modesto, California where Plaintiff worked, executed
5 a collectively bargained waiver of section 227.3 on August 27, 2015. The relevant provision of the CBA
6 unequivocally states that "[v]acation earned but not taken will not be paid to employees terminated for
7 gross misconduct." A true and correct copy of the relevant provision of the CBA is attached as **Exhibit**
8 **1 to the Declaration of Ben Swanson.**

9 19. At all relevant times, Plaintiff and members of the putative class she seeks to represent at
10 WinCo were members of the bargaining unit represented by WinCo Foods #21, and the terms and
11 conditions of their employment were subject to the CBA.

12 20. Ultimately, resolving Plaintiff's section 227.3 claims and derivative claims will require
13 the Court to interpret the CBA, including its waiver of section 227.3. This inherently is an interpretive
14 function, and the claim, on its face, is "substantially dependent on analysis of a collective bargaining
15 agreement." Moreover, the claim does not simply touch upon peripheral matters to the parties'
16 collectively bargained CBAs, but goes to the core of the agreement.

17 21. Plaintiff's assertion of state-law claims is preempted by section 301 of the LMRA, and
18 this matter is properly removable pursuant to 28 U.S.C. § 1441. Indeed, in at least one case in the
19 Eastern District of California involving similar claims, the Court denied the plaintiff's motion to remand
20 because the plaintiff's state-law claims were preempted Labor Code section 301. *See Leslie Ann Chissie*
21 *v. WinCo Foods, LLC, et al.*, No. 2:09-cv-2915,, 2010 WL 580987, at *4 (E.D. Cal. Feb. 12, 2010)
22 ("Adjudication of Plaintiff's various state law claims hinges largely on the reasonableness of the
23 Defendant's actions towards the Plaintiff. Such reasonableness, in turn, may depend on the extent to
24 which Defendant abided by the terms of the CBA. Therefore, Plaintiff's state law claims are preempted
25 by the LMRA and this Court has jurisdiction."). Courts in other jurisdictions have similarly found that
26 wage claims are preempted by section 301 of the LMRA. *See McCray v. Marriott Hotel Servs., Inc.*,
27 No. 16-cv-02092 NC, 2017 WL 1075043 (N.D. Cal. Mar. 22, 2017) ("The court already concluded that
28

1 the central question in this case is whether the CBA waiver of state and municipal law is applicable, so
2 federal jurisdiction is appropriate).

3 **DIVERSITY JURISDICTION**

4 22. This this action is also removable under 28 U.S.C. §§ 1332(a)(1) and 1441(a) because
5 this action involves citizens of different states and the amount in controversy exceeds the sum of
6 seventy-five thousand dollars (\$75,000.00), exclusive of interest and costs.

7 23. **Plaintiff is a Citizen of California.** Plaintiff is a resident and citizen of the State of
8 California. For diversity purposes, a natural person is a “citizen” of the state in which he or she is
9 domiciled. *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). For purposes of
10 diversity of citizenship jurisdiction, citizenship is determined by the individual’s domicile at the time
11 that the lawsuit is filed. *Armstrong v. Church of Scientology Int’l*, 243 F.3d 546, 546 (9th Cir. 2000)
12 (citing *Lew v. Moss*, 797 F.2d 747, 750 (9th Cir. 1986)). A person’s domicile is the place he or she
13 resides with the intent to remain indefinitely. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th
14 Cir. 2001). Residence is *prima facie* evidence of domicile. *State Farm Mut. Auto Ins. Co. v. Dyer*, 29
15 F.3d 514, 520 (10th Cir. 1994).

16 24. The First Amended Complaint alleges that Plaintiff worked for WinCo as a cashier and
17 baker at a store in Modesto, California, until November 25, 2016. Based on information from Plaintiff’s
18 personnel file and information submitted throughout the course of Plaintiff’s employment, Plaintiff has,
19 without exception, listed a California address as her current address, which demonstrates “an intent to
20 remain” in California and establishes her domicile in California. Neither Plaintiff nor Plaintiff’s counsel
21 has provided a different address or indicated that Plaintiff does not intend to remain domiciled in
22 California. Plaintiff, therefore, is, and has been at all times since this action commenced, a citizen of
23 California.

24 25. **WinCo is a Citizen of Idaho.** WinCo is now, and was at the time of the filing of this
25 action, a citizen of a state other than California. Pursuant to 28 U.S.C. § 1332(c), “a corporation shall be
26 deemed to be a citizen of any State by which it has been incorporated and of the State where it has its
27 principal place of business.”
28

1 26. WinCo is now, and was at all relevant times, incorporated under the laws of the State of
2 Idaho.

3 27. WinCo's principal place of business is located in Idaho because the appropriate test to
4 determine a corporation's principal place of business is the "nerve center" test. *Hertz Corp. v. Friend*,
5 130 S. Ct. 1181, 1192 (2010). Under the "nerve center" test, the principal place of business is the state
6 where the "corporation's officers direct, control, and coordinate the corporation's activities" and where
7 the corporation maintains its headquarters. *Id.* Idaho is the site of WinCo's corporate headquarters and
8 the state in which executive offices are located and where WinCo's high-level officers direct, control,
9 and coordinate its activities. All of WinCo's executive and administrative functions take place in Idaho.
10 WinCo is thus a citizen of Idaho and not a citizen of the State of California.

11 28. **Citizenship of Doe Defendants.** The presence of Doe defendants in this case has no
12 bearing on diversity of citizenship for removal. 28 U.S.C. § 1441(a) ("For purposes of removal under
13 this chapter, the citizenship of defendants sued under fictitious names shall be disregarded."). Pursuant
14 to 28 U.S.C. § 1441(a), the residence of fictitious and unknown defendants should be disregarded for
15 purposes of establishing removal jurisdiction under 28 U.S.C. § 1332. *Fristoe v. Reynolds Metals Co.*,
16 615 F.2d 1209, 1213 (9th Cir. 1980) (unnamed defendants are not required to join in a removal petition).
17 Thus, the existence of the naming of Doe defendants one through fifty, inclusive, does not deprive this
18 Court of jurisdiction.

19 29. **Amount in Controversy.** While WinCo denies any liability as to Plaintiff's claims, the
20 amount in controversy requirement is satisfied because "it is more likely than not" that the amount
21 exceeds the jurisdictional minimum of \$75,000.00. *See Sanchez v. Monumental Life Ins.*, 102 F.3d 398,
22 404 (9th Cir. 1996). The jurisdictional amount may be determined from the face of the complaint.
23 *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997). However, as explained by
24 the Ninth Circuit, "the amount-in-controversy inquiry in the removal context is not confined to the face
25 of the complaint." *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004) (finding that the
26 Court may consider facts presented in the removal petition). A plaintiff cannot evade federal
27 jurisdiction by alleging that the amount in controversy falls below the jurisdictional minimum. *Standard*
28 *Fire Ins. Co. v. Knowles*, 133 S.Ct. 1345, 1350 (2013); *Rodriguez v. AT&T Mobility Serv. LLC*, 728

1 F.3d 975, 978-82 (9th Cir. 2013). As a result, Plaintiff's allegation that the amount in controversy does
2 not exceed \$74,999.99 should be disregarded. (*See* Am. Compl. ¶ 2.)

3 30. Plaintiff alleges four claims for relief arising out of purported disability discrimination.
4 Plaintiff seeks general damages/restitution, special damages/lost wages, punitive damages, attorneys'
5 fees, and costs. (*See* Am. Compl. at 15-16.) In determining the amount in controversy, the Court must
6 consider the aggregate of general damages, special damages, punitive damages, and attorneys' fees.
7 *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998) (claims for statutory attorneys' fees to
8 be included in amount in controversy, regardless of whether such an award is discretionary or
9 mandatory); *Davenport v. Mut. Benefit Health & Accident Ass'n*, 325 F.2d 785, 787 (9th Cir. 1963)
10 (punitive damages must be taken into account where recoverable under state law); *Conrad Assoc.'s v.*
11 *Hartford Accident & Ind. Co.*, 994 F. Supp. 1196, 1198 (N.D. Cal. 1998) ("amount in controversy"
12 includes claims for general and special damages).

13 31. To establish the amount in controversy, a defendant may rely on jury verdicts in cases
14 involving similar facts. *Simmons v. PCR Tech.*, 209 F. Supp. 2d 1029, 1033 (N.D. Cal. 2002); *Kroske v.*
15 *U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005). California jury verdicts in similar cases often
16 exceed \$75,000. *See, e.g., Tapia v. San Gabriel Transit Inc.*, Los Angeles Sup. Ct., Case No. BC482433
17 (December 18, 2015) (\$1,289,849 verdict on plaintiff's claims for disability discrimination and violation
18 of the CFRA); *Ko v. The Square Group LLC dba The Square Supermarket*, Los Angeles Sup. Ct., Case
19 No. BC487739 (June 16, 2014) (\$190,712.36 verdict on plaintiff's claims for disability discrimination,
20 retaliation, wrongful termination in violation of public policy, and wage and hour claims and \$500,000
21 in punitive damages); *Behar v. Union Bank*, Los Angeles Sup. Ct., Case No. BC427993 (April 9, 2013)
22 (\$2,563,630 verdict on (two) plaintiffs' claims for age discrimination and harassment, national origin
23 discrimination and harassment, breach of contract and defamation claims); *Kamali v. Cal. Dept. of*
24 *Transp.*, Los Angeles Sup. Ct., Case No. BC426247 (December 20, 2012) (verdict for \$663,983 on
25 plaintiff's claims for national origin and disability discrimination); *Rosales v. Career Sys. Devel. Corp.*,
26 E.D. Cal., Case No. 08CV01383 (WBS) (August 20, 2010) (verdict for \$238,000 on plaintiff's claims
27 under the FEHA for national origin discrimination, age discrimination, retaliation, and wrongful
28 termination); *Hernandez v. Regents of the Univ. of Cal.*, Alameda County Sup. Ct., Case No.

1 RG06272564 (June 29, 2010) (verdict for \$266,347 on disability discrimination, national origin
2 discrimination, and retaliation claims); *see also Landau v. Cty. of Riverside*, 2010 WL 1648442, C.D.
3 Cal., Case No. 2:07-cv-06807 (February 12, 2010) (award of \$1,033,500 to employee who brought
4 action against employer based disability discrimination and failure to accommodate); *Dodd v. Haight*
5 *Brown & Bonesteel LLP*, 2010 WL 4845808, Los Angeles Sup. Ct., Case No. BC413813 (October 15,
6 2010) (award of \$410,520 to employee wrongfully terminated based on disability and medical
7 condition); *Ybarra v. Dacor Holding Inc.*, 2010 WL 2404221, Los Angeles Sup. Ct., Case No. KC-
8 054144 (February 26, 2010) (award of \$615,236 to employee in disability discrimination and wrongful
9 termination action); *Morales v. Los Angeles County Metro. Transp. Auth.*, 2008 WL 4488427, Los
10 Angeles Sup. Ct., Case No. BC339557 (August 19, 2008) (award of \$2,247,137 to employee terminated
11 due to disability); *Ismen v. Beverly Hosp.*, 2008 WL 4056258, Los Angeles Sup. Ct., Cas No. BC366198
12 (August 13, 2008) (award of \$1,180,164 in disability discrimination and failure to accommodate action
13 where employee lost his position after suffering on the job injury); *Vaughn v. CNA Cas. of Cal.*, 2008
14 WL 4056256, C.D. Cal., Case No. 06CV00859 (JVS) (February 28, 2008) (award of \$850,000 to
15 employee in disability discrimination action); *Orue v. Sears, Roebuck & Co.*, 2007 WL 2456108, Los
16 Angeles Sup. Ct., Case No. BC347252 (August 1, 2007) (award of \$173,056 to employee who brought
17 action based on disability and age discrimination against employer who wrongfully terminated him);
18 *Martin v. Arrow Elect.*, 2006 WL 2044626, C.D. Cal., Case No. SACV041134JVS (June 12, 2006)
19 (award of \$1,500,000 to employee who was wrongfully terminated based upon the disabilities he
20 developed during his employment); *Shay v. TG Const., Inc.*, 2002 WL 31415020, Ventura County Sup.
21 Ct., Case No. SC-028511 (January 1, 2002) (award of \$462,500 to employee wrongfully terminated on
22 basis of disability).

23 32. Plaintiff also seeks attorneys' fees in connection with her disability-discrimination
24 claims. Verdicts in comparable cases show that attorneys' fees typically exceed \$75,000.00. *See*
25 *Denenberg v. Cal. Dep't of Transp.*, 2007 WL 2827715 (San Diego County Sup. Ct. Sept. 14, 2006)
26 (attorney's fees award of \$490,000.00 in case alleging discrimination, harassment, and retaliation);
27 *McMillan v. City of Los Angeles*, 2005 WL 3729094 (Los Angeles County Sup. Ct. March 21, 2005)
28 (attorney's fees award of \$504,926.00 in case alleging discrimination and retaliation for filing lawsuit to

1 redress discrimination); *Gallegos v. Los Angeles City College*, 2003 WL 23336379 (Los Angeles
2 County Sup. Ct. Oct. 16, 2003) (attorney’s fees award of \$159,277.00 for claim of discrimination and
3 retaliation). Therefore, the inclusion of a claim for attorneys’ fees also supports the conclusion that the
4 amount in controversy exceeds \$75,000.00.

5 33. In addition, Plaintiff also seeks compensatory damages, restitution, and civil penalties for
6 alleged violations of the California Labor Code and Unlawful, Unfair, and Fraudulent Business Practices
7 Act, which also contribute to the amount in controversy. (*See* Ex. A, Am. Compl. at ¶¶ 19–34.)
8 Plaintiff also seeks an award of attorney’s fees based on this claims, and a typical individual wage and
9 hour case generates fees in excess of \$100,000. *See Martin v. The Old Turner Inn*, 2003 WL 22998402
10 (Cal. Sup. 2003) (awarding \$147,610 in attorneys’ fees and costs in a single-plaintiff wage and hour
11 case in which the plaintiff recovered \$49,508 in compensatory and punitive damages); *Bandoy v. Huh*,
12 1996 WL 675978 (Cal. Sup. 1996) (awarding \$73,680 in attorney’s fees in a wage-and-hour employee
13 misclassification case in which the plaintiff recovered in excess of \$200,000 in unpaid wages).

14 34. Finally, Plaintiff also seeks punitive damages. (*See* Ex. A, Am. Compl. at Prayer, ¶ 2.)
15 Requests for punitive damages must be taken into account in ascertaining the amount in controversy.
16 *Davenport*, 325 F.2d at 787.

17 35. For the above reasons, the amount in controversy in this matter exceeds the \$75,000.00
18 jurisdiction requirement for removal.

19 CLASS ACTION FAIRNESS ACT

20 36. This Court also has original jurisdiction over this action pursuant to the Class Action
21 Fairness Act (“CAFA”) because (1) Plaintiff is a citizen of a State different from WinCo; (2) the action
22 is a class action involving more than 100 putative class members; and (3) “the matter in controversy
23 exceeds the sum or value of \$5,000,000, exclusive of interest and costs.” *See* 28 U.S.C. § 1332(d).

24 37. **Plaintiff is a Citizen of California, and WinCo is a Citizen of Idaho.** Plaintiff is a
25 resident and citizen of the State of California. (*See supra* ¶¶ 23–28.) WinCo is a citizen of the State of
26 Idaho. (*See supra* ¶¶ 25–27.) The presence of Doe defendants in this case has no bearing on diversity of
27 citizenship for removal. (*See supra* ¶ 28.)
28

1 38. **The Number of Class Members Exceeds 100.** CAFA requires that the aggregated
2 number of members of all classes proposed in a complaint be at least 100. 28 U.S.C. § 1332(d)(5)(B).
3 Plaintiff seeks relief on behalf of a class comprised of non-exempt, hourly employees employed by
4 WinCo in California from four years prior to the filing date of this complaint to the present, whom
5 WinCo did not pay all accrued vacation time at the time of their termination. (*See Am. Comp.* at ¶ 13.)
6 Under the CBA that governed Plaintiff’s employment, “[v]acation earned but not taken will not be paid
7 to employees terminated for gross misconduct.” Based on a review of WinCo’s records, there are in
8 excess of 100 former employees terminated for gross misconduct in the relevant time period.

9 39. **The Amount in Controversy Exceeds \$5,000,000.00.** While WinCo specifically denies
10 liability as to all of Plaintiff’s claims and specifically denies the appropriateness of the case proceeding
11 as a class action, WinCo has a reasonable, good faith belief that the amount in controversy, as alleged
12 and pled by Plaintiff, exceeds \$5,000,000.

13 40. In calculating the amount in controversy under CAFA, the claims of the individual
14 members in a class action are aggregated to determine if the amount in controversy exceeds the sum or
15 value of \$5,000,000. 28 U.S.C. § 1332(d)(6).

16 41. Congress intended for federal jurisdiction to be appropriate under CAFA “if the value of
17 the matter in litigation exceeds \$5,000,000 either from the viewpoint of the plaintiff or the viewpoint of
18 the defendant, and regardless of the type of relief sought (*e.g.*, damages, injunctive relief, or declaratory
19 relief).” Senate Judiciary Committee Report, S. REP. 109-14, at 42. Moreover, the Senate Judiciary
20 Committee’s Report on the final version of CAFA makes clear that any doubts regarding the
21 maintenance of interstate class actions in state or federal court should be resolved in favor of federal
22 jurisdiction. S. REP. 109-14, at 42-43 (“[I]f a federal court is uncertain about whether ‘all matters in
23 controversy’ in a purported class action ‘do not in the aggregate exceed the sum or value of \$5,000,000,’
24 the court should err in favor of exercising jurisdiction over the case Overall, section 1332(d) was
25 intended to expand substantially federal court jurisdiction over class actions. Its provisions should be
26 read broadly, with a strong preference that interstate class actions should be heard in a federal court if
27 properly removed by any defendant”).
28

1 42. As stated above, a plaintiff cannot evade federal jurisdiction by alleging that the amount
2 in controversy falls below the jurisdictional minimum. *Knowles*, 133 S.Ct. at 1350; *Rodriguez*, 728 F.3d
3 at 978-82. As a result, Plaintiff's allegation that the amount in controversy does not exceed
4 \$4,999,999.99 should be disregarded. (*See* Ex. A, Am. Compl. at ¶ 2.)

5 43. Plaintiff states four class claims under various provisions of the California Labor Code
6 and the Unfair Competition Law and seeks general damages/restitution, special damages/lost wages,
7 punitive damages, attorneys' fees, and costs on behalf of herself and the class. Based on a review of
8 WinCo's records regarding the number of employees terminated for gross misconduct within the
9 relevant time period and based upon the amount of vacation pay Plaintiff alleges she was denied, the
10 amount in controversy on Plaintiff's class claims exceeds \$5,000,000.00.

11 44. Accordingly, because diversity of citizenship exists, and the amount in controversy
12 plainly exceeds \$5,000,000, this Court has original jurisdiction of this action pursuant to 28 U.S.C.
13 section 1332(d)(2). This action is therefore a proper one for removal to this Court pursuant to 28 U.S.C.
14 section 1441(a).

15 SUPPLEMENTAL JURISDICTION

16 45. To the extent any of the claims alleged in Plaintiff's complaint do not have an
17 independent basis for federal jurisdiction, these claims are within the supplemental jurisdiction of this
18 Court under 29 U.S.C. § 1367(a), in that they are so related to the claims subject to federal jurisdiction
19 that they form part of the same case or controversy under Article III of the United States Constitution.
20 Thus, this action is removable in its entirety.

21 VENUE

22 46. Plaintiff filed this action in the Superior Court of California, County of Stanislaus.

23 47. The County of Stanislaus lies within the jurisdiction of the United States District Court,
24 Eastern District of California. Therefore, without waiving WinCo's right to challenge, among other
25 things, personal jurisdiction and/or venue by way of a motion or otherwise, venue lies in the Eastern
26 District of California pursuant to 28 U.S.C. §§ 84(a), 1441(a), and 1446(a). This Court is the United
27 States District Court for the district within which the State Court Action is pending. Thus, venue lies in
28 this Court pursuant to 28 U.S.C. § 1441(a). Thus, venue lies in this Court pursuant to 28 U.S.C. § 1391.

NOTICE OF REMOVAL ON STATE COURT

48. A true and correct copy of this Notice of Removal will be promptly served on Plaintiff and filed with the Clerk of the Superior Court of the State of California, County of Stanislaus, as required under 28 U.S.C. § 1446(d).

49. WHEREFORE, WinCo prays that this civil action be removed from the Superior Court of the State of California, County of Stanislaus, to the United States District Court for the Eastern District of California.

DATED: March 2, 2018

Respectfully submitted,
SEYFARTH SHAW LLP

By: /s/ Christopher J. Truxler
Kristina M. Launey
Julie G. Yap
Christopher J. Truxler

Attorneys for Defendant
WINCO HOLDINGS, INC.

EXHIBIT A



November 22, 2017

Robin G. Workman
robin@workmanlawpc.com
File No.: 3273

Via Online Filing Submission

Labor and Workforce Development Agency
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified Mail

WinCo Holdings, Inc. dba WinCo Foods
PO Box 5756
Boise, ID 83705

Re: Notice Of Violations Of California Labor Code Sections by Labor Code §§ 201, 203, 204, 226, 227.3, and 2698; California Business and Professions Code §§ 17200, et seq.; Applicable Industrial Welfare Commission Wage Orders, And Pursuant To California Labor Code Section 2698, 2699 and 2699.5

To Whom It May Concern:

Shirley Jaco retained our offices. Ms. Jaco is a former employee of WinCo Holdings, Inc., dba WinCo Foods (WinCo). Prior to her termination on November 25, 2016, Ms. Jaco worked for WinCo Foods as a cashier for approximately ten years. When WinCo terminated Ms. Jaco, it did not pay Ms. Jaco all accrued wages, namely WinCo did not pay Ms. Jaco for all accrued vacation time in violation of California Labor Code section 201 and 227.3. WinCo followed this practice with all of its California WinCo employees upon their employment termination. WinCo knows the amount of accrued vacation, as it sets forth accrued vacation on the California employees' wage statements. WinCo's failure to pay the accrued vacation to Ms. Jaco, and those similarly situated WinCo employees, was willful, and therefore entitles Ms. Jaco, and those similarly situated WinCo employees, to the penalty set forth in Labor Code section 203. WinCo's failure to pay all accrued wages on termination also violates Labor Code section 226, in that WinCo failed to furnish employees with accurate wage statements reflecting the vacation wages owed.


Labor and Workforce Development Agency
November 22, 2017
Page 2

Ms. Jaco contends that WinCo caused violations of the California Labor Code and/or provisions of the applicable Industrial Welfare Commission Orders as specified in California Labor Code sections 201, 203, 204, 226, 227.3 and is therefore liable for civil penalties authorized by California Labor Code section 2699(a) by failing to pay all accrued vacation time to its California employees upon their termination.

This notice is provided to enable Ms. Jaco to proceed as a deputized attorney general in the State of California as authorized by California Labor Code section 2698, et seq. on behalf of herself and current and former aggrieved employees.

Very truly yours,

WORKMAN LAW FIRM, PC



Robin G. Workman

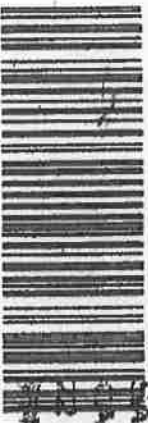
RGW/cp



Workman
Representing Employees

Workman Law Firm, PC
177 Post Street, Suite 800
San Francisco, CA 94108

CERTIFIED MAIL



7015 0640 0002 2417 7093

SAN FRANCISCO

NOV 17 2 21



UNITED STATES POSTAGE
02 lb
\$006.58
NOV 22 2017
MAIL ROOM ZIP CODE: 94108

*Melissa
Vanderberg*

WinCo Holdings, Inc. dba WinCo Foods
PO Box 5756
Boise, ID 83705

NOV 27 2017

83705-075656



EXHIBIT B

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**
WINCO HOLDINGS, INC. and Does 1 through 50, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**
SHIRLEY JACO on behalf of herself and all others similarly situated

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

2017 NOV 27 AM 10:37

CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS

BY ERIN BAGNETT DEPUTY

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STANISLAUS
801 10th Street, 4th Floor, Modesto, CA 95354

CASE NUMBER:
(Número del Caso): **2027761**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Robin G. Workman (Bar # 145810)
Workman Law Firm, PC
177 Post Street, Suite 800, San Francisco, CA 94108

Fax No.: (415) 788-1028
Phone No.: (415) 782-3660

DATE: NOV 27 2017 Clerk, by _____, Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)



- NOTICE TO THE PERSON SERVED:** You are served
- as an individual defendant.
 - as the person sued under the fictitious name of (specify):
 - on behalf of (specify): **WINCO HOLDINGS, INC.**
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
 - by personal delivery on (date):

FILED BY FAX

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Robin G. Workman (Bar # 145810) Rachel E. Davey (Bar # 316096) Workman Law Firm, PC 177 Post Street, Suite 800, San Francisco, CA 94108 TELEPHONE NO. (415) 782-3660 FAX NO.: (415) 788-1028	FOR COURT USE ONLY FILED 2017 NOV 27 AM 10:37 CLERK OF THE SUPERIOR COURT COUNTY OF STANISLAUS BY EDM BARNETT DEPUTY
ATTORNEY FOR (Name): Shirley Jacob, Plaintiff SUPERIOR COURT OF CALIFORNIA, COUNTY OF STANISLAUS STREET ADDRESS: 801 10th Street, 4th Floor MAILING ADDRESS: CITY AND ZIP CODE: Modesto 95354 BRANCH NAME:	
CASE NAME: <p style="text-align: center;">Jaco v. WinCo Holdings, Inc.</p>	CASE NUMBER: <p style="text-align: center; font-size: 1.2em;">2027761</p> JUDGE: DEPT:
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	---

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input checked="" type="checkbox"/> Large number of separately represented parties | d. <input checked="" type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): **EIGHT (8)**
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-013.)

FILED BY FAX

Date: November 22, 2017
 Robin G. Workman
(TYPE OR PRINT NAME)

[Signature]
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

FILED

2018 JAN 26 PM 2:32

CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS

RON D. SALAZAR

DEPUTY

1 WORKMAN LAW FIRM, PC
2 Robin G. Workman (Bar #145810)
3 robin@workmanlawpc.com
4 Rachel E. Davey (Bar #316096)
5 rachel@workmanlawpc.com
6 177 Post Street, Suite 800
7 San Francisco, CA 94108
8 Telephone: (415) 782-3660
9 Facsimile: (415) 788-1028

10 *Attorneys for Plaintiff, Shirley Jaco on*
11 *behalf of herself and all other similarly situated*

12 SUPERIOR COURT OF CALIFORNIA
13 COUNTY OF STANISLAUS

14 SHIRLEY JACO on behalf of herself and all others
15 similarly situated,

16 Plaintiff,

17 vs.

18 WINCO HOLDINGS, INC. and Does 1 through 50,
19 inclusive,

20 Defendants.

No. 2027761

**FIRST AMENDED CLASS ACTION
COMPLAINT**

Unlimited Civil Case

The Amount Demanded Exceeds \$25,000

21 Plaintiff Shirley Jaco ("Jaco" or "Plaintiff"), hereby alleges as follows:

22 1. This action alleges that Defendant WinCo Holdings, Inc., d/b/a WinCo Foods
23 (hereinafter "WinCo" or "Defendant"): (1) failed to pay Plaintiff, and those similarly situated
24 WinCo employees, all accrued vacation wages upon their termination in violation of California
25 Labor Code sections 201 and 227.3; and, (2) failed to provide accurate wage statements to
26 Plaintiff, and those similarly situated WinCo employees, as required by California Labor Code
27 section 226, in that the wage statements did not reflect the accrued vacation wages owed to
28 Plaintiff and those similarly situated upon their termination. Because Defendant knew of the

1 amount of the accrued vacation wages at the time of the termination of Plaintiff, and those
2 similarly situated WinCo employees, its failure to pay all accrued vacation wages at the time of
3 termination was willful and entitles Plaintiff, and those similarly situated WinCo employees, to
4 penalties as set forth in California Labor Code section 203.

5 2. This action seeks relief for unremedied violations of California law, including,
6 inter alia, damages, and/or restitution, as appropriate, to members of the proposed Class, and to
7 victims of the practices at issue, who have not been paid for accrued vacation wages upon their
8 termination, and therefore did not receive all wages due on termination, and who have failed to
9 receive accurate wage statements. Plaintiff is informed and believes that the damages, accrued
10 vacation wages, restitution, penalties, interest and attorneys' fees do not exceed an aggregate of
11 \$4,999,999.99 and that the pro-rata value of Plaintiff's individual claims, including damages,
12 back wages, restitution, interest, attorneys' fees, and penalties, does not exceed \$74,999.99.

13 3. Plaintiff is an adequate and proper class representative. Plaintiff brings this action
14 in her individual capacity, on behalf of all others similarly situated WinCo employees in
15 California, and pursuant to California Business & Professions Code section 17204, on behalf of
16 the general public. Plaintiff is a former employee of Defendant. Except for a few months when
17 she worked in the bakery department, throughout her ten-year employment with Defendant,
18 Defendant employed Plaintiff as a cashier in its store located in Modesto, California.

19 4. On November 25, 2016, Defendant terminated Plaintiff. Defendant stated that it
20 terminated Plaintiff for gross misconduct, a determination subsequently rejected by the
21 California Unemployment Insurance Appeals Board. When Defendant terminated Plaintiff,
22 Plaintiff had 60 hours of accrued vacation time. Defendant did not pay Plaintiff her accrued
23 vacation wages at the time of her termination, despite Plaintiff's numerous requests that
24 Defendant do so. Defendant refused to pay this accrued vacation time, stating that its refusal to
25 do so was pursuant to its policy. Defendant's policy of refusing to pay accrued vacation time
26 upon termination applied to all of its California employees throughout the pertinent time period,
27 i.e., four years from the filing of this complaint. This policy and practice resulted in the
28 California employees not receiving accrued vacation wages upon their termination and not

1 receiving accurate wage statements, as the wage statements do not reflect the accrued vacation
2 wages owed. Defendant was at all times aware of the precise vacation time accrued by its
3 California employees, as it reflects accrued vacation time on wage statements provided to its
4 California employees. Because of Defendant's actions, it (1) failed to pay its California
5 employees accrued vacation wages upon their termination; (2) failed to pay all wages due, as the
6 accrued vacation time constitutes wages; and, (3) failed to provide accurate wage statements to
7 its California employees as required by California Labor Code section 226, in that the wage
8 statements did not reflect the accrued vacation wages owed at termination.

9 5. At the time of her termination, Plaintiff was 75 years old and suffered from a
10 kidney condition that caused Plaintiff to have urgent needs to urinate. If Plaintiff was not
11 allowed to go to the restroom when these needs arose, she would urinate on herself. Plaintiff
12 notified Defendant of her medical condition and asked, as a reasonable accommodation, that
13 when Plaintiff needed to urinate, that she be able to get relief from Lead Clerks, and/or turn off
14 her cashiering station light, so that she could go to the restroom. Although Plaintiff's manager
15 told Plaintiff that this accommodation was acceptable, her manager never implemented this
16 accommodation. As a result, when her kidney condition caused Plaintiff to need to urinate, no
17 one came to Plaintiff's aid and she was not relieved from her cashiering station, causing Plaintiff
18 to frequently urinate on herself, as no one would allow her to go to the restroom.

19 6. On or about November 19, 2016, Plaintiff was under significant stress because
20 she needed to urinate due to her kidney condition and, despite her requests for accommodation,
21 no one would relieve her to allow her to use the restroom. In the midst of this stress, Plaintiff
22 made a \$30.00 mistake on her register, that Plaintiff covered with her own money. On or about
23 the next work day, Plaintiff informed her manager of the mistake and that she had used her own
24 money to cover the shortage. As a result, on November 25, 2016, Defendant terminated Plaintiff
25 for theft and gross misconduct.

26 7. As a proximate result of Defendant's discrimination, retaliation, failure to provide
27 an accommodation, and engage in the interactive process, Plaintiff suffered and continues to
28 suffer substantial losses in earnings, bonuses, deferred compensation and other employment

1 benefits, and has suffered and continues to suffer embarrassment, anger, humiliation, frustration
2 and other highly unpleasant mental anguish all in an amount according to proof.

3 8. Plaintiff filed a timely charge of disability discrimination, retaliation, and
4 wrongful termination with the Department of Fair Employment and Housing ("DFEH") and, on
5 or about October 30, 2017, received a timely notice of the right to sue in California Superior
6 Court pursuant to California Government Code section 12965(b), permitting Plaintiff to bring
7 this action. Therefore, Plaintiff exhausted all of her administrative remedies.

8 9. Defendant, in doing the acts and failing to do the acts as herein alleged, acted
9 maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff, and
10 in conscious disregard of said Plaintiff's rights. In addition, Defendant abused its position of
11 authority and ratified the discriminatory conduct of their employees. Plaintiff is thus entitled to
12 recover punitive damages from Defendant, in an amount according to proof.

13 10. Defendant, is, and at all relevant times was, doing business in the State of
14 California and is an employer under applicable Industrial Welfare Commission Orders.

15 11. The names and capacities of defendants sued herein under California Code of
16 Civil Procedure section 474 as Does 1 through 50, inclusive, are presently not known to Plaintiff,
17 who therefore sues these defendants by such fictitious names. Plaintiff will seek to amend this
18 Complaint and include these Doe Defendant's names and capacities when they are ascertained.
19 Each of the fictitiously named defendants is responsible in some manner for the conduct alleged
20 herein and for the injuries suffered by Plaintiff.

21 12. At all times mentioned in the causes of action alleged herein, each and every
22 Defendant was an agent and/or employee of each and every other Defendant. In doing the things
23 alleged in the causes of action stated herein, each and every Defendant was acting within the
24 course and scope of this agency or employment and was acting with the consent, permission and
25 authorization of each of the remaining Defendant. All actions of each Defendant as alleged in
26 the causes of action stated herein were ratified and approved by every other Defendant or their
27 officers or managing agents.

28 13. This action seeks relief on behalf of a class comprised of non-exempt, hourly,

1 employees employed by Defendant in California from four years prior to the filing date of this
2 complaint to the present, whom Defendant did not pay all accrued vacation time at the time of
3 their termination (“the Class”).

4 14. The proposed Class is sufficiently numerous, consisting of more than 50
5 individuals but fewer than 100, geographically dispersed throughout California, such that the
6 joinder of all proposed Class Members in one action is impracticable, and the disposition of
7 whose claims in a class action will provide substantial benefits to both the parties and the Court.

8 15. There is a well-defined community of interest in the questions of law and fact
9 involved affecting the parties to be represented. The questions of law and fact common to the
10 proposed Class predominate over questions that may affect individual proposed Class Members,
11 including but not limited to the following:

- 12 a. Whether Defendant implemented and engaged in a systematic practice
13 whereby it unlawfully failed to pay all accrued vacation wages upon
14 termination;
- 15 b. Whether Defendant implemented and engaged in a systematic practice
16 whereby it willfully failed to pay all accrued vacation wages upon
17 termination;
- 18 c. Whether Defendant implemented and engaged in a systematic practice
19 whereby it failed to provide accurate wage statements to employees;
- 20 d. Whether the systematic acts and practices of Defendant as alleged herein
21 violated, inter alia, applicable provisions of the California Labor Code,
22 including but not limited to sections 201, 203, 204, 226, 227.3, and 2698,
23 applicable Industrial Welfare Commission Orders, and California Business
24 & Professions Code section 17200, et seq.

25 16. Because at the time of her termination, Plaintiff had accrued vacation time, for
26 which Defendant refused to pay Plaintiff, and failed to receive timely and accurate wage
27 statements, Plaintiff asserts claims that are typical of the claims of the proposed Class.

28 17. Plaintiff will fairly and adequately represent and protect the interests of the

1 proposed Class in that she has no disabling conflict of interest that would be antagonistic to those
2 of the other members of the Class. Plaintiff retained counsel who is competent and experienced
3 in the prosecution of class action wage and hour violations.

4 18. Plaintiff and the members of the proposed Class have all similarly suffered
5 irreparable harm and damages as a result of Defendant's unlawful and wrongful conduct,
6 including but not limited to Defendant's systematic failure to pay accrued vacation wages upon
7 termination, systematic failure to pay all accrued vacation wages when due, and systematic
8 failure to provide accurate wage statements, makes class treatment especially appropriate.
9 Absent this action, Defendant's unlawful conduct will continue unremedied and uncorrected.

10 **FIRST CAUSE OF ACTION**

11 **(Failure to Pay Accrued Vacation Wages Upon Termination**
12 **Pursuant to California Labor Code §§ 201 and 227.3;**
13 **and Penalties Pursuant to Labor Code § 203**
14 **on Behalf of Plaintiff and the Class)**

15 19. Plaintiff and the members of the proposed Class incorporate by reference the
16 allegations contained in the foregoing paragraphs of this complaint as if fully set forth herein.

17 20. During all relevant periods, Plaintiff and the members of the proposed Class
18 accrued vacation time pursuant to Defendant's written policies. At the time of her termination,
19 Plaintiff had accrued vacation time. Pursuant to its policies, at the time of her termination, and at
20 the time of the terminations of the members of the proposed Class, Defendant did not pay for all
21 accrued vacation wages earned. Defendant knew the precise amount of vacation time accrued
22 pursuant to its written policies, as it reflects accrued vacation time on the wage statements of
23 Plaintiff and the members of the proposed Class.

24 21. During all relevant periods, the California Labor Code, sections 201 and 227.3,
25 required employers to pay employees, upon termination, all wages owed, including all accrued
26 vacation wages. Because Defendant failed to pay Plaintiff, and the members of the proposed
27 Class for all vacation wages accrued at the time of termination, Plaintiff and the members of the
28 proposed Class are entitled to recover the penalties provided in Labor Code section 203.

29 22. Plaintiff and the members of the proposed Class are therefore entitled to the relief

1 requested below.

2 **SECOND CAUSE OF ACTION**

3 **(Failure to Provide Accurate Wage Statements Pursuant to California Labor Code Section**
4 **226 on Behalf of Plaintiff and the Class)**

5 23. Plaintiff and the members of the proposed Class incorporate by reference the
6 allegations contained in the foregoing paragraphs of this complaint as if fully set forth herein.

7 24. During all relevant periods, Defendant failed to pay Plaintiff and the members of
8 the proposed Class for accrued vacation wages at the time of termination. This failure violated
9 California Labor Code sections 201 and 227.3.

10 25. As a result of Defendant's failure to pay all accrued and earned vacation wages
11 upon termination, Defendant failed to provide Plaintiff and the members of the proposed Class
12 with accurate wage statements as required by California Labor Code section 226(a)(1) & (5).

13 **THIRD CAUSE OF ACTION**

14 **(Unlawful, Unfair And Fraudulent Business Practices Pursuant**
15 **To Business & Professions Code Section 17200, et seq.**
16 **on behalf of Plaintiff and the Class)**

17 26. Plaintiff and the members of the proposed Class incorporate by reference the
18 allegations contained in the foregoing paragraphs of this Complaint as if fully set forth herein.

19 27. Business & Professions Code section 17200, et seq., prohibits acts of unfair
20 competition, defined as an "unlawful, unfair, or fraudulent business act or practice."

21 28. The policies, acts, and practices heretofore described were and are unlawful
22 business acts or practices because Defendant's failure to pay accrued vacation wages upon
23 termination, and failure to provide accurate and timely wage statements, violate various
24 provisions of California law including but not limited to Labor Code sections 201, 203, 227.3,
25 2698, applicable Industrial Welfare Commission Wage Orders, and other provisions of
26 California common and/or statutory law. Plaintiff reserves the right to allege additional statutory
27 and common law violations by Defendant. Such conduct is ongoing to this date.

28 29. Further, the policies, acts or practices described herein were and are an unfair
business act or practice because any justifications for Defendant's illegal and wrongful conduct

1 were and are vastly outweighed by the harm such conduct caused to Plaintiff, proposed class
2 members, and the members of the general public. Such conduct is ongoing to this date.

3 30. As a result of its unlawful and/or unfair and/or fraudulent acts, Defendant reaps
4 and continues to reap unfair benefits and illegal profits at the expense of Plaintiff and class
5 members. Defendant should be made to disgorge ill-gotten gains and provide restitution to
6 proposed class members and Plaintiff for the wrongfully withheld wages pursuant to Business
7 and Professions Code section 17203. To stop Defendant from engaging this action in the future,
8 Plaintiff also requests that this Court enter an injunction pursuant to Section 17203.

9 31. Accordingly, Plaintiff and the proposed Class respectfully request that the Court
10 award judgment and relief in their favor, to provide restitution, and other types of equitable
11 relief.

12 **FOURTH CAUSE OF ACTION**

13 **(Labor Code Private Attorneys General Act of 2004: Labor Code Sec. 2698)**

14 32. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing
15 paragraphs as if fully set forth herein.

16 33. The policies, acts and practices heretofore described were and are unlawful because
17 Defendant's failure to pay its California employees accrued vacation wages upon their
18 termination, failure to pay all wages due, as the accrued vacation time constitutes wages, and,
19 failure to provide accurate wage statements to its California employees as required by California
20 Labor Code section 226, in that the wage statements did not reflect the accrued vacation wages
21 owed at termination, violates applicable Labor Code sections 201, 203, 226, and 227.3, and gives
22 rise to statutory and civil penalties as a result of such conduct, including but not limited to
23 penalties as provided by Labor Code sections 210, 226(3), 226.3, 2699(f), and 2699.5, and
24 applicable Industrial Welfare Commission Wage Orders. Plaintiff, as an aggrieved employee,
25 hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney General
26 Act of 2004 on behalf of herself and other current and former employees of Defendant against
27 whom one or more of the violations of the Labor Code was committed.

28

1 34. On November 22, 2017, Plaintiff gave written notice to the California Labor and
2 Workforce Development Agency by online submission through their website and by certified mail
3 to WinCo Holdings, Inc. dba WinCo Foods of Labor Code violations as prescribed by California
4 Labor Code section 2699.3. Plaintiff has not received written notification by the LWDA of an
5 intention to investigate the allegations set forth in Plaintiff's November 22, 2017, letter or written
6 notice of cure by January 26, 2018, as prescribed by California Labor Code section 2699.3.

7 **FIFTH CAUSE OF ACTION**

8 **(Solely on Behalf of Plaintiff Jaco)**

9 **(Physical Disability Discrimination/Retaliation: Cal. Gov. Code § 12940(a))**

10 35. Plaintiff incorporates by reference the allegations contained in the foregoing
11 paragraphs of this Complaint as if fully set forth herein.

12 36. At all material times, Plaintiff was an employee covered by California
13 Government Code section 12940, prohibiting discrimination in employment based on physical
14 disability.

15 37. Defendant was, at all times material hereto, an employer within the meaning of
16 California Government Code section 12926(d), and as such, is barred from discriminating
17 against employees on the basis of physical disability.

18 38. At all times material hereto, Plaintiff suffered from a physical disability, namely a
19 kidney condition that required Plaintiff to suffer an urgent need to urinate, within the meaning of
20 California Government Code section 12926(m). Plaintiff's condition limited one or more of her
21 major life activities within the meaning of California Government Code sections 12926(m)(1)(B)
22 and 12926.1.

23 39. At all material times, Plaintiff held the position of cashier. At all times material
24 hereto, Plaintiff could perform her essential job functions with her disability. As such,
25 Defendant's termination of Plaintiff is not protected by Government Code section 12940(1).

26 40. Defendant discriminated against Plaintiff on the basis of her physical disability in
27 multiple violations of California Government Code section 12940 by engaging in a course of
28 conduct intentionally designed to discriminate against Plaintiff on the basis of her disability.

1 This conduct culminated in Defendant's unlawful, discriminatory termination on or about
2 November 25, 2016.

3 41. As a proximate result of Defendant's discrimination, Plaintiff suffered and
4 continues to suffer substantial losses in earnings, bonuses, deferred compensation and other
5 employment benefits, and has suffered and continues to suffer embarrassment, anger,
6 humiliation, frustration and other highly unpleasant mental anguish, in addition to the physical
7 pain derived from her physical disability, all in an amount according to proof.

8 42. Plaintiff filed a timely charge of discrimination, retaliation and wrongful
9 termination with the Department of Fair Employment and Housing ("DFEH") and, on or about
10 October 30, 2017, received a timely notice of the right to sue in California Superior Court
11 pursuant to California Government Code section 12965(b), permitting Plaintiff to bring this
12 action. Therefore, Plaintiff exhausted all of her administrative remedies.

13 43. Defendant, in doing the acts and failing to do the acts as herein alleged, acted
14 maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff, and
15 in conscious disregard of said Plaintiff's rights. In addition, Defendant abused its position of
16 authority and ratified the discriminatory conduct of its employees. Plaintiff is thus entitled to
17 recover punitive damages from Defendant, in an amount according to proof. As a result of
18 Defendant's discriminatory acts as alleged herein, Plaintiff is entitled to an award of reasonable
19 attorneys' fees and costs of suit as provided by California Government Code section 12965(b).

20 **SIXTH CAUSE OF ACTION**

21 **(Solely on Behalf of Plaintiff Jaco)**

22 **(Failure To Take Steps To Prevent Discrimination:
23 Cal. Gov. Code § 12940(k))**

24 44. Plaintiff incorporates by reference the allegations contained in the foregoing
25 paragraphs as if fully set forth herein.

26 45. At all material times, Plaintiff was an employee covered by California
27 Government Code section 12940, prohibiting discrimination in employment based on physical
28 disability.

1 46. Defendant was, at all times material hereto, an employer within the meaning of
2 California Government Code section 12926(d), and as such, is barred from discriminating
3 against employees on the basis of physical disability.

4 47. During her employment, Defendant failed to provide Plaintiff a reasonable
5 accommodation for her physical condition, failed to engage in the interactive process, and
6 ultimately fired Plaintiff due to her physical disability and/or requests for accommodation.
7 Plaintiff notified Defendant that she suffered from a kidney condition, and requested
8 accommodations therefore, due to her inability to control her urge to urinate due to the condition.
9 Rather than engage in the interactive process with Plaintiff to discuss reasonable
10 accommodations for her physical disability, Defendant did nothing. Defendant ultimately
11 terminated Plaintiff on November 25, 2016, due to a minor infraction, that arose, in part, due to
12 the stress Plaintiff suffered due Defendant's failure to accommodate her physical condition.
13 Discrimination on the basis of an employee's physical disability by any agent of a Defendant
14 employer is unlawful. California Government Code § 12940(k). By engaging in this conduct,
15 Defendant failed to take action to provide a workplace free of harassment, discrimination, and
16 retaliation.

17 48. As a proximate result of Defendant's discrimination, Plaintiff suffered and
18 continues to suffer substantial losses in earnings, bonuses, deferred compensation and other
19 employment benefits, and has suffered and continues to suffer embarrassment, anger,
20 humiliation, frustration and other highly unpleasant mental anguish, in addition to the physical
21 pain derived from her physical disability, all in an amount according to proof.

22 49. Plaintiff filed a timely charge of discrimination, retaliation and wrongful
23 termination with the Department of Fair Employment and Housing ("DFEH") and, on or about
24 October 30, 2017, and received a timely notice of the right to sue in California Superior Court
25 pursuant to California Government Code section 12965(b), permitting Plaintiff to bring this
26 action. Therefore, Plaintiff exhausted all of her administrative remedies.

27 50. Defendant, in doing the acts and failing to do the acts as herein alleged, acted
28 maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff, and

1 in conscious disregard of said Plaintiff's rights. In addition, Defendant abused its position of
2 authority and ratified the discriminatory conduct of its employees. Plaintiff is thus entitled to
3 recover punitive damages from Defendant, in an amount according to proof. As a result of
4 Defendant's discriminatory acts as alleged herein, Plaintiff is entitled to an award of reasonable
5 attorneys' fees and costs of suit as provided by California Government Code section 12965(b).

6 **SEVENTH CAUSE OF ACTION**

7 **(Solely on Behalf of Plaintiff Jaco)**

8 **(Failure to Provide Reasonable Accommodations Cal. Gov. Code §§ 12940(m))**

9 51. Plaintiff incorporates by reference the allegations contained in the foregoing
10 paragraphs of this Complaint as if fully set forth herein.

11 52. At all times material hereto, Plaintiff suffered from a physical disability within the
12 meaning of California Government Code section 12926(m). At all times material hereto,
13 Plaintiff could perform her essential job functions with her disability.

14 53. During her employment, Plaintiff alerted Defendant of her disability. Plaintiff
15 informed Defendant that she suffered from a kidney condition that caused Plaintiff to suffer an
16 urgent need to urinate. Plaintiff made clear to Defendant that, as a result of the condition, if she
17 was not relieved to go to the restroom, she would urinate on herself. Plaintiff requested the
18 accommodation of being relieved from her cashiering station when required so that she could go
19 to the restroom.

20 54. At all relevant times herein, Defendant failed to determine what reasonable
21 accommodations existed for the known physical disability of Plaintiff, in violation of California
22 Government Code section 12940(m).

23 55. As a proximate result of Defendant's discrimination, Plaintiff suffered and
24 continues to suffer substantial losses in earnings, bonuses, deferred compensation and other
25 employment benefits, and has suffered and continues to suffer embarrassment, anger,
26 humiliation, frustration and other highly unpleasant mental anguish, in addition to the physical
27 pain derived from her physical disability, all in an amount according to proof.

28

1 56. Plaintiff filed a timely charge of discrimination, retaliation and wrongful
2 termination with the Department of Fair Employment and Housing (“DFEH”) and, on or about
3 October 30, 2017, and received a timely notice of the right to sue in California Superior Court
4 pursuant to California Government Code section 12965(b), permitting Plaintiff to bring this
5 action. Therefore, Plaintiff exhausted all of her administrative remedies.

6 57. Defendant, in doing the acts and failing to do the acts as herein alleged, acted
7 maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff, and
8 in conscious disregard of said Plaintiff’s rights. In addition, Defendant abused its position of
9 authority and ratified the discriminatory conduct of its employees. Plaintiff is thus entitled to
10 recover punitive damages from Defendant, in an amount according to proof. As a result of
11 Defendant’s discriminatory acts as alleged herein, Plaintiff is entitled to an award of reasonable
12 attorneys’ fees and costs of suit as provided by California Government Code section 12965(b).

13 **EIGHTH CAUSE OF ACTION**

14 **(Solely on Behalf of Plaintiff Jaco)**

15 **(Failure to Engage in the Interactive Process; Cal. Gov. Code §§ 12940(n))**

16 58. Plaintiff incorporates by reference the allegations contained in the foregoing
17 paragraphs of this Complaint as if fully set forth herein.

18 59. During her employment, Plaintiff alerted Defendant of her known physical
19 disability. Plaintiff informed Defendant that she suffered from a kidney condition that caused
20 Plaintiff to suffer an urgent need to urinate. Plaintiff made clear to Defendant that, as a result of
21 the condition, if she was not relieved to go to the restroom, she would urinate on herself.
22 Plaintiff requested the accommodation of being relieved from her cashiering station when
23 required so that she could go to the restroom.

24 60. Defendant failed to engage in the interactive process with Plaintiff to determine
25 effective reasonable accommodations for Plaintiff after learning of Plaintiff’s physical disability,
26 in violation of California Government Code section 12940(n). Defendant did not, at any point in
27 time, propose any reasonable accommodation in response to Plaintiff’s request.
28

1 her. Said discharge was unlawful and in violation of public policy, article I, section 8, of the
2 California Constitution, and California Government Code section 12940 because said discharge
3 was on the basis of Plaintiff's physical disability and in retaliation for Plaintiff requesting a
4 reasonable accommodation for her physical disability.

5 66. The foregoing conduct caused Plaintiff to suffer severe emotional distress.
6 Plaintiff has suffered and continues to suffer pain, loss of sleep, discomfort, anxiety, anger,
7 frustration and other emotional distress, and will continue to suffer said emotional distress in the
8 future in an amount according to proof.

9 67. As a proximate result of Defendant's discrimination, Plaintiff suffered and
10 continues to suffer substantial losses in earnings, bonuses, deferred compensation and other
11 employment benefits, and has suffered and continues to suffer embarrassment, anger,
12 humiliation, frustration and other highly unpleasant mental anguish, in addition to the physical
13 pain derived from her physical disability, all in an amount according to proof.

14 68. Defendant, in doing the acts and failing to do the acts as herein alleged, acted
15 maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff, and
16 in conscious disregard of Plaintiff's rights. In addition, Defendant abused its position of
17 authority and ratified the discriminatory conduct of its employees. Plaintiff is thus entitled to
18 recover punitive damages from Defendant, in an amount according to proof. As a result of
19 Defendant's discriminatory acts as alleged herein, Plaintiff is entitled to an award of reasonable
20 attorneys' fees and costs of suit as provided by California Government Code section 12965(b).

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays for relief as follows:

- 23 1. For an award of general damages/restitution in an amount according to proof, plus
24 interest thereon at the legal rate;
- 25 2. For an award of punitive damages in an amount according to proof;
- 26 3. For special damages, including lost wages, in an amount according to proof, plus
27 interest thereon at the legal rate;
- 28 4. For an injunction pursuant to Business and Professions Code section 17203;

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- 5. For costs of suit incurred herein;
- 6. For an award of attorneys' fees, and;
- 7. For such other relief as this Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Date: January 26, 2018

WORKMAN LAW FIRM, PC

By:



Robin G. Workman
*Attorneys for Shirley Jaco, and all others
similarly situated*



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF STANISLAUS**

801 10th Street 4th Floor
Modesto, CA 95354
ADR clerk: (209) 530-3103
www.stanct.org

Alternative Dispute Resolution Information Packet

Recognizing that many civil disputes can be resolved without the time and expense of traditional civil litigation, the Superior Court of California, County of Stanislaus, strongly encourages parties in general civil cases to explore and pursue the use of Alternative Dispute Resolution.

What is Alternative Dispute Resolution?

Alternative Dispute Resolution (ADR) is the general term applied to a wide variety of dispute resolution processes which are alternatives to lawsuits. Trained impartial persons, called "neutrals", resolve disputes or help parties resolve disputes themselves. The types of ADR options available are:

- Arbitration
- Mediation
- Neutral Evaluation

All ADR processes offer a partial or complete alternative to traditional court litigation for resolving disputes. At the present time, Stanislaus County Superior Court offers Mediation and Arbitration.

What are the advantages of using ADR?

- **ADR can save time (FASTER).** Even in complex cases, a dispute can often be resolved in a matter of months, even weeks through ADR, while a lawsuit can take years.
- **ADR can save money (CHEAPER).** By resolving cases earlier, ADR can save parties money that might otherwise be spent on litigation costs (court, attorney and expert witness fees).
- **ADR encourages participation.** Parties have the opportunity to work together, rather than against each other by expressing their own interest and concerns to resolve the dispute.
- **ADR provides control and flexibility.** Parties can choose the ADR method most appropriate for their situation that will best serve their needs.
- **ADR can provide greater satisfaction and improved outcomes.** Surveys indicate that people who have used ADR are more satisfied than people who went through traditional litigation. The ADR atmosphere encourages cooperation and communication rather than the adversarial atmosphere found in litigation.

ADR may not be suitable for every dispute and may not be to your advantage.

- The neutral will charge a fee for their services if the dispute is not resolved within the allotted time.
- Lawsuits must be brought within specified periods of time, known as statutes of limitation. Parties must be careful not to let a statute of limitations run out while a dispute is in the ADR process.
- If a dispute is not resolved through ADR, the parties may still have to put time and money into a lawsuit.

What are my ADR Options?

Stanislaus County Superior Court currently offers pre-screened panelists with experience and training in each of the following areas. It is the policy of the Superior Court of California that all parties are required to meet-and-confer with the opposing side before the Case Management Conference pursuant to rule 3.724 of the California Rules of Court.

❖ **ARBITRATION**

In arbitration, a neutral person called an "arbitrator" presides at the hearing. The arbitrator hears arguments, makes legal rulings, and evaluates the evidence determining the facts from each side. The arbitrator applies the law to the facts of each case and makes an award based upon the merits. Arbitration awards may be entered as judgments in accordance with the agreement of the parties or, where there is no agreement, in accordance with the California statutes. Arbitration is less formal than a trial, and the rules of evidence are often relaxed. These hearings are not held in court.

1. Binding arbitration means that the parties waive their right to a trial and agree to accept the arbitrator's final decision. Generally, there is no right to appeal an arbitrator's decision.
2. Non-Binding arbitration means that the parties are free to request a trial with the court if they do not accept the arbitrator's decision.

Cases for which Arbitration may be appropriate: Arbitration is best for cases where the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time and expense of a trial. It may also be appropriate for complex matters.

Operation/Court Policy. Pursuant to Code of Civil Procedures § 1141.11, all civil actions in which the amount in controversy will not exceed \$50,000 shall be submitted to arbitration. A case is ordered to arbitration after the Case Management Conference. The neutral is chosen from the Courts approved panel, located on our website at www.stanct.org.

Cost. There is no cost to the parties for judicial arbitration. [Local Rule 3.07 (1)]

❖ **MEDIATION**

In mediation, a neutral person called a "mediator" facilitates communication among parties, helps parties clarify facts, identify legal issues, explore options and arrive at a mutually acceptable resolution. Mediation is a voluntary, informal and confidential process held out of court.

Cases for which Mediation may be appropriate: Mediation may be particularly useful when parties have a relationship they want to preserve. If family members, neighbors or business partners have a dispute, mediation may be the best process to use.

Operation/Court Policy. All parties to a dispute may voluntarily agree to submit their case to mediation, either through a court appointment or through a private arrangement. A list of neutral providers who are trained and experienced have been reviewed and approved by the Court. The list can be found at www.stanct.org. Litigants are not limited to a mediator on the court list and may select any mediator agreed upon by all the parties in private mediation. A mediation provider need not be an attorney.

1. Private Mediation. Parties to a civil action can agree to mediate their dispute with a mediator of their choice without court assistance.
2. Court Mediation. Upon stipulation of the parties, the parties may either personally select their mediator from the court approved list of neutrals or request the court to make the selection from the said list. The court will confirm the selected mediator and notice parties by mail.

Cost. Generally the cost of *private mediation* ranges from \$100-\$300 per hour and is shared equally by the parties. The cost of *court mediation* is \$400 total (\$200 per side) for the first two hours. In the event that mediation extends beyond two hours and parties determine it would be beneficial to continue the mediation process, the parties will independently be responsible for compensating the mediator in an amount set by the mediator.

❖ **Additional Information**

Under the Dispute Resolution Program Act (DRPA) funding, the court partners with Stanislaus County Mediation Center to provide free mediation services to litigants in small claims matters and cases involving unlawful detainer. For more information on the specific ADR programs of the Stanislaus County Superior Court, please review the Local Rules available on the Court's website at www.stanct.org.

STAN-100

ATTORNEY FOR PLAINTIFF <i>(name, bar card, and address)</i> : TELEPHONE NO.: _____ FAX NO. <i>(Optional)</i> : _____ E-MAIL ADDRESS <i>(Optional)</i> : _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, STANISLAUS COUNTY MAILING ADDRESS: 801 10TH STREET, 4TH FLOOR CITY AND ZIP CODE: MODESTO, CA 95354 BRANCH NAME: MODESTO	
CASE NAME:	
STIPULATION AND ORDER TO ADR	CASE NUMBER:

The parties and their attorneys stipulate that the claims in this action shall be submitted to the following alternative dispute resolution process:

- | | |
|---|---|
| <input type="checkbox"/> Voluntary Mediation
<input type="checkbox"/> Private Mediation
<input type="checkbox"/> Judicial Arbitration | <input type="checkbox"/> Private Arbitration
<input type="checkbox"/> Neutral Evaluation
<input type="checkbox"/> Voluntary Mediation in lieu of Judicial Arbitration |
|---|---|

This box is to be filled out for or Voluntary Mediation and Neutral Evaluation only.

In accordance with Stanislaus County Rule of Court 3.10(D)(4) and 3.11(C)(2) this form must be signed by the agreed upon mediator or neutral-evaluator. If both parties agree the court will select a mediator for the case.

It is Stipulated that _____ (name of mediator/neutral evaluator) shall serve as the neutral for this case.

Signature of Neutral _____ Date _____

It is Stipulated that the Court select a mediator for this case.

- For Voluntary Mediation this form must be completed and returned with \$400 (\$200 from the plaintiffs and \$200 from the defendants).

▶ _____	▶ _____
(PLAINTIFF)	(DEFENDANT)
(SIGNATURE) _____	(SIGNATURE) _____
(DATE) _____	(DATE) _____
▶ _____	▶ _____
(PLAINTIFF'S ATTORNEY)	(DEFENDANT'S ATTORNEY)
(SIGNATURE) _____	(SIGNATURE) _____
(DATE) _____	(DATE) _____

ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME, ADDRESS, PHONE, BAR NUMBER)	FOR COURT USE ONLY FILED
COURT GENERATED	2017 NOV 27 AM 10:39
Attorney for:	CLERK OF THE SUPERIOR COURT COUNTY OF STANISLAUS
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STANISLAUS Street Address: City Towers Bldg., 801 10th St, 4th Floor, Modesto, CA 95354 Civil Clerk's Office: 801 10th Street, 4th Floor, Modesto, CA 95354	BY <u>ERIN BARNETT</u> DEPUTY
Plaintiff/Petitioner: <u>JACO, Shirley</u> Defendant/Respondent: <u>Winco Holdings</u>	
NOTICE OF CASE MANAGEMENT CONFERENCE	CASE NUMBER <u>2027761</u>

1. NOTICE is given that a Case Management Conference has been scheduled as follows:

Date: 3-26-18 Time: 8:30 AM PM

This case is assigned to Judge ROGER M. BEALICHESNE, Dept 24, for all purposes, including trial.

*Departments 21 & 22 are located at 801 10th Street, 6th Floor, Modesto, CA 95354

*Departments 23 & 24 are located at 801 10th Street, 4th Floor, Modesto, CA 95354

All filings shall be filed in the Clerk's Office at the City Towers, 4th Floor address.

You have 30 calendar days to file a written response with this court after the legal papers and the summons were served on you. You must also serve a copy of your written response on the plaintiff.

2. You must file and serve a completed *Case Management Conference Statement* at least fifteen (15) calendar days before the case management conference.
3. You must be familiar with the case and be fully prepared to participate effectively in the case management conference.
4. At the case management conference the Court may make pretrial orders, including the following:
 - a. An order establishing a discovery schedule.
 - b. An order referring the case to arbitration.
 - c. An order dismissing fictitious defendants.
 - d. An order scheduling exchange of expert witness information.
 - e. An order setting subsequent conferences and the trial date.
 - f. Other orders to achieve the goals of the Trial Court Delay Reduction Act (Gov. Code, § 68600 et seq.).

Date: NOV 27 2017 by ERIN BARNETT Deputy Clerk
Mandatory Form

--SANCTIONS--

If you do not file the *Case Management Statement* required by local rule, or attend the case management conference or participate effectively in the conference, the court may impose sanctions (including dismissal of the case, striking of the answer, and payment of money).

CV003

11/10



Notice of Service of Process

Transmittal Number: 17712978
Date Processed: 02/01/2018

Primary Contact: Melissa Vandenberg
Winco Foods, LLC
650 N Armstrong Place
Boise, ID 83704

Entity: Winco Holdings, Inc.
Entity ID Number 2302675

Entity Served: Winco Holdings, Inc.

Title of Action: Shirley Jaco vs. Winco Holdings, Inc.

Document(s) Type: Summons and Amended Complaint

Nature of Action: Class Action

Court/Agency: Stanislaus County Superior Court, California

Case/Reference No: 2027761

Jurisdiction Served: California

Date Served on CSC: 01/31/2018

Answer or Appearance Due: 30 Days

Originally Served On: CSC

How Served: Personal Service

Sender Information: Robin G. Workman
415-782-3660

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC

251 Little Falls Drive, Wilmington, Delaware 19808-1674 (888) 690-2882 | sop@cscglobal.com

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

SHIRLEY JACO

(b) County of Residence of First Listed Plaintiff Stanislaus County

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Robin G. Workman (SBN 145810) / Rachel E. Davey (SBN 316096)
WORKMAN LAW FIRM, PC
177 Post Street, Suite 800
San Francisco, CA 94108 Tel. (415) 782-3660

DEFENDANTS

WINCO HOLDINGS, INC.

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Julie G. Yap (SBN 243450) / Christopher J. Truxler (SBN 272354)
SEYFARTH SHAW LLP,
400 Capitol Mall, Suite 2350
Sacramento, CA 95814 Tel (916) 448-0159

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Each cell contains a list of legal categories with checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District
6 Multidistrict Litigation-Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. §§ 1331, 1332, 1441, 1446, and 1453; 29 U.S.C. § 185

Brief description of cause:

Plaintiff alleges state wage and hour claims preempted by the LMRA as well as state discrimination claims.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

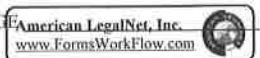
DOCKET NUMBER

DATE March 2, 2018

SIGNATURE OF ATTORNEY OF RECORD /s/ Christopher J. Truxler

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE



Case 1:18-cv-00301-DAD-EPG Document 1-1 Filed 03/02/18 Page 2 of 2
INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

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12 Attorneys for Defendant
13 WINCO HOLDINGS, INC.

14 UNITED STATES DISTRICT COURT
15 EASTERN DISTRICT OF CALIFORNIA

16 SHIRLEY JACO on behalf of herself and all
17 others similarly situated,

18 Plaintiff,

19 v.

20 WINCO HOLDINGS, INC. and Does 1
21 through 50, inclusive.

22 Defendants.

Case No.

**DECLARATION OF BEN SWANSON IN
SUPPORT OF DEFENDANT WINCO
HOLDINGS, INC.'S NOTICE OF
REMOVAL**

1 I, Ben Swanson, declare as follows:

2 1. I have personal knowledge of the facts contained in this declaration and, if called as a
3 witness, I could and would testify competently as to their accuracy.

4 2. I am WinCo Holdings, Inc.'s ("WinCo") Director of Labor Relations. In this capacity, I
5 am familiar with and have access and control over applicable collective bargaining agreements as well
6 as personnel records of current and former employees. A true and correct copy of the portions of the
7 Collective Bargaining Agreement between WinCo, Inc. and WinCo Foods #21, in effect from
8 September 29, 2014 through September 22, 2019, that address vacation pay upon termination and that
9 applied to Plaintiff Shirley Jaco during her employment is attached hereto as **Exhibit 1**.

10 I declare under penalty of perjury under the law of the State of California and the United States
11 of America that the foregoing is true and correct.

12 Executed this 1st day of March, 2018, at Sacramento, California.

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16 Ben Swanson
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EXHIBIT 1

**WinCo Foods #21
2200 Plaza Parkway
Modesto, California 95350**

**HOURLY EMPLOYEE
WORKING CONDITIONS & WAGES AGREEMENT**

A. RECOGNITION AND NEGOTIATIONS

1. WinCo Holdings, Inc. (WinCo) recognizes WinCo Foods #21 Hourly Employee Association as the sole collective bargaining representative of the employees at Store #21 in Modesto, California, whose classifications are covered by the Wage Summary in the back of this Agreement, for the purpose of establishing wages, hours and conditions of employment for all such hourly, non-management employees. Upon termination (and any appeal under this Agreement), an employee shall cease to be a member of the Employee Association.
2. WinCo enters into this Agreement with Association. WinCo also agrees to meet with Association representatives, upon request made at least 60 days prior to the expiration date of this Agreement, to negotiate a successor Agreement to be effective after expiration of this Agreement.

B. NON-DISCRIMINATION

1. WinCo is an equal opportunity employer. Employees are responsible to read, acknowledge and comply with WinCo's separate detailed Non-Discrimination and Anti-Harassment Policy.
2. Harassment of employees of any nature is unacceptable and will not be tolerated. Please see WinCo's Non-Discrimination and Anti-Harassment Policy for further details.
3. Any form of discrimination or sexual, racial or other harassment, based on any protected status must be reported to the Vice President, Labor & Human Resources, or any Grocery Division Vice President of WinCo immediately.

C. DISCHARGES WITH PRIOR WARNING

WinCo policy is not to discharge any employee for substandard performance without first calling it to their attention. An instance of inadequate performance or improper activity will be discussed with the individual verbally by the store manager, assistant manager, and/or department manager. A memorandum of this discussion will be placed in the employee file which the employee will be asked to acknowledge. A second instance of the same or any other type will result in written warning which the employee will be asked to acknowledge. A third instance of any violation of company policies or any type of inadequate performance can result in termination. The appropriate level of corrective action may vary in individual cases depending on such factors as: the employee's prior record, including length of service; the nature and severity of the offense; and the impact of the offense on the company's business.

WinCo Foods #21

- 4-5 hour scheduled shift: One net ten-minute rest period near the midpoint of the work segment as practicable.
- Up to and including 6 ½ hour scheduled shifts (i.e. 12:00 p.m. – 6:30 p.m. with ½ hour meal period): One net 10-minute rest period as close to the middle of the work segment as practicable.
- Over 6 ½ hour scheduled shifts (i.e. 12:00 p.m. – 6:45 p.m. with ½ hour meal period): If the employee is scheduled to work a shift of more than 6 ½ hours the employee shall be provided a second rest period as close to the middle of the second work segment as practicable.
- Over 11 hour scheduled shifts (i.e. 12:00 p.m. – 11:15 p.m. with Two x ½ hour meal period): If the employee is scheduled to work a shift of more than 11 hours the employee shall be provided a third rest period.

I. VACATIONS

1. All employees shall be entitled to vacations determined by the anniversary date of his or her employment according to the following schedule:

One (1) week vacation after one (1) year of continuous employment.

Two (2) weeks vacation after three (3) years of continuous employment.

Three (3) weeks vacation after seven (7) years of continuous employment.

Four (4) weeks vacation after fifteen (15) years of continuous employment.

2. Employees working thirty-three (33) hours or more per week averaged over one year will be eligible for 40 hours vacation pay per week of vacation.

Employees working less than thirty-three (33) hours per week averaged over the year will be eligible for pro-rated weekly vacation based on actual hours worked in the preceding anniversary year divided by fifty-two (52). Employees averaging less than twenty (20) hours per week will not be eligible for pro-rated vacation.

3. Employees will receive one (1) additional day at the regular rate in addition to vacation pay if a holiday occurs during the employee's vacation, or employee may elect to take an extra day of vacation.
4. Vacations will be scheduled by seniority (date of employment) at times mutually agreeable between employee and management.
5. Employees requesting vacation pay in advance must notify WinCo's payroll department in writing two weeks in advance of the vacation starting date. If no written notice is given, vacation pay will be paid on the normal payday.
6. Vacations or vacation payments will not be allowed and not considered earned until the anniversary date commitment each year has been satisfied.

WinCo Foods #21

7. Employees must take vacation during the year following the employee anniversary date it is earned. Vacations cannot be accumulated from anniversary year to year. Earned vacations not taken in the year following anniversary date will be voided unless approved in writing by the store manager prior to the employee's anniversary date. Such approval will not be considered valid until received by the General Office Payroll Department.
8. Vacation earned but not taken will not be paid to employees terminated for gross misconduct (See Company Personnel Policies for definition of gross misconduct.)

J. LEAVES OF ABSENCE

1. **Funeral Leave** - Employees will be granted up to three (3) days funeral leave with pay due to death in the immediate family. To receive funeral pay, the employee must attend the funeral. Funeral leave will be paid only with respect to work days on which the employee is scheduled and will not apply to an employee's scheduled day off, holidays, vacations or any other day on which the employee would not have worked. Scheduled days off will not be changed to avoid payment for funeral leave. Immediate family shall be defined as: Husband, wife, child, step child, parent, stepparent, in law parent, sister, stepsister, brother, stepbrother, grandparent or grandchild. Employees must work a total of 2080 hours before becoming eligible for funeral benefit pay.
2. **Jury Duty Leave** - Employees called for jury duty or summoned for witness shall be paid the difference between Jury or Witness fee and normal earnings for regularly scheduled hours on the same day, with the employee to report to work if excused. Jury duty pay shall at no time exceed two (2) weeks pay at regular rate of pay based on the average hours worked during the last fifty-two (52) weeks. Employees summoned for Jury Duty shall not have their regular schedules changed as to avoid payment of Jury Duty Leave. Employees regularly scheduled for night work may be rescheduled to a day shift for the period of Jury Duty service but once permanently released management may place them on a work schedule similar to which they normally work.
3. **Industrial (On the Job) Injury or Illness Leave** - Time loss (leave) shall be granted in accordance with applicable state workers' compensation rules. An employee who has an on-the-job injury or illness must notify his/her supervisor immediately, unless incapacitated by the injury or illness. Employees are required to follow the WinCo Foods Employee Responsibility Policy regarding on the job injuries/illness.

Industrial injury time loss hours will be applied toward FMLA and/or applicable state leave entitlement when the employee is eligible and qualified for these leaves.

Failure to follow the on the job illness/injury policy may result in disciplinary action up to and including discharge and delays in processing industrial time loss request.

4. **Personal Leave** - Leaves of absence without pay for personal reasons must be requested in writing by employees and be mutually agreed to in writing by management. The Personal Leave may be granted up to a maximum of ninety (90) days with no loss of seniority.

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7 Attorneys for Defendant
WINCO HOLDINGS, INC.

8
9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

11
12 SHIRLEY JACO on behalf of herself and all
13 others similarly situated,

14 Plaintiff,

15 v.

16 WINCO HOLDINGS, INC. and Does 1
through 50, inclusive.

17 Defendants.

Case No.

**DEFENDANT WINCO HOLDINGS,
INC.'S CORPORATE DISCLOSURE
STATEMENT**

18
19 **TO THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF**
20 **CALIFORNIA, AND TO PLAINTIFF AND HER ATTORNEYS OF RECORD:**

21 Pursuant to Federal Rule of Civil Procedure 7.1, WinCo Holdings, Inc. (“WinCo”) hereby
22 certifies, as follows: WinCo Holdings, Inc. is an Idaho corporation. WinCo Holdings, Inc. does not
23 have a parent corporation. No publicly held corporation owns 10 percent or more of WinCo Holdings,
24 Inc.

25 ///

26 ///

27 ///

28 ///

1 DATED: March 2, 2018

Respectfully submitted,

2 SEYFARTH SHAW LLP

3 By: /s/ Christopher J. Truxler

4 Kristina M. Launey

5 Julie G. Yap

Christopher J. Truxler

6 *Attorneys for Defendant*

7 WINCO HOLDINGS, INC.

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Former Employee Sues Winco Holdings Over Alleged Wage Violations and Discrimination](#)
