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17 Attorneys for Defendants

18 UNITED NATURAL FOODS, INC.  
19 UNITED NATURAL FOODS WEST, INC.

20 UNITED STATES DISTRICT COURT  
21 CENTRAL DISTRICT OF CALIFORNIA

22 SALVADOR GUERRA, individually  
23 and on behalf of other members of the  
24 general public similarly situated and on  
25 behalf of other aggrieved employees  
26 pursuant to the California Private  
27 Attorneys General Act,

28 Plaintiff,

v.

UNITED NATURAL FOODS, INC., an  
unknown business entity; UNITED  
NATURAL FOODS WEST, INC., a  
California corporation; UNFI, an  
unknown business entity; and DOES 1  
through 100, inclusive,

Defendants.

Case No. 5:18-cv-02382

**DEFENDANTS UNITED  
NATURAL FOODS, INC. AND  
UNITED NATURAL FOODS  
WEST, INC.’S NOTICE OF  
REMOVAL PURSUANT TO  
THE CLASS ACTION  
FAIRNESS ACT (“CAFA”)**

**[28 U.S.C. §§ 1332, 1441, 1446,  
AND 1453]**

1 **TO THE CLERK OF THE CENTRAL DISTRICT OF CALIFORNIA AND**  
2 **PLAINTIFF AND HIS COUNSEL OF RECORD:**

3 **PLEASE TAKE NOTICE THAT** Defendants United Natural Foods, Inc.  
4 (“UNFI”), United Natural Foods West, Inc. (“UNFI West”) (collectively,  
5 “Defendants” or “UNFI”), by and through their counsel, remove the above-entitled  
6 action to this Court from the Superior Court of the State of California, County of  
7 Riverside, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453. This removal is  
8 based on the following grounds:

9 **I. PROCEDURAL BACKGROUND.**

10 1. On September 13, 2018, Plaintiff Salvador Guerra (“Plaintiff”) filed a  
11 class and representative action complaint in the Superior Court of the State of  
12 California, County of Riverside, entitled *Salvador Guerra, individually and on*  
13 *behalf of other members of the general public similarly situated and on behalf of*  
14 *other aggrieved employees pursuant to the California Private Attorneys General*  
15 *Act v. United Natural Foods, Inc., an unknown business entity; United Natural*  
16 *Foods West, Inc., a California corporation; UNFI, an unknown business entity; and*  
17 *Does 1 through 100, inclusive*, Case No. RIC1818751 (the “Complaint”).

18 2. On October 9, 2018, Plaintiff served copies of the Summons and  
19 Complaint on the registered agent for Defendants. A copy of Plaintiff’s Summons  
20 and Complaint as served on Defendants is attached hereto as **Exhibit A**. Exhibit A  
21 constitutes all the pleadings, process, and orders served upon Defendants in the  
22 Superior Court action.

23 3. Plaintiff seeks to represent the following class: “All current and former  
24 hourly-paid or non-exempt employees who worked for any of the Defendants  
25 within the State of California at any time during the period from four years  
26 preceding the filing of this Complaint to final judgment.” (Exh. A, Compl. ¶ 15.)

27 4. Plaintiff alleges the following violations of the California Labor Code  
28 in eleven causes of action against Defendants: (1) failure to pay all overtime wages;

1 (2) failure to provide meal periods; (3) failure to provide rest periods; (4) failure to  
2 pay minimum wages; (5) failure to pay all wages due at the time of termination of  
3 employment; (6) failure to pay all wages during employment; (7) failure to provide  
4 complete and accurate wage statements; (8) failure to keep requisite payroll  
5 records; (9) failure to reimburse business expenses; (10) violations of the unfair  
6 competition law; and (11) Private Attorneys General Act penalties. (Exh. A,  
7 Compl. ¶¶ 56 - 141.)

8 **II. REMOVAL IS TIMELY.**

9 5. Because this Notice of Removal is filed within thirty days of service of  
10 the Complaint on October 9, 2018, it is timely under 28 U.S.C. §§ 1446(b)(3) and  
11 1453. No previous Notice of Removal has been filed or made with this Court for  
12 the relief sought herein.

13 **III. THIS COURT HAS ORIGINAL SUBJECT MATTER JURISDICTION**  
14 **UNDER CAFA.**

15 6. Plaintiff brings this action as a putative class action under California  
16 Code Civ. Proc. § 382. (Exh. A, Compl. ¶ 1.)<sup>1</sup> Removal based upon Class Action  
17 Fairness Act (“CAFA”) diversity jurisdiction is proper pursuant to 28 U.S.C. §§  
18 1441, 1446, and 1453 because: (i) diversity of citizenship exists between at least  
19 one putative class member and one Defendant, (ii) the aggregate number of putative  
20 class members in all proposed classes is 100 or greater; and (iii) the amount placed  
21 in controversy by the Complaint exceeds, in the aggregate, \$5 million, exclusive of  
22 interest and costs. 28 U.S.C. §§ 1332(d)(2) & (d)(5)(B), 1453. Although  
23 Defendants deny Plaintiff’s factual allegations and deny that Plaintiff—or the class  
24 he purports to represent—is entitled to the relief requested, based on Plaintiff’s  
25 allegations in the Complaint and prayer for relief, all requirements for jurisdiction  
26 under CAFA have been met in this case.

27 \_\_\_\_\_  
28 <sup>1</sup> Defendants deny, and reserve the right to contest at the appropriate time, that this  
action can properly proceed as a class action. Defendants further deny Plaintiff’s  
claims and deny that he can recover any damages.

1           **A. UNFI Is Not a California Citizen, and Minimal Diversity of**  
 2           **Citizenship Exists.**

3           7. To satisfy CAFA’s diversity requirement, a party seeking removal  
 4 need only show that minimal diversity exists, that is, that one putative class  
 5 member is a citizen of a state different from any defendant. 28 U.S.C.  
 6 § 1332(d)(2); *United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus.*  
 7 *& Serv. Workers Int’l Union, AFL-CIO, CLC v. Shell Oil Co.*, 602 F.3d 1087, 1090-  
 8 91 (9th Cir. 2010) (finding that to achieve its purposes, CAFA provides expanded  
 9 original diversity jurisdiction for class actions meeting the minimal diversity  
 10 requirement set forth in 28 U.S.C. § 1332(d)(2)). “An individual is a citizen of the  
 11 state in which he is domiciled.” *Boon v. Allstate Ins. Co.*, 229 F. Supp. 2d 1016,  
 12 1019 (C.D. Cal. 2002) (citing *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857  
 (9th Cir. 2001)).

13           8. In his Complaint, Plaintiff alleges that “Plaintiff SALVADOR  
 14 GUERRA is an individual residing in the State of California.” (Exh. A, Compl. ¶  
 15 5.) Moreover, Plaintiff has brought claims on behalf of putative class members  
 16 residing in California. (*Id.* at ¶ 15.) He alleges that “[a]t all relevant times set forth  
 17 herein, Defendants employed Plaintiff and other persons as hourly-paid or non-  
 18 exempt employees within the State of California, County of Riverside.” (*Id.* at ¶  
 19 26.) The Complaint alleges that Plaintiff has worked in California since at least  
 20 April 2016. For purposes of diversity of citizenship jurisdiction, citizenship is  
 21 determined by the individual’s domicile at the time that the lawsuit is filed.  
 22 *Armstrong v. Church of Scientology Int’l*, 243 F.3d 546, 546 (9th Cir. 2000) (citing  
 23 *Lew v. Moss*, 797 F.2d 747, 750 (9th Cir. 1986)). Evidence of continuing residence  
 24 creates a presumption of domicile. *Washington v. Hovenssa LLC*, 652 F.3d 340, 395  
 25 (3d Cir. 2011). Therefore, Plaintiff is a citizen of California for diversity  
 26 jurisdiction purposes. Thus, at least one putative class member is a citizen of  
 27 California for diversity jurisdiction purposes. Plaintiff does not allege that he is a  
 28 citizen of Delaware or Rhode Island. (*Id.*)

1           9. For diversity purposes, a corporation is deemed to be a citizen of any  
2 state in which it has been incorporated and of any state where it has its principal  
3 place of business. 28 U.S.C. § 1332(c)(1). UNFI is organized under the laws of  
4 Delaware. (Declaration of Lynn Kassab in Support of Defendants’ Notice of  
5 Removal (“Kassab Decl.”), ¶ 3.) UNFI’s “principal place of business” is the place  
6 where its officers direct, control, and coordinate the corporation’s activities. *Hertz*  
7 *Corp. v. Friend*, 559 U.S. 77, 92-93 (2010). UNFI’s corporate headquarters is in  
8 the State of Rhode Island, as are the majority of its corporate books and records and  
9 its executive and administrative functions (including but not limited to operations,  
10 corporate finance, accounting, human resources, payroll, marketing, legal, and  
11 information systems). (Kassab Decl. ¶ 4.) In addition, UNFI’s chief executive  
12 officer, chief financial officer, and corporate secretary, as well as other corporate  
13 executives work from the Rhode Island headquarters and direct, control, and  
14 coordinate UNFI’s corporate activities from Rhode Island. (Kassab Decl. ¶ 5.)  
15 Accordingly, UNFI is a citizen of Delaware and Rhode Island for diversity  
16 jurisdiction purposes. 28 U.S.C. § 1332(d)(10).

17           10. Therefore, based on the Complaint, at least one member of the putative  
18 class is a citizen of a state different than one Defendant. As a result, diversity  
19 jurisdiction exists under CAFA. 28 U.S.C. § 1332(d)(2)(A) (requiring only  
20 “minimal diversity” under which “any member of a class of plaintiffs is a citizen of  
21 a State different from any Defendant”).

22           **B. The Putative Class Has More Than 100 Members.**

23           11. Based on Plaintiff’s definition of the putative class, it contains more  
24 than 100 members. (Declaration of Anne-Marie Mosher in Support of Defendants’  
25 Notice of Removal (“Mosher Decl.”) ¶ 4.) Plaintiff’s putative class includes all  
26 non-exempt employees who have worked in California at any time beginning four  
27 (4) years prior to the filing of the Complaint, and includes approximately 3,925  
28 current and former such employees. (Exh. A, Compl. ¶ 15; Mosher Decl. ¶ 4.)

1           **C.    The Amount In Controversy Exceeds Five Million Dollars.**

2           12. Pursuant to CAFA, the claims of the individual members in a class  
3 action are aggregated to determine if the amount in controversy exceeds \$5 million,  
4 exclusive of interest and costs. 28 U.S.C. § 1332(d)(6). Because Plaintiff does not  
5 expressly plead a specific amount of class damages, a removing party need only  
6 show that it is more likely than not that the amount in controversy exceeds \$5  
7 million. *See Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 376 (9th Cir.  
8 1997).

9           13. Defendants' burden to establish the amount in controversy is the  
10 preponderance of the evidence standard. *Dart Cherokee Basin Operating Co., LLC*  
11 *v. Owens*, 135 S. Ct. 547 (2014); *see also Jordan v. Nationstar Mortg., LLC*, 781  
12 F.3d 1178, 1183 (9th Cir. 2015) (citing *Dart Cherokee* for the proposition that there  
13 is no anti-removal presumption against CAFA cases). A removing party seeking to  
14 invoke CAFA jurisdiction "need include only a plausible allegation that the amount  
15 in controversy exceeds the jurisdictional threshold." *Dart Cherokee*, 135 S. Ct. at  
16 554. "If a federal court is uncertain about whether 'all matters in controversy' in a  
17 purported class action 'do not in the aggregate exceed the sum or value of  
18 \$5,000,000,' the court should err in favor of exercising jurisdiction over the case."  
19 Senate Judiciary Report, S. R. No. 109-14, at 42 (2005) (citation omitted).

20           14. A removing defendant is "not required to comb through its records to  
21 identify and calculate the exact frequency of violations." *Oda, et al. v. Gucci*  
22 *America, Inc., et al.*, Nos. 2:14-cv-7468-SVW (JPRx) and 2:14-cv-7469-SVW  
23 (JPRx), 2015 WL 93335, at \*5 (C.D. Cal. Jan. 7, 2015); *Sanchez v. Russell Sigler,*  
24 *Inc.*, No. CV 15-01350-AB (PLAx), 2015 WL 12765359, at \*2 (C.D. Cal. April 28,  
25 2015) ("[A] removing defendant is not obligated to research, state and prove the  
26 Plaintiffs' claims for damages.") (citation omitted); *see also LaCross v. Knight*  
27 *Transp. Inc.*, 775 F.3d 1200, 1203 (9th Cir. 2015) (rejecting Plaintiffs' argument for  
28 remand based on the contention that the class may not be able to prove all amounts

1 claimed: “Plaintiffs are conflating the amount in controversy with the amount of  
2 damages ultimately recoverable.”); *Ibarra v. Manheim Invs., Inc.*, 775 F.3d 1193,  
3 1198 n.1 (9th Cir. 2015) (in alleging the amount in controversy, Defendants “are  
4 not stipulating to damages suffered, but only estimating the damages in  
5 controversy”). The ultimate inquiry is what amount is put “in controversy” by the  
6 plaintiff’s complaint, not what a defendant will actually owe. *LaCross*, 775 F.3d at  
7 1202 (internal citation omitted) (explaining that courts are directed “to first look to  
8 the complaint in determining the amount in controversy”).

9 15. Under *Dart Cherokee*, a removing defendant is not required to submit  
10 evidence in support of its removal allegations. *Roa v. TS Staffing Servs, Inc.*, No.  
11 2:14-cv-08424-ODW (MRW), 2015 U.S. Dist. LEXIS 7442, at \*4-5 (C.D. Cal.  
12 2015). However, as detailed below, Defendants have both plausibly alleged and  
13 established by a preponderance of the evidence that the amount in controversy  
14 exceeds \$5 million and the Court has jurisdiction pursuant to CAFA. As discussed  
15 below, when the claims of the putative class members in the present case are  
16 aggregated, their claims put into controversy over \$5 million in potential damages.  
17 28 U.S.C. § 1332(d)(2).

18 16. Although Defendants deny Plaintiff’s factual allegations and deny that  
19 he or the putative class he seeks to represent are entitled to any damages  
20 whatsoever, Plaintiff’s allegations and prayer for relief have “more likely than not”  
21 put into controversy an amount that exceeds the \$5 million threshold when  
22 aggregating the claims of the putative class members as set forth in 28 U.S.C. §  
23 1332(d)(6).<sup>2</sup>

24 \_\_\_\_\_  
25 <sup>2</sup> This Notice of Removal discusses the nature and amount of damages placed in  
26 controversy by Plaintiff’s Complaint. Defendants’ reference to specific damage  
27 amounts are provided solely for the purpose of establishing that the amount in  
28 controversy is more likely than not in excess of the jurisdictional minimum.  
Defendants maintain that each of Plaintiff’s claims is without merit and that  
Defendants are not liable to Plaintiff. No statement or reference contained herein  
shall constitute an admission of liability or a suggestion that Plaintiff will or could  
actually recover any damages based upon the allegations contained in the Complaint  
or otherwise. “The amount in controversy is simply an estimate of the total amount

1           17. As explained above, Plaintiff seeks to represent a putative class of  
 2 approximately 3,925 members. (Exh. A, Compl. ¶ 15.; Mosher Decl. ¶ 4.)  
 3 Defendants’ representative has reviewed relevant data concerning the putative class  
 4 which Plaintiff seeks to represent, including Plaintiff himself. (Mosher Decl. ¶ 3.)  
 5 Based on the allegations in the Complaint, Plaintiff has put more than \$5 million in  
 6 controversy as set forth below, and CAFA removal is appropriate. (*Id.* ¶¶ 3-6.)

7                           **1. Plaintiff’s Late Final Wage Claim Alone Puts Nearly Five**  
 8                           **Million Dollars in Controversy.**

9           18. Plaintiff alleges that Plaintiff and the other class members did not  
 10 receive all wages owed to them at the time of their discharge or resignation. (Exh.  
 11 A, Compl. ¶ 40.) Plaintiff alleges that he and the other class members are entitled  
 12 to waiting time penalties pursuant to Labor Code Section 203. (Exh. A, Compl. ¶  
 13 96.) Plaintiff claims that Plaintiff and the other class members are entitled to  
 14 recover various wages they have not been paid. (*Id.* ¶¶ 64, 88.) Plaintiff also  
 15 alleges that “[d]uring the relevant time period, Defendants intentionally and  
 16 willfully failed to pay Plaintiff and the other class members who are no longer  
 17 employed by Defendants their wages, earned and unpaid, within seventy-two (72)  
 18 hours of their leaving Defendants’ employ.” (*Id.* ¶¶ 93, 105.) The Complaint seeks  
 19 “statutory penalty wages for each day they were not paid,” up to the 30 day  
 20 maximum penalty under Labor Code Section 203. (*Id.* ¶ 96.)

21           19. Of the 3,925 total putative class members, approximately 1,178  
 22 California employees terminated their employment during the three year limitations  
 23 period applicable to a Section 203 penalties claim. (Mosher Decl. ¶ 4.) These  
 24 terminated employees’ average final hourly rate of pay during the class period was  
 25 approximately \$17.35 per hour, and Plaintiff alleges that the putative class members  
 26 worked at least eight hours per day. (*Id.*; Compl. ¶ 33.) If, as Plaintiff alleges, these  
 27 terminated employees are still owed unpaid wages, the Complaint seeks a full 30

28 \_\_\_\_\_  
 in dispute, not a prospective assessment of [Defendants’] liability.” *Lewis v. Verizon*  
*Communs., Inc.*, 627 F.3d 395, 400 (9th Cir. 2010).



1 days of waiting time penalties stemming from these unpaid wages for each  
 2 employee who was terminated more than 30 days ago. (Exh. A, Compl. ¶¶ 96,  
 3 105.) The Complaint does not allege that all overtime and minimum wages owed  
 4 have been paid to these employees, and indeed seeks those wages as damages. *See*  
 5 *Ford v. CEC Entm't, Inc.*, 2014 WL 3377990 (N.D. Cal. 2014) (“Assuming a 100%  
 6 violation rate is thus reasonably grounded in the complaint . . . [b]ecause no  
 7 averment in the complaint supports an inference that these sums were ever paid.”).  
 8 As such, the Complaint puts in controversy Labor Code Section 203 penalties of  
 9 approximately \$4,164.00 per terminated employee (\$17.35 x 8 x 30), or  
 10 **\$4,905,192.00** in the aggregate (\$4,164.00 x 1,178).

11 **2. Plaintiff’s Wage Statement Claim Puts at Least an Additional**  
 12 **\$2.8 Million in Controversy.**

13 20. Plaintiff also alleges that Defendants failed to provide accurate,  
 14 itemized wage statements. (*See* Plaintiff’s Seventh Cause of Action in the  
 15 Complaint.) Specifically, Plaintiff alleges that Defendants “intentionally and  
 16 willfully failed to provide Plaintiff and the other class members with complete and  
 17 accurate wage statements.” (Exh. A, Compl. ¶ 105.) Plaintiff states that “[t]he  
 18 deficiencies include, but are not limited to: the failure to include the total number of  
 19 hours worked by Plaintiff and the other class members.” (*Id.*) Thus, the Complaint  
 20 alleges that all wage statements provided to class members were deficient.

21 21. Labor Code Section 226(e) provides that an employee suffering injury  
 22 due to an employer’s failure to provide a compliant wage statement is entitled to  
 23 recover fifty dollars (\$50) for the initial pay period in which a violation occurs and  
 24 one hundred dollars (\$100) per employee for each violation in a subsequent pay  
 25 period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), plus  
 26 reasonable attorney’s fees and costs. Cal. Labor Code § 226(e); *Garnett v. ADT*  
 27 *LLC*, 74 F. Supp. 3d 1332, 1335-36 (E.D. Cal. 2015) (*Amaral’s* holding regarding  
 28 “subsequent” violations does not apply to Labor Code § 226); *Lucas v. Michael*  
*Kors (USA), Inc.*, 2018 WL 2146403, at \*8 (C.D. Cal. 2018) (proper to “apply

1 section 226(e)(1) penalties directly as the statute reads—\$50 for the initial pay  
2 period, and \$100 for each violation in a subsequent pay period.”). In line with the  
3 statute, Plaintiff seeks “the greater of their actual damages caused by Defendants’  
4 failure to comply with California Labor Code section 226(a), or an aggregate  
5 penalty not exceeding four thousand dollars per employee.” (Exh. A, Compl. ¶  
6 108.)

7 22. Here, during the relevant one year statute of limitations for a claim for  
8 Labor Code Section 226 statutory penalties, putative class members were provided  
9 wage statements on a weekly basis. (Mosher Decl. ¶ 5.) During the one-year  
10 period of September 13, 2017 to September 13, 2018, UNFI issued wage statements  
11 53 times, and wage statement penalties would cap at the \$4,000 maximum per  
12 employee after 41 wage statements per employee. (*Id.* ¶ 6.) During this period, the  
13 highest number of weekly wage statements UNFI issued to putative class members  
14 was 1,824 and the lowest number was 1,085. (*Id.*) Even assuming that UNFI  
15 issued only 1,085 wage statements per week to putative class members during this  
16 one year limitations period, this claim puts **\$4,340,000** in controversy (1,085 x  
17 \$4,000 = \$4,340,000). (*Id.*)

18 23. In addition to these amounts, Plaintiff’s First and Fourth Causes of  
19 Action allege that Defendants failed to pay minimum wage and overtime to  
20 Plaintiff and the other class members. (Exh. A, Compl. ¶¶ 56-64, 85-90, Prayer for  
21 Relief ¶¶ 5-9, 23-29.) Plaintiff’s Second and Third Causes of Action for failure to  
22 provide meal periods and failure to authorize and permit rest periods, allege that  
23 Plaintiff and the other class members are owed Labor Code Section 226.7 premium  
24 pay for these alleged violations. (Exh. A, Compl. ¶¶ 65-84, Prayer for Relief ¶¶ 10-  
25 22.) Plaintiff’s Ninth Cause of Action alleges that Defendants failed to reimburse  
26 Plaintiff and the other class members for necessary business-related expenses. (Exh.  
27 A, Compl. ¶¶ 115-118, Prayer for Relief ¶¶ 48-52.) Plaintiff’s Tenth Cause of  
28 Action alleges violations of the unfair competition law for all these claimed

1 violations, and seeks restitution for a four year period. These causes of action and  
 2 prayers put additional amounts in controversy, but were pleaded without sufficient  
 3 specificity to allow Defendants to calculate the minimum wage, overtime, premium  
 4 pay, and restitution amounts placed in controversy.

5 **3. Plaintiff’s Request for Attorneys’ Fees Increases the Amount in**  
 6 **Controversy.**

7 24. Plaintiff seeks to recover attorneys’ fees for various claims. (Exh. A,  
 8 Compl. ¶¶ 64, 88, 125, 139, 141, Prayer for Relief, ¶¶ 8, 15, 27, 51, 59.) Attorneys’  
 9 fees are properly included in determining the amount in controversy. *See Fritsch*  
 10 *v. Swift Transportation Co. of Arizona, LLC*, 899 F.3d 785, 794 (9th Cir. 2018)  
 11 (“Because the law entitles [the plaintiff] to an award of attorneys’ fees if he is  
 12 successful, such future attorneys’ fees are at stake in the litigation, and must be  
 13 included in the amount in controversy.”).

14 25. Although Defendants deny Plaintiff’s claim for attorneys’ fees, for  
 15 purposes of removal, the Ninth Circuit uses a benchmark rate of twenty-five percent  
 16 of the potential damages as the amount of attorneys’ fees. *In re Quintus Sec. Litig.*,  
 17 148 F. Supp. 2d 967, 973 (N.D. Cal. 2001) (benchmark for attorneys’ fees is 25%  
 18 of the common fund). Courts therefore include a practical 25% fee award in the  
 19 amount in controversy. *See, e.g., Sanchez v. Russell Sigler, Inc.*, 2015 WL  
 20 12765359, at \*7 (C.D. Cal. Apr. 28, 2015); *Molnar v. 1-800-Flowers.com, Inc.*, No.  
 21 08-CV-05420-CAS-OJCx, 2009 WL 481618, \*5 (C.D. Cal. Feb. 23, 2009)  
 22 (“Applying a 25% fee estimate to the \$2,931,794.63 compensatory damages figure.  
 23 . . . yields an attorneys’ fee award of \$732,948.65. Therefore, the Court includes this  
 24 amount in determining the amount in controversy.”); *Tompkins v. Basic Research*  
 25 *LLC*, No. CIV-S-08244-LKK-DAD, 2008 WL 1808316 at \*4 (E.D. Cal. Apr. 22,  
 26 2008) (“[T]he Ninth Circuit has established that 25% of the common fund is a fair  
 27 estimate of attorneys’ fees. This therefore adds \$500,000 to the amount in  
 28 controversy.” (internal citations omitted)).

26. Defendants note that the inclusion of attorneys’ fees would add at least

1 another \$2,311,298 to the amount in controversy (25% of \$9,245,192 [\$4,905,192 +  
2 \$4,340,000]), bringing the total amount in controversy to at least **\$11,556,490**.

3 Even if the Court finds that the twenty-five percent benchmark rate does not apply  
4 in this particular context, the Court may determine the amount of attorneys' fees at  
5 stake, taking into account statutory fee shifting requirements. *See Fritsch*, 899 F.3d  
6 at 796 ("Accordingly, we leave the calculation of the amount of the attorneys' fees  
7 at stake to the district court on remand."). Regardless of the amount this Court  
8 ultimately determines, Defendants already have demonstrated by a preponderance  
9 of the evidence that the amount in controversy exceeds \$5,000,000, and removal  
10 therefore is appropriate.

11 **D. CAFA's Exceptions to Removal Do Not Apply.**

12 27. CAFA's "home-state" and "local controversy" exceptions to do not  
13 apply to this removal. The "home state" exception prevents CAFA removal only  
14 when all "primary defendants" are citizens of the state in which the action was  
15 filed. 28 U.S.C. § 1332(d)(4)(B); *Phillips v. Kaiser Found. Health Plan, Inc.*, 953  
16 F. Supp. 2d 1078, 1086 (N.D. Cal. 2011) ("[Home state] test requires that all  
17 'primary defendants' be residents of the same state in which the action is filed.")  
18 Here, Plaintiff brought all claims in the Complaint against UNFI and UNFI West,  
19 seeking damages against both without distinction. (Exh. A, Compl. ¶¶ 26-55,  
20 Prayer for Relief, ¶¶ 5-60) (alleging violations against both defendants equally).  
21 Plaintiff alleges that the acts of each Defendant are attributable to the other  
22 Defendant and that "Defendants, jointly and severally, employed Plaintiff . . ."  
23 (Exh. A, Compl. ¶ 10, 27). Because Plaintiff apportions liability equally between  
24 Defendants, UNFI is a "real target" of the lawsuit and is a primary defendant in this  
25 case. *Vodenichar v. Halcon Energy Properties, Inc.*, 733 F.3d 497, 506 (3d Cir.  
26 2013) (finding that all defendants were "primary defendants" when the plaintiff  
27 appeared to apportion liability equally among them); *Harrington v. Mattel, Inc.*,  
28 No. C07-05110 MJJ, 2007 WL 4556920, at \*5 (N.D. Cal. Dec. 20, 2007) (holding

1 that Mattel, Inc. and its wholly owned subsidiary, Fisher-Price, Inc., were both  
2 “primary defendants”). UNFI is not a citizen of California, the state where this  
3 action was originally filed, and so the home state exception to CAFA removal does  
4 not apply. (Kassab Decl. ¶¶ 3-5.)

5 28. The “local controversy” exception to CAFA jurisdiction also does not  
6 apply because during the three-year period prior to the filing of this action, more  
7 than one “class action has been filed asserting the same or similar factual  
8 allegations against any of the defendants on behalf of the same or other persons . . .  
9 .” See 28 U.S.C. § 1332(d)(4)(A); see also *Chalian v. CVS Pharmacy, Inc.*, No.  
10 CV1608979ABAGRX, 2017 WL 1377589, at \*3 (C.D. Cal. Apr. 11, 2017)  
11 (holding that the local controversy exception did not apply where similar class  
12 action lawsuits had been filed against Defendants in the past three years). On June  
13 19, 2018, Plaintiffs Christopher Billington and Ronald Cooksey filed a complaint in  
14 Sacramento County Superior Court which asserted similar factual allegations  
15 against Defendants on behalf of the same or other persons. See **Exhibit B**,  
16 *Christopher Billington and Ronald Cooksey, on behalf of themselves and all others*  
17 *similarly situated, and on behalf of the general public, v. United Natural Foods,*  
18 *Inc.; United Natural Foods West, Inc.; and DOES 1-100*, Eastern District of  
19 California, Case No. 2:18-cv-02082-TLN (Exh. B; 28 U.S.C. 1332(d)(4)(A)(ii).  
20 Plaintiffs Billington and Cooksey also seek to represent a putative class of all non-  
21 exempt, hourly workers of Defendants in California and assert claims, including  
22 failure to pay overtime and straight time wages, failure to authorize and provide  
23 meal and rest breaks, failure to provide itemized wage statements, failure to timely  
24 pay wages due at the termination of employment, and unfair business practices  
25 under California law. (Class Action Complaint ¶¶ 46, 74-150.) Further, *Cortez v.*  
26 *United Natural Foods, Inc.* was also filed during the three-year period prior to the  
27 filing of this action and alleges many of the same class claims, including overtime  
28 claims, on behalf of non-exempt California drivers who are included in putative

1 class in this action, and alleges a wage statement class claim on behalf of all  
2 California employees. *See Exhibit C, Richard B. Cortez, on behalf of himself, and*  
3 *others similarly situated v. United Natural Foods, Inc.; United Natural Foods West,*  
4 *Inc.; and DOES 1 through 50, inclusive, Northern District of California, Case No.*  
5 *5:18-CV-04603-BLF (Class Action Complaint ¶¶ 1, 5.).* Therefore, the local  
6 controversy exception does not apply. (Exh. B ¶ 1, Exh. C ¶ 5, Compl. ¶ 15.)

7 **IV. VENUE**

8 29. This action was originally filed in the Superior Court for the County of  
9 Riverside. Initial venue is therefore proper in this district, pursuant to 28 U.S.C. §  
10 1441(a), because it encompasses the county in which this action has been pending.

11 **V. NOTICE**

12 30. Defendants will promptly serve this Notice of Removal on all parties  
13 and will promptly file a copy of this Notice of Removal with the clerk of the state  
14 court in which the action is pending, as required under 28 U.S.C. § 1446(d).

15 **VI. CONCLUSION**

16 Based on the foregoing, Defendants request that this action be removed to  
17 this Court. If any question arises as to the propriety of the removal of this action,  
18 Defendants respectfully request the opportunity to present a brief and oral argument  
19 in support of its position that this case is subject to removal.

20 Dated: November 8, 2018

MORGAN, LEWIS & BOCKIUS LLP

21 By /s/ John S. Battenfeld  
22 John S. Battenfeld  
23 Andrea Fellion

24 Attorneys for Defendants  
25 UNITED NATURAL FOODS, INC.  
26 UNITED NATURAL FOODS WEST, INC.

# EXHIBIT A



**Service of Process  
Transmittal**

10/09/2018  
CT Log Number 534197375

**TO:** Jill Sutton  
United Natural Foods, Inc.  
313 Iron Horse Way  
Providence, RI 02908-5637

**RE: Process Served in California**

**FOR:** United Natural Foods, Inc. (Domestic State: DE)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** Salvador Guerra, etc., Pltf. vs. United Natural Foods, Inc., etc., et al., Dfts.

**DOCUMENT(S) SERVED:** Summons, Complaint, Cover Sheet, Instructions, Certificate, Notice(s),

**COURT/AGENCY:** Riverside County - Superior Court - Riverside, CA  
Case # RIC1818751

**NATURE OF ACTION:** Employee Litigation - Violation of California Labor Code 510 and 1193

**ON WHOM PROCESS WAS SERVED:** C T Corporation System, Los Angeles, CA

**DATE AND HOUR OF SERVICE:** By Process Server on 10/09/2018 at 14:12

**JURISDICTION SERVED :** California

**APPEARANCE OR ANSWER DUE:** Within 30 days after service (Document(s) may contain additional answer dates)

**ATTORNEY(S) / SENDER(S):** Edwin Aiwazian  
Lawyers for Justice APC  
410 WEST ARDEN AVENUE  
SUITE 203  
GLENDALE, CA 91203  
818-265-1020

**ACTION ITEMS:** SOP Papers with Transmittal, via UPS Next Day Air , 1ZX212780138732212

Image SOP

Email Notification, Lynn Kassab lkassab@unfi.com

Email Notification, Jason Tardiff jtardiff@unfi.com

Email Notification, Jeffrey Shapiro jshapiro@unfi.com

Email Notification, Kristin Andreozzi kandreozzi@unfi.com

Email Notification, Nicholas Leitzes nleitzes@unfi.com

Email Notification, Stephanie Soto ssoto@unfi.com

Email Notification, Jesse Clark jcclark@unfi.com

Email Notification, Michaela Connors Mare mconnorsmare@unfi.com

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.





**Service of Process  
Transmittal**

10/09/2018  
CT Log Number 534197375

**TO:** Jill Sutton  
United Natural Foods, Inc.  
313 Iron Horse Way  
Providence, RI 02908-5637

**RE: Process Served in California**

**FOR:** United Natural Foods, Inc. (Domestic State: DE)

**SIGNED:** C T Corporation System  
**ADDRESS:** 818 West Seventh Street  
Los Angeles, CA 90017  
**TELEPHONE:** 213-337-4615

**DOCKET HISTORY:**

<b>DOCUMENT(S) SERVED:</b>	<b>DATE AND HOUR OF SERVICE:</b>	<b>TO:</b>	<b>CT LOG NUMBER:</b>
Letter	By Certified Mail on 06/06/2018 at 14:37 postmarked on 06/04/2018	Jill Sutton United Natural Foods, Inc.	533472889

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

SUM-100

**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

**UNITED NATURAL FOODS, INC.,** an unknown business entity;  
"Additional Parties Attachment Form is attached."

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

**SALVADOR GUERRA,** individually, "Additional Parties Attachment Form is attached."

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

FILED

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

SEP 18 2018

L. VILLANUEVA

**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](http://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](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://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 en la 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](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que la queda 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 lo 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](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://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 desear el caso.

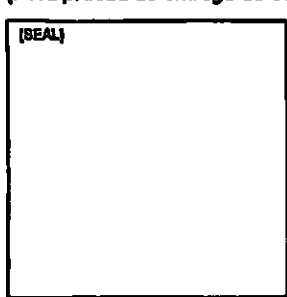
The name and address of the court is:  
(El nombre y dirección de la corte es): **Riverside County Superior Court**  
**4050 Main Street**  
**Riverside, California 92501**

CASE NUMBER  
**RIC 1818751**

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):  
**Edwin Aiwazian, 410 Arden Ave., Suite 203, Glendale, CA 91203; Telephone (818) 265-1020**

DATE: \_\_\_\_\_ 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

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):
3.  on behalf of (specify): **UNITED NATURAL FOODS, INC., AN UNKNOWN BUSINESS ENTITY**  
 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):
4.  by personal delivery on (date):

SUM-200(A)

<b>SHORT TITLE:</b> Guerra vs. United Natural Foods, Inc., et al	<b>CASE NUMBER:</b> <b>RIC</b> 18 187 51
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**INSTRUCTIONS FOR USE**

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

- Plaintiff   
  Defendant   
  Cross-Complainant   
  Cross-Defendant

UNITED NATURAL FOODS WEST, INC., a California corporation; UNFI, an unknown business entity; and DOES 1 through 100, inclusive,

SUM-200(A)

<b>SHORT TITLE:</b> Guerra vs. United Natural Foods, Inc., et al.	<b>CASE NUMBER:</b> <b>RIC 18 18751</b>
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**INSTRUCTIONS FOR USE**

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties. Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

- Plaintiff
  Defendant
  Cross-Complainant
  Cross-Defendant

and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act;

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

SEP 18 2018

L. VILLANUEVA

1 Edwin Aiwazian (SBN 232943)  
2 **LAWYERS for JUSTICE, PC**  
3 410 West Arden Avenue, Suite 203  
4 Glendale, California 91203  
5 Tel: (818) 265-1020 / Fax: (818) 265-1021

6 *Attorneys for Plaintiff*

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
8 **FOR THE COUNTY OF RIVERSIDE**

9 SALVADOR GUERRA, individually, and on  
10 behalf of other members of the general public  
11 similarly situated and on behalf of other  
12 aggrieved employees pursuant to the  
13 California Private Attorneys General Act;

14 **Plaintiff,**

15 vs.

16 UNITED NATURAL FOODS, INC., an  
17 unknown business entity; UNITED  
18 NATURAL FOODS WEST, INC., a  
19 California corporation; UNFI, an unknown  
20 business entity; and DOES 1 through 100,  
21 inclusive,

22 **Defendants.**

Case No.: **RIC 18 18751**

**CLASS ACTION COMPLAINT FOR  
DAMAGES & ENFORCEMENT UNDER  
THE PRIVATE ATTORNEYS GENERAL  
ACT, CALIFORNIA LABOR CODE  
§ 2698, ET SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment);
- (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records);
- (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (10) Violation of California Business & Professions Code §§ 17200, et seq.
- (11) Violation of California Labor Code § 2698, et seq. (California Labor Code Private Attorneys General Act of 2004)

**DEMAND FOR JURY TRIAL**

**CLASS ACTION COMPLAINT FOR DAMAGES & ENFORCEMENT UNDER THE PRIVATE ATTORNEYS GENERAL ACT,  
CALIFORNIA LABOR CODE § 2698, ET SEQ. AND DEMAND FOR JURY TRIAL**

**LAWYERS for JUSTICE, PC**  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

**LAWYERS for JUSTICE, PC**  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

1 COMES NOW, Plaintiff SALVADOR GUERRA ("Plaintiff"), individually, and on  
2 behalf of other members of the general public similarly situated and on behalf of other  
3 aggrieved employees pursuant to the California Private Attorney General Act, and alleges as  
4 follows:

5 **JURISDICTION AND VENUE**

6 1. This class action is brought pursuant to the California Code of Civil Procedure  
7 section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal  
8 jurisdiction limits of the Superior Court and will be established according to proof at trial. The  
9 "amount in controversy" for the named Plaintiff, including but not limited to claims for  
10 compensatory damages, restitution, penalties, wages, premium pay, and pro rata share of  
11 attorneys' fees, is less than seventy-five thousand dollars (\$75,000).

12 2. This Court has jurisdiction over this action pursuant to the California  
13 Constitution, Article VI, Section 10, which grants the superior court "original jurisdiction in  
14 all other causes" except those given by statute to other courts. The statutes under which this  
15 action is brought do not specify any other basis for jurisdiction.

16 3. This Court has jurisdiction over Defendants because, upon information and  
17 belief, Defendants are citizens of California, have sufficient minimum contacts in California,  
18 or otherwise intentionally avail themselves of the California market so as to render the  
19 exercise of jurisdiction over them by California courts consistent with traditional notions of  
20 fair play and substantial justice.

21 4. Venue is proper in this Court because, upon information and belief, Defendant  
22 maintains offices, has agents, employs individuals, and/or transacts business in the State of  
23 California, County of Riverside. The majority of acts and omissions alleged herein relating to  
24 Plaintiff and the other class members took place in the State of California, including the  
25 County of Riverside.

26 **PARTIES**

27 5. Plaintiff SALVADOR GUERRA is an individual residing in the State of  
28 California.

**LAWYERS for JUSTICE, PC**  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

1           6. Defendant UNITED NATURAL FOODS, INC., at all times herein mentioned,  
2 was and is, upon information and belief, an employer whose employees are engaged  
3 throughout the State of California, including the County of Riverside.

4           7. Defendant UNITED NATURAL FOODS WEST, INC., at all times herein  
5 mentioned, was and is, upon information and belief, a California corporation, and at all times  
6 herein mentioned, an employer whose employees are engaged throughout the State of  
7 California, including the County of Riverside.

8           8. Defendant UNFI, at all times herein mentioned, was and is, upon information  
9 and belief, an employer whose employees are engaged throughout the State of California,  
10 including the County of Riverside.

11           9. At all relevant times, Defendants UNITED NATURAL FOODS, INC., UNITED  
12 NATURAL FOODS WEST, INC., and UNFI were the "employer" of Plaintiff within the  
13 meaning of all applicable California laws and statutes.

14           10. At all times herein relevant, Defendants UNITED NATURAL FOODS, INC.,  
15 UNITED NATURAL FOODS WEST, INC., UNFI, and DOES 1 through 100, and each of  
16 them, were the agents, partners, joint venturers, joint employers, representatives, servants,  
17 employees, successors-in-interest, co-conspirators and/or assigns, each of the other, and at all  
18 times relevant hereto were acting within the course and scope of their authority as such agents,  
19 partners, joint venturers, joint employers, representatives, servants, employees, successors, co-  
20 conspirators and/or assigns, and all acts or omissions alleged herein were duly committed with  
21 the ratification, knowledge, permission, encouragement, authorization and/or consent of each  
22 defendant designated as a DOE herein.

23           11. The true names and capacities, whether corporate, associate, individual or  
24 otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sues  
25 said defendants by such fictitious names. Plaintiff is informed and believes, and based on that  
26 information and belief alleges, that each of the defendants designated as a DOE is legally  
27 responsible for the events and happenings referred to in this Complaint, and unlawfully caused  
28 the injuries and damages to Plaintiff and the other class members as alleged in this Complaint.

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Glendale, California 91203

1 Plaintiff will seek leave of court to amend this Complaint to show the true names and  
2 capacities when the same have been ascertained.

3 12. Defendants UNITED NATURAL FOODS, INC., UNITED NATURAL FOODS  
4 WEST, INC., UNFI, and DOES 1 through 100 will hereinafter collectively be referred to as  
5 "Defendants."

6 13. Plaintiff further alleges that Defendants, directly or indirectly controlled or  
7 affected the working conditions, wages, working hours, and conditions of employment of  
8 Plaintiff and the other class members and aggrieved employees so as to make each of said  
9 Defendants employers and employers liable under the statutory provisions set forth herein.

10 **CLASS ACTION ALLEGATIONS**

11 14. Plaintiff brings this action on his own behalf and on behalf of all other members  
12 of the general public similarly situated, and, thus, seeks class certification under California  
13 Code of Civil Procedure section 382.

14 15. The proposed class is defined as follows:  
15 All current and former hourly-paid or non-exempt employees who worked for  
16 any of the Defendants within the State of California at any time during the  
17 period from four years preceding the filing of this Complaint to final judgment.

18 16. Plaintiff reserves the right to establish subclasses as appropriate.

19 17. The class is ascertainable and there is a well-defined community of interest in  
20 the litigation:

21 a. **Numerosity:** The class members are so numerous that joinder of all class  
22 members is impracticable. The membership of the entire class is  
23 unknown to Plaintiff at this time; however, the class is estimated to be  
24 greater than fifty (50) individuals and the identity of such membership is  
25 readily ascertainable by inspection of Defendants' records.

26 b. **Typicality:** Plaintiff's claims are typical of all other class members' as  
27 demonstrated herein. Plaintiff will fairly and adequately protect the  
28 interests of the other class members with whom he has a well-defined



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Glendale, California 91203

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community of interest.

c. **Adequacy**: Plaintiff will fairly and adequately protect the interests of each class member, with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff has no interest that is antagonistic to the other class members. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and during the pendency of this action will continue to incur, costs and attorneys' fees, that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

d. **Superiority**: A class action is superior to other available methods for the fair and efficient adjudication of this litigation because individual joinder of all class members is impractical.

e. **Public Policy Considerations**: Certification of this lawsuit as a class action will advance public policy objectives. Employers of this great state violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. However, class actions provide the class members who are not named in the complaint anonymity that allows for the vindication of their rights.

18. There are common questions of law and fact as to the class members that predominate over questions affecting only individual members. The following common questions of law or fact, among others, exist as to the members of the class:

- a. Whether Defendants' failure to pay wages, without abatement or reduction, in accordance with the California Labor Code, was willful;
- b. Whether Defendants' had a corporate policy and practice of failing to pay their hourly-paid or non-exempt employees within the State of

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410 West Arden Avenue, Suite 203  
Glendale, California 91203

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California for all hours worked and missed (short, late, interrupted, and/or missed altogether) meal periods and rest breaks in violation of California law;

c. Whether Defendants required Plaintiff and the other class members to work over eight (8) hours per day and/or over forty (40) hours per week and failed to pay the legally required overtime compensation to Plaintiff and the other class members;

d. Whether Defendants deprived Plaintiff and the other class members of meal and/or rest periods or required Plaintiff and the other class members to work during meal and/or rest periods without compensation;

e. Whether Defendants failed to pay minimum wages to Plaintiff and the other class members for all hours worked;

f. Whether Defendants failed to pay all wages due to Plaintiff and the other class members within the required time upon their discharge or resignation;

g. Whether Defendants failed to timely pay all wages due to Plaintiff and the other class members during their employment;

h. Whether Defendants complied with wage reporting as required by the California Labor Code; including, *inter alia*, section 226;

i. Whether Defendants kept complete and accurate payroll records as required by the California Labor Code, including, *inter alia*, section 1174(d);

j. Whether Defendants failed to reimburse Plaintiff and the other class members for necessary business-related expenses and costs;

k. Whether Defendants' conduct was willful or reckless;

l. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code section 17200, et seq.;

m. The appropriate amount of damages, restitution, and/or monetary

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Glendale, California 91203

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penalties resulting from Defendants' violation of California law; and

n. Whether Plaintiff and the other class members are entitled to compensatory damages pursuant to the California Labor Code.

**PAGA ALLEGATIONS**

19. At all times herein set forth, PAGA was applicable to Plaintiff's employment by Defendants.

20. At all times herein set forth, PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty, including unpaid wages and premium wages, to be assessed and collected by the LWDA for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

21. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved employee," who is any person that was employed by the alleged violator and against whom one or more of the alleged violations was committed.

22. Plaintiff was employed by Defendant UNITED NATURAL FOODS, INC. and the alleged violations were committed against him during his time of employment and he is, therefore, an aggrieved employee. Plaintiff and the other employees are "aggrieved employees" as defined by California Labor Code section 2699(c) in that they are current or former employees of Defendants, and one or more of the alleged violations were committed against them.

23. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee, including Plaintiff, may pursue a civil action arising under PAGA after the following requirements have been met:

a. The aggrieved employee shall give written notice by online submission (hereinafter "Employee's Notice") to the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support

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410 West Arden Avenue, Suite 203  
Glendale, California 91203

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the alleged violations.

b. The LWDA shall provide notice (hereinafter "LWDA Notice") to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within sixty (60) calendar days of the postmark date of the Employee's Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days of the postmark date of the Employee's Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

24. On June 4, 2014, Plaintiff provided written notice by online submission to the LWDA and by certified mail to Defendant UNITED NATURAL FOODS, INC. of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Plaintiff did not receive an LWDA Notice within sixty-five (65) days of the date of the submission of Plaintiff's Notice.

25. Therefore, the administrative prerequisites under California Labor Code section 2699.3(a) to recover civil penalties, including unpaid wages and premium wages per California Labor Code section 558 against Defendant UNITED NATURAL FOODS, INC., in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802 have been satisfied.

**GENERAL ALLEGATIONS**

26. At all relevant times set forth herein, Defendants employed Plaintiff and other persons as hourly-paid or non-exempt employees within the State of California, County of Riverside.

27. Defendants, jointly and severally, employed Plaintiff as an hourly-paid, non-exempt employee, from approximately April 2016 to approximately March 2018, in the State of California, County of Riverside.

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1           28. Defendants hired Plaintiff and the other class members and classified them as  
2 hourly-paid or non-exempt employees, and failed to compensate them for all hours worked.  
3 and missed meal periods and/or rest breaks.

4           29. Defendants had the authority to hire and terminate Plaintiff and the other class  
5 members, to set work rules and conditions governing Plaintiff's and the other class members'  
6 employment, and to supervise their daily employment activities.

7           30. Defendants exercised sufficient authority over the terms and conditions of  
8 Plaintiff's and the other class members' employment for them to be joint employers of  
9 Plaintiff and the other class members.

10          31. Defendants directly hired and paid wages and benefits to Plaintiff and the other  
11 class members.

12          32. Defendants continue to employ hourly-paid or non-exempt employees within the  
13 State of California.

14          33. Plaintiff and the other class members worked over eight (8) hours in a day,  
15 and/or forty (40) hours in a week during their employment with Defendants.

16          34. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
17 engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt  
18 employees within the State of California. This pattern and practice involved, *inter alia*, failing  
19 to pay them for all regular and/or overtime wages earned and for missed meal periods and rest  
20 breaks in violation of California law.

21          35. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
22 knew or should have known that Plaintiff and the other class members were entitled to receive  
23 certain wages for overtime compensation and that they were not receiving accurate overtime  
24 compensation for all overtime hours worked.

25          36. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
26 failed to provide Plaintiff and the other class members all required rest and meal periods  
27 during the relevant time period as required under the Industrial Welfare Commission Wage  
28 Orders and thus they are entitled to any and all applicable penalties.

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1           37. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
2 knew or should have known that Plaintiff and the other class members were entitled to receive  
3 all meal periods or payment of one additional hour of pay at Plaintiff's and the other class  
4 member's regular rate of pay when a meal period was missed, and they did not receive all  
5 meal periods or payment of one additional hour of pay at Plaintiff's and the other class  
6 member's regular rate of pay when a meal period was missed.

7           38. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
8 knew or should have known that Plaintiff and the other class members were entitled to receive  
9 all rest periods or payment of one additional hour of pay at Plaintiff's and the other class  
10 member's regular rate of pay when a rest period was missed, and they did not receive all rest  
11 periods or payment of one additional hour of pay at Plaintiff's and the other class members'  
12 regular rate of pay when a rest period was missed.

13           39. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
14 knew or should have known that Plaintiff and the other class members were entitled to receive  
15 at least minimum wages for compensation and that they were not receiving at least minimum  
16 wages for all hours worked.

17           40. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
18 knew or should have known that Plaintiff and the other class members were entitled to receive  
19 all wages owed to them upon discharge or resignation, including overtime and minimum  
20 wages and meal and rest period premiums, and they did not, in fact, receive all such wages  
21 owed to them at the time of their discharge or resignation.

22           41. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
23 knew or should have known that Plaintiff and the other class members were entitled to receive  
24 all wages owed to them during their employment. Plaintiff and the other class members did  
25 not receive payment of all wages, including overtime and minimum wages and meal and rest  
26 period premiums, within any time permissible under California Labor Code section 204.

27           42. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
28 knew or should have known that Plaintiff and the other class members were entitled to receive

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1 complete and accurate wage statements in accordance with California law, but, in fact, they  
2 did not receive complete and accurate wage statements from Defendants. The deficiencies  
3 included, *inter alia*, the failure to include the total number of hours worked by Plaintiff and the  
4 other class members.

5 43. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
6 knew or should have known that Defendants had to keep complete and accurate payroll  
7 records for Plaintiff and the other class members in accordance with California law, but, in  
8 fact, did not keep complete and accurate payroll records.

9 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
10 knew or should have known that Plaintiff and the other class members were entitled to  
11 reimbursement for necessary business-related expenses.

12 45. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
13 knew or should have known that they had a duty to compensate Plaintiff and the other class  
14 members pursuant to California law, and that Defendants had the financial ability to pay such  
15 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely  
16 represented to Plaintiff and the other class members that they were properly denied wages, all  
17 in order to increase Defendants' profits.

18 46. During the relevant time period, Defendants failed to pay overtime wages to  
19 Plaintiff and the other class members for all overtime hours worked. Plaintiff and the other  
20 class members were required to work more than eight (8) hours per day and/or forty (40) hours  
21 per week without overtime compensation for all overtime hours worked.

22 47. During the relevant time period, Defendants failed to provide all requisite  
23 uninterrupted meal and rest periods to Plaintiff and the other class members.

24 48. During the relevant time period, Defendants failed to pay Plaintiff and the other  
25 class members at least minimum wages for all hours worked.

26 49. During the relevant time period, Defendants failed to pay Plaintiff and the other  
27 class members all wages owed to them upon discharge or resignation.

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1           58.    Specifically, the applicable IWC Wage Order provides that Defendants are and  
2 were required to pay Plaintiff and the other class members employed by Defendants, and  
3 working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the  
4 rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more  
5 than forty (40) hours in a workweek.

6           59.    The applicable IWC Wage Order further provides that Defendants are and were  
7 required to pay Plaintiff and the other class members overtime compensation at a rate of two  
8 times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

9           60.    California Labor Code section 510 codifies the right to overtime compensation  
10 at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours  
11 in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day  
12 of work, and to overtime compensation at twice the regular hourly rate for hours worked in  
13 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day  
14 of work.

15           61.    During the relevant time period, Plaintiff and the other class members worked in  
16 excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

17           62.    During the relevant time period, Defendants intentionally and willfully failed to  
18 pay overtime wages owed to Plaintiff and the other class members.

19           63.    Defendants' failure to pay Plaintiff and the other class members the unpaid  
20 balance of overtime compensation, as required by California laws, violates the provisions of  
21 California Labor Code sections 510 and 1198, and is therefore unlawful.

22           64.    Pursuant to California Labor Code section 1194, Plaintiff and the other class  
23 members are entitled to recover unpaid overtime compensation, as well as interest, costs, and  
24 attorneys' fees.

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**SECOND CAUSE OF ACTION**

**(Violation of California Labor Code §§ 226.7 and 512(a))**

**(Against UNITED NATURAL FOODS, INC.,**

**UNITED NATURAL FOODS WEST, INC., UNFI, and DOES 1 through 100)**

65. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 64, and each and every part thereof with the same force and effect as though fully set forth herein.

66. At all relevant times, the IWC Order and California Labor Code sections 226.7 and 512(a) were applicable to Plaintiff's and the other class members' employment by Defendants.

67. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any meal or rest period mandated by an applicable order of the California IWC.

68. At all relevant times, the applicable IWC Wage Order and California Labor Code section 512(a) provide that an employer may not require, cause or permit an employee to work for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is no more than six (6) hours, the meal period may be waived by mutual consent of both the employer and employee.

69. At all relevant times, the applicable IWC Wage Order and California Labor Code section 512(a) further provide that an employer may not require, cause or permit an employee to work for a work period of more than ten (10) hours per day without providing the employee with a second uninterrupted meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

70. During the relevant time period, Plaintiff and the other class members who were scheduled to work for a period of time no longer than six (6) hours, and who did not waive

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1 their legally-mandated meal periods by mutual consent, were required to work for periods  
2 longer than five (5) hours without an uninterrupted meal period of not less than thirty (30)  
3 minutes and/or rest period.

4 71. During the relevant time period, Plaintiff and the other class members who were  
5 scheduled to work for a period of time in excess of six (6) hours were required to work for  
6 periods longer than five (5) hours without an uninterrupted meal period of not less than thirty  
7 (30) minutes and/or rest period.

8 72. During the relevant time period, Defendants intentionally and willfully required  
9 Plaintiff and the other class members to work during meal periods and failed to compensate  
10 Plaintiff and the other class members the full meal period premium for work performed during  
11 meal periods.

12 73. During the relevant time period, Defendants failed to pay Plaintiff and the other  
13 class members the full meal period premium due pursuant to California Labor Code section  
14 226.7.

15 74. Defendants' conduct violates applicable IWC Wage Order and California Labor  
16 Code sections 226.7 and 512(a).

17 75. Pursuant to applicable IWC Wage Order and California Labor Code section  
18 226.7(c), Plaintiff and the other class members are entitled to recover from Defendants one  
19 additional hour of pay at the employee's regular rate of compensation for each work day that  
20 the meal or rest period is not provided.

21 **THIRD CAUSE OF ACTION**

22 **(Violation of California Labor Code § 226.7)**

23 **(Against UNITED NATURAL FOODS, INC.,**

24 **UNITED NATURAL FOODS WEST, INC., UNFI, and DOES 1 through 100)**

25 76. Plaintiff incorporates by reference the allegations contained in paragraphs 1  
26 through 75, and each and every part thereof with the same force and effect as though fully set  
27 forth herein.

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1           **77. At all times herein set forth, the applicable IWC Wage Order and California**  
2 **Labor Code section 226.7 were applicable to Plaintiff's and the other class members'**  
3 **employment by Defendants.**

4           **78. At all relevant times, California Labor Code section 226.7 provides that no**  
5 **employer shall require an employee to work during any rest period mandated by an applicable**  
6 **order of the California IWC.**

7           **79. At all relevant times, the applicable IWC Wage Order provides that "[e]very**  
8 **employer shall authorize and permit all employees to take rest periods, which insofar as**  
9 **practicable shall be in the middle of each work period" and that the "rest period time shall be**  
10 **based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)**  
11 **hours or major fraction thereof" unless the total daily work time is less than three and one-half**  
12 **(3 ½) hours.**

13           **80. During the relevant time period, Defendants required Plaintiff and other class**  
14 **members to work four (4) or more hours without authorizing or permitting a ten (10) minute**  
15 **rest period per each four (4) hour period worked.**

16           **81. During the relevant time period, Defendants willfully required Plaintiff and the**  
17 **other class members to work during rest periods and failed to pay Plaintiff and the other class**  
18 **members the full rest period premium for work performed during rest periods.**

19           **82. During the relevant time period, Defendants failed to pay Plaintiff and the other**  
20 **class members the full rest period premium due pursuant to California Labor Code section**  
21 **226.7**

22           **83. Defendants' conduct violates applicable IWC Wage Orders and California**  
23 **Labor Code section 226.7.**

24           **84. Pursuant to the applicable IWC Wage Orders and California Labor Code section**  
25 **226.7(c), Plaintiff and the other class members are entitled to recover from Defendants one**  
26 **additional hour of pay at the employees' regular hourly rate of compensation for each work**  
27 **day that the rest period was not provided.**

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**FOURTH CAUSE OF ACTION**

**(Violation of California Labor Code §§ 1194, 1197, and 1197.1)**

**(Against UNITED NATURAL FOODS, INC.,**

**UNITED NATURAL FOODS WEST, INC., UNFI, and DOES 1 through 100)**

85. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 84, and each and every part thereof with the same force and effect as though fully set forth herein.

86. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1 provide that the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.

87. During the relevant time period, Defendants failed to pay minimum wage to Plaintiff and the other class members as required, pursuant to California Labor Code sections 1194, 1197, and 1197.1.

88. Defendants' failure to pay Plaintiff and the other class members the minimum wage as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to those sections Plaintiff and the other class members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

89. Pursuant to California Labor Code section 1197.1, Plaintiff and the other class members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each employee minimum wages.

90. Pursuant to California Labor Code section 1194.2, Plaintiff and the other class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

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**FIFTH CAUSE OF ACTION**

**(Violation of California Labor Code §§ 201 and 202)**

**(Against UNITED NATURAL FOODS, INC.,**

**UNITED NATURAL FOODS WEST, INC., UNFI, and DOES 1 through 100)**

91. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 90, and each and every part thereof with the same force and effect as though fully set forth herein.

92. At all relevant times herein set forth, California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

93. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and the other class members who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.

94. Defendants' failure to pay Plaintiff and the other class members who are no longer employed by Defendants' their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

95. California Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

96. Plaintiff and the other class members are entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

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**SIXTH CAUSE OF ACTION**

**(Violation of California Labor Code § 204)**

**(Against UNITED NATURAL FOODS, INC.,**

**UNITED NATURAL FOODS WEST, INC., UNFI, and DOES 1 through 100)**

97. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 96, and each and every part thereof with the same force and effect as though fully set forth herein.

98. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed.

99. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

100. At all times herein set forth, California Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period

101. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and the other class members all wages due to them, within any time period permissible under California Labor Code section 204.

102. Plaintiff and the other class members are entitled to recover all remedies available for violations of California Labor Code section 204.

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**SEVENTH CAUSE OF ACTION**

**(Violation of California Labor Code § 226(a))**

**(Against UNITED NATURAL FOODS, INC.,**

**UNITED NATURAL FOODS WEST, INC., UNFI, and DOES 1 through 100)**

103. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 102, and each and every part thereof with the same force and effect as though fully set forth herein.

104. At all material times set forth herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

105. Defendants have intentionally and willfully failed to provide Plaintiff and the other class members with complete and accurate wage statements. The deficiencies include, but are not limited to: the failure to include the total number of hours worked by Plaintiff and the other class members.

106. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiff and the other class members have suffered injury and damage to their statutorily-protected rights.



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1           107. More specifically, Plaintiff and the other class members have been injured by  
2 Defendants’ intentional and willful violation of California Labor Code section 226(a) because  
3 they were denied both their legal right to receive, and their protected interest in receiving,  
4 accurate and itemized wage statements pursuant to California Labor Code section 226(a).

5           108. Plaintiff and the other class members are entitled to recover from Defendants the  
6 greater of their actual damages caused by Defendants’ failure to comply with California Labor  
7 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per  
8 employee.

9           109. Plaintiff and the other class members are also entitled to injunctive relief to  
10 ensure compliance with this section, pursuant to California Labor Code section 226(h).

**EIGHTH CAUSE OF ACTION**

**(Violation of California Labor Code § 1174(d))**

**(Against UNITED NATURAL FOODS, INC.,**

**UNITED NATURAL FOODS WEST, INC., UNFI, and DOES 1 through 100)**

11           110. Plaintiff incorporates by reference the allegations contained in paragraphs 1  
12 through 109, and each and every part thereof with the same force and effect as though fully set  
13 forth herein.  
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15           111. Pursuant to California Labor Code section 1174(d), an employer shall keep, at a  
16 central location in the state or at the plants or establishments at which employees are  
17 employed, payroll records showing the hours worked daily by and the wages paid to, and the  
18 number of piece-rate units earned by and any applicable piece rate paid to, employees  
19 employed at the respective plants or establishments. These records shall be kept in accordance  
20 with rules established for this purpose by the commission, but in any case shall be kept on file  
21 for not less than two years.  
22

23           112. Defendants have intentionally and willfully failed to keep accurate and complete  
24 payroll records showing the hours worked daily and the wages paid, to Plaintiff and the other  
25 class members.  
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1 113. As a result of Defendants' violation of California Labor Code section 1174(d),  
2 Plaintiff and the other class members have suffered injury and damage to their statutorily-  
3 protected rights.

4 114. More specifically, Plaintiff and the other class members have been injured by  
5 Defendants' intentional and willful violation of California Labor Code section 1174(d)  
6 because they were denied both their legal right and protected interest, in having available,  
7 accurate and complete payroll records pursuant to California Labor Code section 1174(d).

8 **NINTH CAUSE OF ACTION**

9 **(Violation of California Labor Code §§ 2800 and 2802)**

10 **(Against UNITED NATURAL FOODS, INC.,**

11 **UNITED NATURAL FOODS WEST, INC., UNFI, and DOES 1 through 100)**

12 115. Plaintiff incorporates by reference the allegations contained in paragraphs 1  
13 through 114, and each and every part thereof with the same force and effect as though fully set  
14 forth herein.

15 116. Pursuant to California Labor Code sections 2800 and 2802, an employer must  
16 reimburse its employee for all necessary expenditures incurred by the employee in direct  
17 consequence of the discharge of his or her job duties or in direct consequence of his or her  
18 obedience to the directions of the employer.

19 117. Plaintiff and the other class members incurred necessary business-related  
20 expenses and costs that were not fully reimbursed by Defendants.

21 118. Defendants have intentionally and willfully failed to reimburse Plaintiff and the  
22 other class members for all necessary business-related expenses and costs. Plaintiff and the  
23 other class members are entitled to recover from Defendants their business-related expenses  
24 and costs incurred during the course and scope of their employment, plus interest accrued from  
25 the date on which the employee incurred the necessary expenditures at the same rate as  
26 judgments in civil actions in the State of California.

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**TENTH CAUSE OF ACTION**

**(Violation of California Business & Professions Code §§ 17200, et seq.)**

**(Against UNITED NATURAL FOODS, INC.,**

**UNITED NATURAL FOODS WEST, INC., UNFI, and DOES 1 through 100)**

119. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 118, and each and every part thereof with the same force and effect as though fully set forth herein.

120. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, other class members, to the general public, and Defendants' competitors. Accordingly, Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

121. Defendants' activities as alleged herein are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code section 17200, et seq.

122. A violation of California Business & Professions Code section 17200, et seq. may be predicated on the violation of any state or federal law. In this instant case, Defendants' policies and practices of requiring employees, including Plaintiff and the other class members, to work overtime without paying them proper compensation violate California Labor Code sections 510 and 1198. Additionally, Defendants' policies and practices of requiring employees, including Plaintiff and the other class members, to work through their meal and rest periods without paying them proper compensation violate California Labor Code sections 226.7 and 512(a). Defendants' policies and practices of failing to pay minimum wages violate California Labor Code sections 1194, 1197, and 1197.1. Moreover, Defendants' policies and practices of failing to timely pay wages to Plaintiff and the other class members violate California Labor Code sections 201, 202 and 204. Defendants also violated California Labor Code sections 226(a), 1174(d), 2800 and 2802.

123. As a result of the herein described violations of California law, Defendants unlawfully gained an unfair advantage over other businesses.

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1           **124. Plaintiff and the other class members have been personally injured by**  
2 **Defendants’ unlawful business acts and practices as alleged herein, including but not**  
3 **necessarily limited to the loss of money and/or property.**

4           **125. Pursuant to California Business & Professions Code sections 17200, et seq.,**  
5 **Plaintiff and the other class members are entitled to restitution of the wages withheld and**  
6 **retained by Defendants during a period that commences four years prior to the filing of this**  
7 **Complaint; an award of attorneys’ fees pursuant to California Code of Civil procedure section**  
8 **1021.5 and other applicable laws; and an award of costs.**

9                                       **ELEVENTH CAUSE OF ACTION**

10                               **(Violation of California Labor Code §§ 2698, et seq.)**

11                           **(Against UNITED NATURAL FOODS, INC. and DOES 1 through 100)**

12           **126. Plaintiff incorporates by reference the allegations contained in paragraphs 1**  
13 **through 125, and each and every part thereof with the same force and effect as though fully set**  
14 **forth herein.**

15           **127. PAGA expressly establishes that any provision of the California Labor Code**  
16 **which provides for a civil penalty to be assessed and collected by the LWDA, or any of its**  
17 **departments, divisions, commissions, boards, agencies or employees for a violation of the**  
18 **California Labor Code, may be recovered through a civil action brought by an aggrieved**  
19 **employee on behalf of himself or herself, and other current or former employees.**

20           **128. Whenever the LWDA, or any of its departments, divisions, commissions,**  
21 **boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action**  
22 **is authorized to exercise the same discretion, subject to the same limitations and conditions, to**  
23 **assess a civil penalty.**

24           **129. Plaintiff and the other hourly-paid or non-exempt employees are “aggrieved**  
25 **employees” as defined by California Labor Code section 2699(c) in that they are all current or**  
26 **former employees of Defendants, and one or more of the alleged violations was committed**  
27 **against them.**

28           **///**

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**Failure to Pay Overtime**

130. Defendants' failure to pay legally required overtime wages to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code sections 510 and 1198.

**Failure to Provide Meal Periods**

131. Defendants' failure to provide legally required meal periods to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code sections 226.7 and 512(a).

**Failure to Provide Rest Periods**

132. Defendants' failure to provide legally required rest periods to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code section 226.7.

**Failure to Pay Minimum Wages**

133. Defendants' failure to pay legally required minimum wages to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code sections 1194, 1197 and 1197.1.

**Failure to Timely Pay Wages Upon Termination**

134. Defendants' failure to timely pay wages to Plaintiff and the other aggrieved employees upon termination in accordance with Labor Code sections 201 and 202 constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 201 and 202.

**Failure to Timely Pay Wages During Employment**

135. Defendants' failure to timely pay wages to Plaintiff and the other aggrieved employees during employment in accordance with Labor Code section 204 constitutes unlawful and/or unfair activity prohibited by California Labor Code section 204.

**Failure to Provide Complete and Accurate Wage Statements**

136. Defendants' failure to provide complete and accurate wage statements to Plaintiff and the other aggrieved employees in accordance with Labor Code section 226(a) constitutes unlawful and/or unfair activity prohibited by California Labor Code section 226(a).

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**Failure to Keep Complete and Accurate Payroll Records**

137. Defendants' failure to keep complete and accurate payroll records relating to Plaintiff and the other aggrieved employees in accordance with California Labor Code section 1174(d) constitutes unlawful and/or unfair activity prohibited by California Labor Code section 1174(d).

**Failure to Reimburse Necessary Business-Related Expenses and Costs**

138. Defendants' failure to reimburse Plaintiff and the other aggrieved employees for necessary business-related expenses and costs in accordance with California Labor Code sections 2800 and 2802 constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 2800 and 2802.

139. Pursuant to California Labor Code section 2699, Plaintiff, individually, and on behalf of all aggrieved employees, requests and is entitled to recover from Defendants and each of them, business expenses, unpaid wages, and/or untimely wages according to proof, interest, attorneys' fees and costs pursuant to California Labor Code section 218.5, as well as all statutory penalties against Defendants, and each of them, including but not limited to:

- a. Penalties under California Labor Code section 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- b. Penalties under California Code of Regulations Title 8 section 11010, et seq. in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;
- c. Penalties under California Labor Code section 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for

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each subsequent violation; and

d. Any and all additional penalties and sums as provided by the California Labor Code and/or other statutes.

140. Pursuant to California Labor Code section 2699(i), civil penalties recovered by aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and Workforce Development Agency for the enforcement of labor laws and education of employers and employees about their rights and responsibilities and twenty-five percent (25%) to the aggrieved employees.

141. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and costs pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable statute.

**DEMAND FOR JURY TRIAL**

Plaintiff, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorney General Act, requests a trial by jury.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of all other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorney General Act, prays for relief and judgment against Defendants, jointly and severally, as follows:

**Class Certification**

1. That this action be certified as a class action;
2. That Plaintiff be appointed as the representative of the Class;
3. That counsel for Plaintiff be appointed as Class Counsel; and
4. That Defendants provide to Class Counsel immediately the names and most current/last known contact information (address, e-mail and telephone numbers) of all class members.

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**As to the First Cause of Action**

5. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiff and the other class members;

6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;

8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194; and

9. For such other and further relief as the Court may deem just and proper.

**As to the Second Cause of Action**

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods (including second meal periods) to Plaintiff and the other class members;

11. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

12. For all actual, consequential, and incidental losses and damages, according to proof;

13. For premium wages pursuant to California Labor Code section 226.7(c);

14. For pre-judgment interest on any unpaid wages from the date such amounts were due;

15. For reasonable attorneys' fees and costs of suit incurred herein; and

16. For such other and further relief as the Court may deem just and proper.

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**As to the Third Cause of Action**

17. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and the other class members;

18. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

19. For all actual, consequential, and incidental losses and damages, according to proof;

20. For premium wages pursuant to California Labor Code section 226.7(c);

21. For pre-judgment interest on any unpaid wages from the date such amounts were due; and

22. For such other and further relief as the Court may deem just and proper.

**As to the Fourth Cause of Action**

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiff and the other class members;

24. For general unpaid wages and such general and special damages as may be appropriate;

25. For statutory wage penalties pursuant to California Labor Code section 1197.1 for Plaintiff and the other class members in the amount as may be established according to proof at trial;

26. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

27. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194(a);

28. For liquidated damages pursuant to California Labor Code section 1194.2; and

29. For such other and further relief as the Court may deem just and proper.

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**As to the Fifth Cause of Action**

30. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiff and the other class members no longer employed by Defendants;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiff and the other class members who have left Defendants' employ;

33. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

34. For such other and further relief as the Court may deem just and proper.

**As to the Sixth Cause of Action**

35. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to pay all compensation owed at the time required by California Labor Code section 204 to Plaintiff and the other class members;

36. For all actual, consequential, and incidental losses and damages, according to proof;

37. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

38. For such other and further relief as the Court may deem just and proper.

**As to the Seventh Cause of Action**

39. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and the other class members, and willfully failed to provide accurate itemized wage statements thereto;

40. For actual, consequential and incidental losses and damages, according to proof;

41. For statutory penalties pursuant to California Labor Code section 226(e);

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1           42.    For injunctive relief to ensure compliance with this section, pursuant to  
2   California Labor Code section 226(h); and

3           43.    For such other and further relief as the Court may deem just and proper.

4    **As to the Eighth Cause of Action**

5           44.    That the Court declare, adjudge and decree that Defendants violated California  
6   Labor Code section 1174(d) by willfully failing to keep accurate and complete payroll records  
7   for Plaintiff and the other class members as required by California Labor Code section  
8   1174(d);

9           45.    For actual, consequential and incidental losses and damages, according to proof;

10          46.    For statutory penalties pursuant to California Labor Code section 1174.5; and

11          47.    For such other and further relief as the Court may deem just and proper.

12    **As to the Ninth Cause of Action**

13          48.    That the Court declare, adjudge and decree that Defendants violated California  
14   Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the other  
15   class members for all necessary business-related expenses as required by California Labor  
16   Code sections 2800 and 2802;

17          49.    For actual, consequential and incidental losses and damages, according to proof;

18          50.    For the imposition of civil penalties and/or statutory penalties;

19          51.    For reasonable attorneys' fees and costs of suit incurred herein; and

20          52.    For such other and further relief as the Court may deem just and proper.

21    **As to the Tenth Cause of Action**

22          53.    That the Court decree, adjudge and decree that Defendants violated California  
23   Business and Professions Code sections 17200, et seq. by failing to provide Plaintiff and the  
24   other class members all overtime compensation due to them, failing to provide all meal and  
25   rest periods to Plaintiff and the other class members, failing to pay at least minimum wages to  
26   Plaintiff and the other class members, failing to pay Plaintiff's and the other class members'  
27   wages timely as required by California Labor Code section 201, 202 and 204 and by violating  
28   California Labor Code sections 226(a), 1174(d), 2800 and 2802.

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1           54. For restitution of unpaid wages to Plaintiff and all the other class members and  
2 all pre-judgment interest from the day such amounts were due and payable;

3           55. For the appointment of a receiver to receive, manage and distribute any and all  
4 funds disgorged from Defendants and determined to have been wrongfully acquired by  
5 Defendants as a result of violation of California Business and Professions Code sections  
6 17200, et seq.;

7           56. For reasonable attorneys’ fees and costs of suit incurred herein pursuant to  
8 California Code of Civil Procedure section 1021.5;

9           57. For injunctive relief to ensure compliance with this section, pursuant to  
10 California Business and Professions Code sections 17200, et seq.; and

11           58. For such other and further relief as the Court may deem just and proper.

12                           As to the Eleventh Cause of Action

13           59. For civil penalties and wages pursuant to California Labor Code sections  
14 2699(a), (f) and (g) and 558 plus costs and attorneys’ fees for violation of California Labor  
15 Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1,  
16 1198, 2800 and 2802; and

17           60. For such other and further relief as the Court may deem equitable and  
18 appropriate.

19 Dated: September 13, 2018

LAWYERS for JUSTICE, PC

21 By:   
22 Edwin Aiwazian  
23 Attorneys for Plaintiff

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Edwin Aiwazian (SBN 232943)</b> <b>LAWYERS for JUSTICE, PC</b> 410 West Arden Avenue, Suite 203 Glendale, California 91203 TELEPHONE NO.: (818) 265-1020 FAX NO.: (818) 265-1021 ATTORNEY FOR (Name): <b>Plaintiff Salvador Guerra</b>	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>Riverside</b> STREET ADDRESS: <b>4050 Main Street</b> MAILING ADDRESS: CITY AND ZIP CODE: <b>Riverside 92501</b> BRANCH NAME: <b>Riverside Historic Courthouse</b>	
CASE NAME: <b>Guerra vs. United Natural Foods, Inc., et al.</b>	
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
	CASE NUMBER: <b>RIC 18 18751</b> JUDGE: DEPT:

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:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (48) <b>Other PIPD/WO (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIPD/WO (23) <b>Non-PIP/WO (Other) Tort</b> <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-PIP/WO tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	<b>Contract</b> <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) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <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)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b> <input type="checkbox"/> Arbitration/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) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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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 type="checkbox"/> Large number of separately represented parties	d. <input checked="" type="checkbox"/> Large number of witnesses
b. <input checked="" 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 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): **11**

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-015.)

Date: **September 13, 2018**  
**Edwin Aiwazian** (TYPE OR PRINT NAME)      (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.

Page 1 of 2  
 Cal. Rules of Court, rules 2.30, 3.220, 3.400-3.403, 3.740;  
 Cal. Standards of Judicial Administration, std. 3.10  
 www.courtinfo.ca.gov

**CIVIL CASE COVER SHEET**

Form Adopted for Mandatory Use  
 Judicial Council of California  
 CM-010 (Rev. July 1, 2007)

CM-010

**INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET**

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

**CASE TYPES AND EXAMPLES****Auto Tort**

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

**Other P/DP/WD (Personal Injury/Property Damage/Wrongful Death) Tort**

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (not asbestos or toxic/environmental) (24)  
Medical Malpractice (45)  
Medical Malpractice—  
Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other P/DP/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other P/DP/WD

**Non-P/DP/WD (Other) Tort**

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice (not medical or legal)  
Other Non-P/DP/WD Tort (35)

**Employment**

Wrongful Termination (36)  
Other Employment (15)

**Contract**

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract (not unlawful detainer or wrongful eviction)  
Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage (not provisionally complex) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

**Real Property**

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

**Unlawful Detainer**

Commercial (31)  
Residential (32)  
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

**Judicial Review**

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor  
Commissioner Appeals

**Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)**

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

**Enforcement of Judgment**

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment (non-domestic relations)  
Sister State Judgment  
Administrative Agency Award (not unpaid taxes)  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

**Miscellaneous Civil Complaint**

RICO (27)  
Other Complaint (not specified above) (42)  
Declaratory Relief Only  
Injunctive Relief Only (non-harassment)  
Mechanics Lien  
Other Commercial Complaint Case (non-tort/non-complex)  
Other Civil Complaint (non-tort/non-complex)

**Miscellaneous Civil Petition**

Partnership and Corporate Governance (21)  
Other Petition (not specified above) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief From Late Claim  
Other Civil Petition

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE**

- |  |   |
|--|---|
| <input type="checkbox"/> BANNING 135 N. Alessandro Rd., Banning, CA 92220                    | <input type="checkbox"/> MURRIETA 30755-D Auld Rd., Suite 1226, Murrieta, CA 92563        |
| <input type="checkbox"/> BLYTHE 265 N. Broadway, Blythe, CA 92225                            | <input type="checkbox"/> PALM SPRINGS 3255 E. Tahquitz Canyon Way, Palm Springs, CA 92282 |
| <input type="checkbox"/> HEMET 840 N. State St., Hemet, CA 92343                             | <input checked="" type="checkbox"/> RIVERSIDE 4050 Main St., Riverside, CA 92501          |
| <input type="checkbox"/> MORENO VALLEY 13800 Heacock St., Ste. D201, Moreno Valley, CA 92553 | <input type="checkbox"/> TEMECULA 41002 County Center Dr., #100, Temecula, CA 92591       |

RI-030

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar Number and Address) <b>Edwin Alwazian</b> <b>LAWYERS for JUSTICE PC</b> 410 West Arden Avenue, Suite 203 Glendale, California 91203  TELEPHONE NO. (818) 265-1020. FAX NO. (Optional) (818) 265-1021 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff Salvador Guerra	FOR COURT USE ONLY  <b>FILED</b> SUPERIOR COURT OF CALIFORNIA COUNTY OF RIVERSIDE  <b>SEP 13 2018</b>  <b>L. VILLANUEVA</b>
PLAINTIFF/PETITIONER: Salvador Guerra	CASE NUMBER: <b>RIC 18 18751</b>
DEFENDANT/RESPONDENT: United Natural Foods, Inc., et al.	
<b>CERTIFICATE OF COUNSEL</b>	

The undersigned certifies that this matter should be tried or heard in the court identified above for the reasons specified below:

- The action arose in the zip code of: 92553
- The action concerns real property located in the zip code of: \_\_\_\_\_
- The Defendant resides in the zip code of: \_\_\_\_\_

For more information on where actions should be filed in the Riverside County Superior Courts, please refer to Local Rule 1.0015 at [www.riverside.courts.ca.gov](http://www.riverside.courts.ca.gov).

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: September 13, 2018

Edwin Alwazian  
(TYPE OR PRINT NAME OF IF ATTORNEY OR PARTY MAKING DECLARATION)

  
(SIGNATURE)

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE**  
4050 Main Street  
Riverside, CA 92501  
[www.riverside.courts.ca.gov](http://www.riverside.courts.ca.gov)

**NOTICE OF ASSIGNMENT TO DEPARTMENT  
AND CASE MANAGEMENT CONFERENCE (CRC 3.722)**

**GUERRA VS UNITED NATURA**

**CASE NO. RIC1818751**

**This case is assigned to the Honorable Judge Craig G. Riemer in Department 05 for all purposes.**

**The Case Management Conference is scheduled for 11/13/18 at 8:30 in Department 05.**

**Department 5 are located at 4050 Main St, Riverside, CA 92501.**

**The plaintiff/cross-complainant shall serve a copy of this notice on all defendants/cross-defendants who are named or added to the complaint and file proof of service.**

**Any disqualification pursuant to CCP section 170.6 shall be filed in accordance with that section.**

**Requests for accommodations can be made by submitting Judicial Council form MC-410 no fewer than five court days before the hearing. See California Rules of Court, rule 1.100.**

**CERTIFICATE OF MAILING**

**I certify that I am currently employed by the Superior Court of California, County of Riverside, and that I am not a party to this action or proceeding. In my capacity, I am familiar with the practices and procedures used in connection with the mailing of correspondence. Such correspondence is deposited in the outgoing mail of the Superior Court. Outgoing mail is delivered to and mailed by the United States Postal Service, postage prepaid, the same day in the ordinary course of business. I certify that I served a copy of the foregoing NOTICE on this date, by depositing said copy as stated above.**

**Court Executive Officer/Clerk**

**Date: 09/13/18**

**by:** \_\_\_\_\_

**LOURDES VILLANUEVA, Deputy Clerk**



# EXHIBIT B

1 William Turley, Esq. (122408)  
2 David Mara, Esq. (230498)  
3 Jill Vecchi, Esq. (299333)  
4 Matthew Crawford, Esq. (310230)  
5 **THE TURLEY & MARA LAW FIRM, APLC**  
6 7428 Trade Street  
7 San Diego, California 92121  
8 Telephone: (619) 234-2833  
9 Facsimile: (619) 234-4048

**FILED/ENDORSED**  
JUN 19 2018  
By: J. Mora  
Deputy Clerk

10 Attorneys for Plaintiffs CHRISTOPHER BILLINGTON  
11 and RONALD COOKSEY, on behalf of themselves, all  
12 others similarly situated, and on behalf of the general public.

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **IN AND FOR THE COUNTY OF SACRAMENTO**

15 CHRISTOPHER BILLINGTON AND  
16 RONALD COOKSEY, on behalf of  
17 themselves, all others similarly situated, and  
18 on behalf of the general public,

19 Plaintiffs,

20 v.

21 UNITED NATURAL FOODS, INC.;  
22 UNITED NATURAL FOODS WEST,  
23 INC.; and DOES 1-100,

24 Defendants.

Case No. **34-2018-00235159**

**PLAINTIFFS' CLASS ACTION  
COMPLAINT FOR DAMAGES,  
INJUNCTIVE RELIEF, DECLARATORY  
RELIEF, AND RESTITUTION**

- 1) Failure to Pay All Straight Time Wages;
- 2) Failure to Pay All Overtime Wages;
- 3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, IWC Wage Order No. 7-2001(11); Cal. Code Regs., tit. 8 § 11090);
- 4) Failure to Authorize and Permit Rest Periods (Lab. Code § 226.7; IWC Wage Order No. 7-2001(12); Cal. Code Regs. Title 8 § 11090);
- 5) Failure to Authorize and Permit Recovery Periods (Lab. Code § 226.7; Cal. Code Regs. Title 8 § 3395);
- 6) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Lab. Code §§ 226, 1174, 1175);
- 7) Failure to Pay All Wages Due at the Time of Termination of Employment (Lab. Code §§ 201-203); and
- 8) Violation of Unfair Competition Law (Bus. & Prof. Code § 17200, et seq.).

**DEMAND FOR JURY TRIAL**

**BY FAX**

1 Plaintiffs CHRISTOPHER BILLINGTON AND RONALD COOKSEY, on behalf of themselves,  
2 all others similarly situated, and on behalf of the general public, complain of Defendants UNITED  
3 NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or DOES and for  
4 causes of action and allege:

5 1. This is a class action pursuant to California Code of Civil Procedure section 382 on behalf  
6 of Plaintiffs, CHRISTOPHER BILLINGTON AND RONALD COOKSEY, and all non-  
7 exempt, hourly workers who are presently or formerly employed by UNITED NATURAL  
8 FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or DOES and/or their  
9 subsidiaries or affiliated companies and/or predecessors within the State of California.

10 2. At all times mentioned herein, UNITED NATURAL FOODS, INC.; UNITED NATURAL  
11 FOODS WEST, INC.; and/or DOES have conducted business in Sacramento County and  
12 elsewhere within California.

13 3. At all times mentioned herein, UNITED NATURAL FOODS, INC.; UNITED NATURAL  
14 FOODS WEST, INC.; and/or subsidiaries or affiliated companies and/or DOES, within the  
15 State of California, have, among other things, employed current and former non-exempt  
16 employees.

17 4. At all times mentioned herein, the common policies and practices of UNITED NATURAL  
18 FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or DOES were a direct  
19 cause of Defendants' and/or DOES' failure to comply with California's wage and hours  
20 laws, Wage Orders, and/or the California Labor Code, as set forth more fully within.

21 5. For at least four (4) years prior to the filing of this action and through to the present,  
22 Defendants UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST,  
23 INC.; and/or DOES have had a consistent policy and/or practice of not paying Plaintiffs  
24 and its Non-Exempt Employees for all of the hours they worked.

25 6. For at least four (4) years prior to the filing of this action and through to the present,  
26 Defendants UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST,  
27 INC.; and/or DOES have had a continuous and widespread policy of not paying Plaintiffs  
28

1 and those similarly situated for all hours they worked, including before clocking in for their  
2 work shift, after clocking out for their work shift, and during unpaid meal periods. Further,  
3 Defendants UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST  
4 INC.; and/or DOES have had a continuous and widespread policy to shave the time  
5 Plaintiffs and those similarly situated worked (referred to as "time shaving").

6 7. For at least four (4) years prior to the filing of this action and through to the present,  
7 Defendants UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST  
8 INC.; and/or DOES have had a continuous and widespread policy of "clocking-out"  
9 Plaintiffs and those similarly situated for thirty (30) minute meal periods, even though  
10 Plaintiffs and those similarly situated were suffered and/or permitted to work during these  
11 deduction periods, thereby deducting thirty (30) minutes of paid time, including straight  
12 time and overtime.

13 8. For at least four (4) years prior to the filing of this action and through to the present,  
14 Defendants UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST,  
15 INC.; and/or DOES have had a consistent policy and/or practice of failing to provide all  
16 straight time and overtime wages owed to Non-Exempt Employees, as mandated under the  
17 California Labor Code and the implementing rules and regulations of the Industrial Welfare  
18 Commission's ("IWC") California Wage Orders.

19 9. For at least four (4) years prior to the filing of this action and through to the present,  
20 Defendants UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST,  
21 INC.; and/or DOES have had a consistent policy of requiring Non-Exempt Employees  
22 within the State of California, including Plaintiffs, to work through meal periods and work  
23 at least five (5) hours without a meal period and failing to pay such employees one (1) hour  
24 of pay at the employees' regular rate of compensation for each workday that the meal  
25 period is not provided, or other compensation, as required by California's state wage and  
26 hour laws, and deducting a half hours pay from their wages.

27 10. For at least four (4) years prior to filing of this action and through the present, Defendants  
28

1 UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or  
2 DOES did not have a policy of allowing its hourly employees working shifts of ten (10) or  
3 more hours in a day to take a second meal period of not less than thirty (30) minutes as  
4 required by the applicable Wage Order of the IWC.

5 11. For at least four (4) years prior to the filing of this action and through to the present,  
6 Defendants UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST,  
7 INC.; and/or DOES have had a consistent policy of requiring Non-Exempt Employees  
8 within the State of California, including Plaintiffs, to work over ten (10) hours without  
9 providing an additional, uninterrupted meal period of thirty (30) minutes and failing to pay  
10 such employees one (1) hour of pay at the employees' regular rate of compensation for  
11 each workday that the meal period is not provided, or other compensation, as required by  
12 California's state wage and hour laws.

13 12. For at least four (4) years prior to the filing of this action and through to the present,  
14 Defendants UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST,  
15 INC.; and/or DOES have had a consistent policy and/or practice of requiring its Non-  
16 Exempt Employees within the State of California, including Plaintiffs, to work for over  
17 four hours, or a major fraction thereof, without a 10 minute rest period, and failing to pay  
18 such employees one (1) hour of pay at the employees' regular rate of compensation for  
19 each workday that the rest period is not provide, or other compensation, as required by  
20 California's state wage and hour laws.

21 13. For at least four (4) years prior to the filing of this action and through to the present,  
22 Defendants UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST,  
23 INC.; and/or DOES have had a consistent policy and/or practice of failing to provide  
24 Plaintiffs and its Non-Exempt Employees with cool down recovery periods in accordance  
25 with California Code of Regulations, Title 8, section 3395.

26 14. For at least four (4) years prior to the filing of this action and through to the present,  
27 Defendants UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST,  
28

- 1 INC.; and/or DOES and/or their officers and/or managing agents have had a consistent
- 2 policy and/or practice of willfully failing to provide to Plaintiffs and its Non-Exempt
- 3 Employees, accurate itemized employee wage statements.
- 4 15. For at least four (4) years prior to the filing of this action and through to the present,
- 5 Defendants UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST,
- 6 INC.; and/or DOES and/or their officers and/or managing agents have had a consistent
- 7 policy and/or practice of willfully failing to timely pay wages owed to Plaintiffs and those
- 8 Non-Exempt Employees who left Defendants UNITED NATURAL FOODS, INC.;
- 9 UNITED NATURAL FOODS WEST, INC.; and/or DOES employ or who were
- 10 terminated.
- 11 16. For at least four (4) years prior to the filing of this action and through to the present,
- 12 UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or
- 13 DOES, by failing to lawfully pay Plaintiffs and those similarly situated all the wages they
- 14 are owed, engaged in false, unfair, fraudulent and deceptive business practices within the
- 15 meaning of the Business and Professions Code section 17200, et seq.
- 16 17. Throughout the statutory period, UNITED NATURAL FOODS, INC.'S; UNITED
- 17 NATURAL FOODS WEST, INC.'S; and/or DOES' employees, including Plaintiffs and
- 18 similarly situated Non-Exempt Employees, were not provided all straight time and
- 19 overtime wages owed, meal periods and rest periods, or compensation in lieu thereof, as
- 20 mandated under the California Labor Code, and the implementing rules and regulations of
- 21 the Industrial Welfare Commissions ("IWC") California Wage Orders.
- 22 18. Throughout the statutory period, UNITED NATURAL FOODS, INC.; UNITED
- 23 NATURAL FOODS WEST, INC.; and/or DOES employees, including Plaintiffs and
- 24 similarly situated Non-Exempt Employees were not provided with accurate and itemized
- 25 employee wage statements.
- 26 19. UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or
- 27 DOES failed to comply with Labor Code section 226, subdivision (a), by itemizing in wage
- 28

1 statements all hourly compensation and accurately reporting total hours worked by  
2 Plaintiffs and the members of the proposed class. Plaintiffs and members of the proposed  
3 class are entitled to penalties not to exceed \$4,000 for each employee pursuant to Labor  
4 Code section 226(b).

5 20. UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or  
6 DOES have failed to comply with IWC Wage Order 7-2001(7) by failing to maintain  
7 accurate time records showing hourly compensation, when the employee begins and ends  
8 each work day and total daily hours worked by itemizing in wage statements and accurately  
9 reporting total hours worked by Plaintiffs and members of the proposed class.

10 21. UNITED NATURAL FOODS, INC.'S; UNITED NATURAL FOODS WEST, INC.'S;  
11 and/or DOES' failure to retain accurate records of total hours worked by Plaintiffs and the  
12 proposed class was willful and deliberate, was a continuous breach of UNITED  
13 NATURAL FOODS, INC.'S; UNITED NATURAL FOODS WEST, INC.'S; and/or  
14 DOES' duty owed to Plaintiffs and the proposed class.

15 22. Throughout the statutory period, UNITED NATURAL FOODS, INC.'S; UNITED  
16 NATURAL FOODS WEST, INC.'S; and/or DOES' employees, including Plaintiffs and  
17 similarly situated Non-Exempt Employees, were not timely paid all wages owed to them  
18 at the time of termination.

19 23. Defendants UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST,  
20 INC.; and/or DOES are and were aware that Plaintiffs and members of the proposed class  
21 were not paid all straight time and overtime wages owed, nor provided meal and rest  
22 periods. Defendants UNITED NATURAL FOODS, INC.'S; UNITED NATURAL  
23 FOODS WEST, INC.'S; and/or DOES' denial of wages and other compensation due to  
24 Plaintiffs and members of the proposed class was willful and deliberate.

25 24. Defendants UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST,  
26 INC.; and/or DOES, each and collectively, controlled the wages, hours, and working  
27 conditions of Plaintiffs and the proposed class, creating a joint-employer relationship over  
28

1 Plaintiffs and the proposed class.

2 25. Plaintiffs CHRISTOPHER BILLINGTON AND RONALD COOKSEY, on behalf of  
3 themselves and all of UNITED NATURAL FOODS, INC.'S; UNITED NATURAL  
4 FOODS WEST, INC.'S; and/or DOES' Non-Exempt Employees, bring this action  
5 pursuant to California Labor Code sections 218, 218.5, 222, 223, 224, 226, subd. (b), 226.7,  
6 510, 512, 515, 558, 1194, 1197, and California Code of Regulations, Title 8, sections 11090  
7 and 3395, seeking unpaid wages, overtime, meal and rest period compensation, penalties,  
8 injunctive and other equitable relief, and reasonable attorneys' fees and costs.

9 26. Plaintiffs CHRISTOPHER BILLINGTON AND RONALD COOKSEY, on behalf of  
10 themselves and all putative Class members made up of UNITED NATURAL FOODS,  
11 INC.'S; UNITED NATURAL FOODS WEST, INC.'S; and/or DOES' non-exempt  
12 employees, pursuant to California Business and Professions Code sections 17200-17208,  
13 also seek injunctive relief, restitution, and disgorgement of all benefits UNITED  
14 NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or DOES  
15 enjoyed from their failure to pay all straight time wages, overtime wages, and meal and  
16 rest period compensation.

17 I. VENUE

18 27. Venue as to each Defendant, UNITED NATURAL FOODS, INC.; UNITED NATURAL  
19 FOODS WEST, INC.; and/or DOES, is proper in this judicial district, pursuant to Code of  
20 Civil Procedure section 395. Defendants UNITED NATURAL FOODS, INC.; UNITED  
21 NATURAL FOODS WEST, INC.; and/or DOES conduct business and commit Labor  
22 Code violations within Sacramento County, and each Defendant and/or DOE is within  
23 California for service of process purposes. The unlawful acts alleged herein have a direct  
24 effect on Plaintiffs and those similarly situated within the State of California and within  
25 Sacramento County. Defendants UNITED NATURAL FOODS, INC.; UNITED  
26 NATURAL FOODS WEST, INC.; and/or DOES employ numerous Class members who  
27 work in Sacramento County, in California.

28



1           **II. PARTIES**

2           **A. Plaintiffs.**

3           28. At all relevant times herein, Plaintiffs CHRISTOPHER BILLINGTON AND RONALD  
4           COOKSEY are and were residents of California. At all relevant times herein, they were  
5           employed by Defendants UNITED NATURAL FOODS, INC.; UNITED NATURAL  
6           FOODS WEST, INC.; and/or DOES within the last four (4) years as non-exempt, hourly  
7           employees in California.

8           29. On information and belief, Plaintiffs and all other members of the proposed class  
9           experienced Defendants UNITED NATURAL FOODS, INC.'S; UNITED NATURAL  
10           FOODS WEST, INC.'S; and/or DOES' common company policies of failing to pay all  
11           straight time and overtime wages owed.

12           30. On information and belief, Plaintiffs and all other members of the proposed class  
13           experienced Defendants UNITED NATURAL FOODS, INC.'S; UNITED NATURAL  
14           FOODS WEST, INC.'S; and/or DOES' common company policies of illegally deducting  
15           wages from employees for meal periods during which they were performing work.

16           31. On information and belief, Plaintiffs and all other members of the proposed class  
17           experienced Defendants UNITED NATURAL FOODS, INC.'S; UNITED NATURAL  
18           FOODS WEST, INC.'S; and/or DOES' common company policies and/or practices of  
19           failing to pay all straight time and overtime wages owed, and failing to provide compliant  
20           meal periods to employees before the end of their fifth hour of work or a second meal  
21           period before the end of the tenth hour or work, or compensation in lieu thereof.

22           32. On information and belief, Plaintiffs and all other members of the proposed class  
23           experienced Defendants UNITED NATURAL FOODS, INC.'S; UNITED NATURAL  
24           FOODS WEST, INC.'S; and/or DOES' common company policies of failing to provide  
25           ten (10) minute paid rest breaks to employees whom worked four (4) hours or major  
26           fractions thereof.

27           33. On information and belief, Plaintiffs and all other members of the proposed class  
28

1 experienced Defendants UNITED NATURAL FOODS, INC.'S; UNITED NATURAL  
2 FOODS WEST, INC.'S; and/or DOES' common company policies of failing to provide  
3 cool down recovery periods.

4 34. On information and belief, Plaintiffs and all other members of the proposed class  
5 experienced Defendants UNITED NATURAL FOODS, INC.'S; UNITED NATURAL  
6 FOODS WEST, INC.'S; and/or DOES' common company policies of failing to provide  
7 Non-Exempt Employees with accurate itemized wage statements. On information and  
8 belief, Defendants and/or DOES failure to provide to their Non-Exempt Employees,  
9 including Plaintiffs, with accurate itemized wage statements was willful.

10 35. On information and belief, Plaintiffs and all other members of the proposed class  
11 experienced Defendants UNITED NATURAL FOODS, INC.'S; UNITED NATURAL  
12 FOODS WEST, INC.'S; and/or DOES' common company policies of failing to timely  
13 compensate Non-Exempt Employees all wages owed upon termination. On information  
14 and belief, Defendants' and/or DOES' failure to pay, in a timely manner, compensation  
15 owed to Non-Exempt Employees, including Plaintiffs, upon termination of their  
16 employment with UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS  
17 WEST, INC.; and/or DOES was willful.

18 36. On information and belief, Plaintiffs and all other members of the proposed class  
19 experienced Defendants UNITED NATURAL FOODS, INC.'S; UNITED NATURAL  
20 FOODS WEST, INC.'S; and/or DOES' fraudulent and deceptive business practices within  
21 the meaning of the Business and Professions Code section 17200, et seq.

22 37. Plaintiffs and the proposed class are covered by, inter alia, California IWC Occupational  
23 Wage Order No. 7-2001, and Title 8, California Code of Regulations, §§ 11090 and 3395.

24 **B. Defendants.**

25 38. At all relevant times herein, UNITED NATURAL FOODS, INC.; UNITED NATURAL  
26 FOODS WEST, INC.; and/or DOES engage in the ownership and operation of facilities  
27 which distributes natural, organic, and specialty foods and non-food products.

28

- 1 39. UNITED NATURAL FOODS, INC. and UNITED NATURAL FOODS WEST, INC. have  
2 been taking care of “Category Management,” “Merchandising,” “Marketing,”  
3 “eCommerce Solutions,” “Mobile Ordering,” and “Delivery Alerts” for different  
4 businesses for 40 years. UNITED NATURAL FOODS, INC., <https://www.unfi.com/>, (Last  
5 visited June 14<sup>th</sup>, 2018). UNITED NATURAL FOODS, INC. and UNITED NATURAL  
6 FOODS WEST, INC. provide “over 10,000” products for any “store, kitchen and website”  
7 all over the U.S. *Id.* UNITED NATURAL FOODS, INC. and UNITED NATURAL  
8 FOODS WEST, INC. have “33 distribution centers” and “1,000 trucks” to deliver those  
9 products. *Id.*
- 10 40. UNITED NATURAL FOODS, INC. and UNITED NATURAL FOODS WEST, INC.  
11 claim that “attracting good people, and keeping them, is essential to the strategy of a  
12 successful company.” UNITED NATURAL FOODS, INC., <https://unfi-openhire.silkroad.com/>,  
13 (Last visited June 14<sup>th</sup>, 2018). UNITED NATURAL FOODS, INC. and UNITED  
14 NATURAL FOODS WEST, INC. claim to understand that their company’s “vitality  
15 depends on the quality of [their] staff.” *Id.*
- 16 41. What UNITED NATURAL FOODS, INC. and UNITED NATURAL FOODS WEST,  
17 INC. fail to acknowledge is that to keep the high quality of their staff, they need to pay the  
18 staff for all hours worked. This is something that UNITED NATURAL FOODS, INC. and  
19 UNITED NATURAL FOODS WEST, INC. fail to do without consequence and if they  
20 continue to do so they will see that their “vitality” will undoubtedly lessen.
- 21 42. On information and belief, UNITED NATURAL FOODS, INC.; UNITED NATURAL  
22 FOODS WEST, INC.; and/or DOES exercised control over the wages, hours, and/or  
23 working conditions of Plaintiffs and members of the proposed class throughout the liability  
24 period.
- 25 43. UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or  
26 DOES principal place of business is in the State of California.
- 27 44. The true names and capacities, whether individual, corporate, associate, or otherwise, of  
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1 Defendants DOES 1-100, inclusive, are presently unknown to Plaintiffs, who therefore  
2 sues these Defendants by such fictitious names under Code of Civil Procedure section 474.  
3 Plaintiffs are informed and believes, and based thereon alleges, that each of the Defendants  
4 designated herein as a DOE is legally responsible in some manner for the unlawful acts  
5 referred to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the  
6 true names and capacities of the Defendants designated hereinafter as DOES when such  
7 identities become known.

8 45. Plaintiffs are informed and believes, and based thereon alleges, that each Defendant and/or  
9 DOE acted in all respects pertinent to this action as the agent of the other Defendants and/or  
10 DOES, carried out a joint scheme, business plan or policy in all respects pertinent hereto,  
11 and the acts of each Defendants and/or DOES are legally attributable to the other  
12 Defendants and/or DOES.

13 **III. CLASS ACTION ALLEGATIONS**

14 46. Plaintiffs bring this action on behalf of themselves and all others similarly situated as a  
15 class action pursuant to section 382 of the California Code of Civil Procedure. Plaintiffs  
16 seek to represent a Class composed of and defined as follows:

17  
18 All persons who are employed or have been employed by  
19 Defendants in the State of California as hourly, Non-Exempt  
20 workers during the period of the relevant statute of limitations.

21  
22 Plaintiffs also seek to represent subclasses composed of and defined as follows:

23  
24 All persons who are or have been employed by UNITED  
25 NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST,  
26 INC.; and/or DOES in the State of California as hourly, Non-  
27 Exempt workers during the period of the relevant statute of  
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limitations, who worked one (1) or more shifts in excess of five (5) hours.

All persons who are or have been employed by UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or DOES in the State of California as hourly, Non-Exempt workers during the period of the relevant statute of limitations, who worked one (1) or more shifts in excess of six (6) hours.

All persons who are or have been employed by UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or DOES in the State of California as hourly, Non-Exempt workers during the period of the relevant statute of limitations, who worked one (1) or more shifts in excess of ten (10) hours.

All persons who are or have been employed by UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or DOES in the State of California as hourly, Non-Exempt workers during the period of the relevant statute of limitations, who worked one (1) or more shifts in excess of twelve (12) hours.

All persons who are or have been employed by UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or DOES in the State of California as hourly, Non-

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Exempt workers during the period of the relevant statute of limitations, who worked one (1) or more shifts in excess of two (2) hours.

All persons who are or have been employed by UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or DOES in the State of California as hourly, Non-Exempt workers during the period of the relevant statute of limitations, who worked one (1) or more shifts in excess of three (3) hour and one-half hours, but less than or equal to six (6) hours.

All persons who are or have been employed by UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or DOES in the State of California as hourly, Non-Exempt workers during the period of the relevant statute of limitations, who worked one (1) or more shifts in excess of six (6) hours, but less than or equal to ten (10) hours.

All persons who are or have been employed by UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or DOES in the State of California as hourly, Non-Exempt workers during the period of the relevant statute of limitations, who worked one (1) or more shifts in excess of ten (10) hours.

All persons who are or have been employed by UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST,

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INC.; and/or DOES in the State of California as hourly, Non-Exempt workers during the period of the relevant statute of limitations, who separated their employment from Defendants.

All persons who are or have been employed by UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or DOES in the State of California as hourly, Non-Exempt workers during the period of the relevant statute of limitations, who worked one (1) or more shifts in which they received a wage statement for the corresponding pay period.

All persons who are or have been employed by UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or DOES in the State of California as hourly, Non-Exempt workers during the period of the relevant statute of limitations, who were deducted wages for meal periods.

47. Plaintiffs reserve the right under rule 1855, subdivision (b), California Rules of Court, to amend or modify the Class description with greater specificity or further division into subclasses or limitation to particular issues.

48. This action has been brought and may properly be maintained as a class action under the provisions of section 382 of the California Code of Civil Procedure because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

A. **Numerosity.**

49. The potential members of the Class as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class members has

1 not been determined at this time, Plaintiffs is informed and believes that UNITED  
2 NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or DOES  
3 currently employ, and during the liability period employed, over fifty (50) employees, all  
4 in the State of California, in positions as hourly non-exempt employees.

5 50. Accounting for employee turnover during the relevant periods increases this number  
6 substantially. Upon information and belief, Plaintiffs allege UNITED NATURAL FOODS,  
7 INC.'S; UNITED NATURAL FOODS WEST, INC.'S; and/or DOES' employment  
8 records will provide information as to the number and location of all Class members.  
9 Joinder of all members of the proposed Class is not practicable.

10 **B. Commonality.**

11 51. There are questions of law and fact common to the Class that predominate over any  
12 questions affecting only individual Class members. These common questions of law and  
13 fact include, without limitation:

14 (1) Whether UNITED NATURAL FOODS, INC.; UNITED  
15 NATURAL FOODS WEST, INC.; and/or DOES violated the Labor Code  
16 and/or applicable IWC Wage Orders in failing to pay its non-exempt  
17 workers all earned wages at the regular rate for all hours worked.

18 (2) Whether UNITED NATURAL FOODS, INC.'S; UNITED  
19 NATURAL FOODS WEST, INC.'S; and/or DOES' uniform policies  
20 and/or practices whereby non-exempt workers were pressured and/or  
21 incentivized to forego taking meal and/or rest periods.

22 (3) Whether UNITED NATURAL FOODS, INC.; UNITED  
23 NATURAL FOODS WEST, INC.; and/or DOES violated Labor Code  
24 section 226.7, IWC Wage Order No. 7-2001 or other applicable IWC Wage  
25 Orders, and/or California Code of Regulations, Title 8, section 11090, by  
26 failing to authorize, permit, and/or provide rest periods to its hourly, non-  
27 exempt employees for every four (4) hours or major fraction thereof worked  
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and/or failing to pay said employees one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period was not authorized, permitted and/or provided.

(4) Whether UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or DOES violated Labor Code section 226.7 and/or California Code of Regulations, Title 8, section 3395, by failing to authorize, permit, and/or provide recovery periods to its hourly, non-exempt employees in accordance with section 3395.

(5) Whether UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or DOES willfully failed to pay, in a timely manner, wages owed to members of the proposed Class who left UNITED NATURAL FOODS, INC.'S; UNITED NATURAL FOODS WEST, INC.'S; and/or DOES' employ or who were terminated.

(6) Whether UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or DOES violated Labor Code section 203, which provides for the assessment of a penalty against the employer, by willfully failing to timely pay all wages owed to employees who left UNITED NATURAL FOODS, INC.'S; UNITED NATURAL FOODS WEST, INC.'S; and/or DOES' employ or who were terminated.

(7) Whether UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or DOES had uniform policies and/or practices of failing to provide employees accurate and itemized wage statements.

(8) Whether UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or DOES had uniform policies and/or practices of failing to timely pay all wages owed to employees who left UNITED NATURAL FOODS, INC.'S; UNITED NATURAL FOODS

1 WEST, INC.'S; and/or DOES' employ or who were terminated.

2 52. The answer to each of these respective questions will generate a common answer capable  
3 of resolving class-wide liability in one stroke.

4 53. Said common questions predominate over any individualized issues and/or questions  
5 affecting only individual members.

6 **C. Typicality.**

7 54. The claims of the named Plaintiffs are typical of the claims of the proposed class. Plaintiffs  
8 and all members of the proposed class sustained injuries and damages arising out of and  
9 caused by UNITED NATURAL FOODS, INC.'S; UNITED NATURAL FOODS WEST,  
10 INC.'S; and/or DOES' common course of conduct in violation of laws and regulations that  
11 have the force and effect of law and statutes as alleged.

12 55. Plaintiffs CHRISTOPHER BILLINGTON AND RONALD COOKSEY were subjected to  
13 the same uniform policies and/or practices complained of herein that affected all such  
14 employees. Thus, as CHRISTOPHER BILLINGTON AND RONALD COOKSEY were  
15 subjected to the same unlawful policies and practices as all hourly non-exempt employees,  
16 their claims are typical of the class they seek to represent.

17 **D. Adequacy of Representation.**

18 56. Plaintiffs will fairly and adequately represent and protect the interests of the members of  
19 the Class.

20 57. Plaintiffs are ready and willing to take the time necessary to help litigate this case.

21 58. Plaintiffs have no conflicts that will disallow them to fairly and adequately represent and  
22 protect the interests of the members of the Class.

23 59. Counsel who represent Plaintiffs are competent and experienced in litigating large  
24 employment class actions.

25 60. Specifically, William Turley, Esq., David Mara, Esq., Jill Vecchi, Esq., and Matthew  
26 Crawford, Esq. are California lawyers in good standing.

27 61. Mr. Turley regularly lectures lawyers on wage and hour class action issues. He has been a  
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1 featured speaker on many ACI Wage and Hour Class Action presentations and Consumer  
2 Attorney of California Wage and Hour Class Action presentations.

3 62. Mr. Turley is listed as Amicus counsel on over 20 California Supreme Court decisions.

4 63. Mr. Turley and Mr. Mara wrote winning amicus briefs in two very worker friendly  
5 California Supreme Court cases: *Augustus v. ABM Security Servs.* (2016) 2 Cal.5th 257  
6 and *Williams v. Superior Court* (decided July 13, 2017).

7 64. Mr. Turley is a Past President of Consumer Attorneys of San Diego and has been elected  
8 to the Board of Governors of the Consumer Attorneys of California for over 15 years. Mr.  
9 Turley is currently on and has been a member of the Consumer Attorneys of California  
10 Amicus Curie Committee for over 20 years.

11 65. Mr. Turley has had over 100 legal articles published, including some on California Labor  
12 Code.

13 66. Mr. Turley and Mr. Mara were appointed class counsel in the landmark California Supreme  
14 Court case, *Brinker v. Superior Court* and have been appointed as class counsel in many  
15 California wage and hour cases, in both State Court and Federal Court.

16 67. Mr. Turley testified before the California Senate in a committee hearing on September 3,  
17 2015, regarding the new piece-rate bill, California Labor Code § 226.2.

18 68. On April 12, 2016 and April 20, 2016, Mr. Turley testified in front of the California Senate  
19 regarding an amendment to California Labor Code §§ 2698, *et. seq.*, the "Private Attorneys  
20 General Act" or "PAGA." Furthermore, Mr. Turley also participated in drafting the new  
21 amendment to PAGA.

22 69. The Turley & Mara Law Firm, APLC have the resources to take this case to trial and  
23 judgment, if necessary.

24 70. Mr. Turley and Mr. Mara have the experience, ability, and ways and means to vigorously  
25 prosecute this case.

26 E. Superiority of Class Action.

27 71. A class action is superior to other available means for the fair and efficient adjudication of  
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1 this controversy. Individual joinder of all Class members is not practicable, and questions  
2 of law and fact common to the Class predominate over any questions affecting only  
3 individual members of the Class. Each member of the Class has been damaged and is  
4 entitled to recovery by reason of UNITED NATURAL FOODS, INC.'S; UNITED  
5 NATURAL FOODS WEST, INC.'S; and/or DOES' illegal policies and/or practices of  
6 failing to pay all straight time and overtime wages owed, failing to permit or authorize rest  
7 periods, failing to provide meal periods, knowingly and intentionally failing to comply with  
8 wage statement requirements, and failing to pay all wages due at termination.

9 72. Class action treatment will allow those similarly situated persons to litigate their claims in  
10 the manner that is most efficient and economical for the parties and the judicial system.  
11 Plaintiffs are unaware of any difficulties that are likely to be encountered in the  
12 management of this action that would preclude its maintenance as a class action.

13 73. Because such common questions predominate over any individualized issues and/or  
14 questions affecting only individual members, class resolution is superior to other methods  
15 for fair and efficient adjudication.

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18 **IV. CAUSES OF ACTION**

19 **FIRST CAUSE OF ACTION AGAINST UNITED NATURAL FOODS, INC.;**  
20 **UNITED NATURAL FOODS WEST, INC.; AND/OR DOES: Failure to Pay All**  
21 **Straight Time Wages**

22 74. Plaintiffs and those similarly situated Class members hereby incorporate by reference each  
23 and every other paragraph in this Complaint herein as if fully plead.

24 75. Defendants and/or DOES have had a continuous policy of not paying Plaintiffs and those  
25 similarly situated for all hours worked.

26 76. It is fundamental that an employer must pay its employees for all time worked. California  
27 Labor Code sections 218 and 218.5 provides a right of action for nonpayment of wages.  
28 Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section

1 223 prohibits the pay of less than a statutory or contractual wage scale. Labor Code section  
2 1197 prohibits the payment of less than the minimum wage. Labor Code section 1194 states  
3 that an employee receiving less than the legal minimum wage is entitled to recover in a  
4 civil action the unpaid balance of the full amount of this minimum wage. Labor Code  
5 section 224 only permits deductions from wages when the employer is required or  
6 empowered to do so by state or federal law or when the deduction is expressly authorized  
7 in writing by the employee for specified purposes that do not have the effect of reducing  
8 the agreed upon wage.

9 77. Plaintiffs and those similarly situated Class members were employed by UNITED  
10 NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or DOES at  
11 all relevant times. UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS  
12 WEST, INC.; and/or DOES were required to compensate Plaintiffs for all hours worked  
13 and were prohibited from making deductions that had the effect of reducing the agreed  
14 upon wage.

15 78. Defendants and/or DOES have a continuous and consistent policy of clocking-out Plaintiffs  
16 and those similarly situated for a thirty (30) minute meal period, even though Plaintiffs and  
17 all members of the Class work through their meal periods. Thus, UNITED NATURAL  
18 FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or DOES do not pay  
19 Plaintiffs and each and every member of the Class for all time worked each and every day  
20 they work without a meal period and have time deducted.

21 79. Plaintiffs and those similarly situated Class members are informed and believe and thereon  
22 allege that UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST,  
23 INC.; and/or DOES breached the legal duty to pay full wages to Plaintiffs by deducting a  
24 portion of the wages earned when Plaintiffs' and the Class members' actual time records  
25 indicate that a meal period was not taken. UNITED NATURAL FOODS, INC.; UNITED  
26 NATURAL FOODS WEST, INC.; and/or DOES did not make reasonable efforts to  
27 determine whether the time deducted was actually worked as reported by Plaintiffs and  
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1 Class members. UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS  
2 WEST, INC.; and/or DOES, without a reasonable basis, presumed that actual reported  
3 hours had not been accurately reported. The conduct complained of is a form of what is  
4 sometimes called “dinging,” “shaving,” or “scrubbing” and is prohibited by law.

5 80. Defendants and/or DOES have a continuous and consistent policy of not paying Plaintiffs  
6 and those similarly situated for all time worked, including before Plaintiffs and those  
7 similarly situated clock in for work shifts and after they clock out after work shifts.

8 81. Defendants and/or DOES have a continuous and consistent policy of shaving the time  
9 Plaintiffs and those similarly situated work (referred to as “time shaving”).

10 82. Thus, UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.;  
11 and/or DOES shave/steal earned wages from Plaintiffs and each and every member of the  
12 Class each and every day they work. UNITED NATURAL FOODS, INC.; UNITED  
13 NATURAL FOODS WEST, INC.; and/or DOES have not paid Plaintiffs and the members  
14 of the Class all straight time wages owed.

15 83. Plaintiffs and the Class members are informed and believe and thereon allege that as a  
16 direct result of Defendants’ and/or DOES’ uniform policies and/or practices, Plaintiffs and  
17 the Class members have suffered, and continue to suffer, substantial unpaid wages, and  
18 lost interest on such wages, and expenses and attorneys’ fees in seeking to compel UNITED  
19 NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or DOES to  
20 fully perform their obligations under state law, all to their respective damage in amounts,  
21 according to proof at trial.

22 84. As a direct result of UNITED NATURAL FOODS, INC.’S; UNITED NATURAL FOODS  
23 WEST, INC.’S; and/or DOES’ policy of illegal wage theft, Plaintiffs and those similarly  
24 situated have been damaged in an amount to be proven at trial.

25 85. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described  
26 below.

27 **SECOND CAUSE OF ACTION AGAINST UNITED NATURAL FOODS, INC.;**  
28 **UNITED NATURAL FOODS WEST, INC.; AND/OR DOES: Failure to Pay All**

**Overtime Wages**

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2 86. Plaintiffs and those similarly situated Class members hereby incorporate by reference each  
3 and every other paragraph in this Complaint herein as if fully plead.

4 87. It is fundamental that an employer must pay its employees for all time worked. California  
5 Labor Code sections 218 and 218.5 provides a right of action for nonpayment of wages.  
6 Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section  
7 223 prohibits the pay of less than a statutory or contractual wage scale. Labor Code section  
8 1197 prohibits the payment of less than the minimum wage. Labor Code section 224 only  
9 permits deductions from wages when the employer is required or empowered to do so by  
10 state or federal law or when the deduction is expressly authorized in writing by the  
11 employee for specified purposes that do not have the effect of reducing the agreed upon  
12 wage.

13 88. UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or  
14 DOES failed to pay overtime when employees worked over eight (8) hours per day and  
15 when employees worked over forty (40) hours per week.

16 89. Plaintiffs and those similarly situated Class members were employed by UNITED  
17 NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or DOES at  
18 all relevant times. UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS  
19 WEST, INC.; and/or DOES were required to compensate Plaintiffs for all overtime hours  
20 worked and were prohibited from making deductions that had the effect of reducing the  
21 agreed upon wage.

22 90. UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or  
23 DOES failed to pay for the overtime that was due, pursuant to IWC Wage Order No. 7-  
24 2001, item 3(A).

25 91. Plaintiffs and the Class members are informed and believe and thereon allege that as a  
26 direct result of Defendants' and/or DOES' uniform policies and/or practices, Plaintiffs and  
27 the Class members have suffered, and continue to suffer, substantial unpaid overtime  
28 wages, and lost interest on such overtime wages, and expenses and attorneys' fees in

1 seeking to compel UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS  
 2 WEST, INC.; and/or DOES to fully perform their obligations under state law, all to their  
 3 respective damage in amounts according to proof at time of trial. UNITED NATURAL  
 4 FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or DOES committed the  
 5 acts alleged herein knowingly and willfully, with the wrongful and deliberate intention on  
 6 injuring Plaintiffs and the Class members. UNITED NATURAL FOODS, INC.; UNITED  
 7 NATURAL FOODS WEST, INC.; and/or DOES acted with malice or in conscious  
 8 disregard of Plaintiffs' and the Class Member's rights. In addition to compensation,  
 9 Plaintiffs is also entitled to any penalties allowed by law.

10 92. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described  
 11 below.

12 **THIRD CAUSE OF ACTION AGAINST UNITED NATURAL FOODS, INC.;**  
 13 **UNITED NATURAL FOODS WEST, INC.; AND/OR DOES: Failure to Provide**  
 14 **Meal Periods, or Compensation in Lieu Thereof (Lab. Code §§ 226.7, 512, IWC Wage**  
 15 **Order No. 7-2001(11); Cal. Code Regs., tit. 8, § 11090)**

15 93. Plaintiffs and those similarly situated Class members hereby incorporate by reference each  
 16 and every other paragraph in this Complaint herein as if fully plead.

17 94. Under California Labor Code section 512 and IWC Wage Order No. 7, no employer shall  
 18 employ any person for a work period of more than five (5) hours without providing a meal  
 19 period of not less than thirty (30) minutes. During this meal periods of not less than thirty  
 20 (30) minutes, the employee is to be completely free of the employer's control and must not  
 21 perform any work for the employer. If the employee does perform work for the employer  
 22 during the thirty (30) minute meal period, the employee has not been provided a meal  
 23 period in accordance with the law. Also, the employee is to be compensated for any work  
 24 performed during the thirty (30) minute meal period.

25 95. In addition, an employer may not employ an employee for a work period of more than ten  
 26 (10) hours per day without providing the employee with another meal period of less than  
 27 thirty (30) minutes.

28 96. Under California Labor Code section 226.7, if the employer does not provide an employee



1 a meal period in accordance with the above requirements, the employer shall pay the  
2 employee one (1) hour of pay at the employee's regular rate of compensation for each  
3 workday that the meal period is not provided.

4 97. UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or  
5 DOES failed to provide thirty (30) minute, uninterrupted meal periods to its Non-Exempt  
6 Employees who worked for work periods of more than five (5) consecutive hours. As such,  
7 UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or  
8 DOES non-exempt employees were required to work over five (5) consecutive hours at a  
9 time without being provided a thirty (30) minute uninterrupted meal period within that  
10 time.

11 98. UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or  
12 DOES failed to provide thirty (30) minute, uninterrupted meal periods to its Non-Exempt  
13 Employees for every five (5) continuous hours worked.

14 99. UNITED NATURAL FOODS, INC.'S; UNITED NATURAL FOODS WEST, INC.'S;  
15 and/or DOES' business model is such that Non-Exempt Employees were assigned too  
16 much work and insufficient help due to chronic understaffing to be able to take meal  
17 periods. Thus, Non-Exempt Employees are not able to take meal periods.

18 100. Throughout the statutory period, UNITED NATURAL FOODS, INC.; UNITED  
19 NATURAL FOODS WEST, INC.; and/or DOES had a pattern and practice of assigning  
20 too much work to be completed in too short of time frames, resulting in Plaintiffs and those  
21 similarly situated not being able to take meal periods.

22 101. UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or  
23 DOES would not permit Plaintiffs and the Class to take 30-minute meal periods unless  
24 specifically scheduled by Defendants and/or DOES or unless Plaintiffs and the Class were  
25 expressly told to by Defendants and/or DOES. This routinely resulted in Plaintiffs and the  
26 Class members not being able to take a meal period, if at all, until after the fifth hour.

27 102. UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or  
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1 DOES did not have a policy of providing a second meal period before the end of the tenth  
2 hour.

3 103. Failing to provide compensation for such unprovided or improperly provided meal periods,  
4 as alleged above, UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS  
5 WEST, INC.; and/or DOES willfully violated the provisions of Labor Code sections 226.7,  
6 512, and IWC Wage Order No. 7.

7 104. As a result of the unlawful acts of UNITED NATURAL FOODS, INC.; UNITED  
8 NATURAL FOODS WEST, INC.; and/or DOES, Plaintiffs and the Class they seek to  
9 represent have been deprived of premium wages, in amounts to be determined at trial, and  
10 are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees  
11 and costs, pursuant to Labor Code section 226.7, and IWC Wage Order No. 7-2001.  
12 Plaintiffs and the Class they seek to represent did not willfully waive their right to take  
13 meal periods through mutual consent with UNITED NATURAL FOODS, INC.; UNITED  
14 NATURAL FOODS WEST, INC.; and/or DOES.

15 105. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described  
16 below.

17 **FOURTH CAUSE OF ACTION AGAINST UNITED NATURAL FOODS, INC.;**  
18 **UNITED NATURAL FOODS WEST, INC.; AND/OR DOES: Failure to Authorize**  
19 **and Permit Rest Periods (Lab. Code § 226.7; IWC Wage Order No. 7-2001(12); Cal.**  
**Code Regs. Title 8 § 11090)**

20 106. Plaintiffs and those similarly situated Class members hereby incorporate by reference each  
21 and every other paragraph in this Complaint herein, as if fully plead.

22 107. Under IWC Wage Order No. 7, every employer shall authorize and permit all employees  
23 to take rest periods, "[t]he authorized rest period time shall be based on the total hours  
24 worked daily at the rate of ten (10) minutes net rest time per four (4) hours worked or major  
25 fraction thereof." IWC Wage Order 7-2001(12). The time spent on rest periods "shall be  
26 counted as hours worked for which there shall be no deduction from wages." *Id.*

27 108. Under California Labor Code section 226.7, if the employer does not provide an employee  
28 a rest period in accordance with the above requirements, the employer shall pay the

1 employee one (1) hour of pay at the employee's regular rate of compensation for each  
2 workday that the meal period is not provided.

3 109. At all relevant times, Defendants and/or DOES failed to authorize and/or permit rest period  
4 time based upon the total hours worked daily at the rate of ten (10) minutes net rest time  
5 per four (4) hours or major fraction thereof.

6 110. In the alternative, UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS  
7 WEST, INC.; and/or DOES business model was such that Non-Exempt Employees were  
8 assigned too much work with insufficient help due to chronic understaffing whereby  
9 Plaintiffs and the Class had to work through their rest periods.

10 111. Throughout the statutory period, UNITED NATURAL FOODS, INC.; UNITED  
11 NATURAL FOODS WEST, INC.; and/or DOES had a pattern and practice of assigning  
12 too much work to be completed in too short of time frames, resulting in Plaintiffs and those  
13 similarly situated not being able to take rest periods.

14 112. As a result of the unlawful acts of UNITED NATURAL FOODS, INC.; UNITED  
15 NATURAL FOODS WEST, INC.; and/or DOES, Plaintiffs and the Class they seek to  
16 represent have been deprived of premium wages, in amounts to be determined at trial, and  
17 are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees  
18 and costs, pursuant to Labor Code section 226.7, and IWC Wage Order No. 7-2001.

19 113. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described  
20 below.

21 **FIFTH CAUSE OF ACTION AGAINST UNITED NATURAL FOODS, INC.;**  
22 **UNITED NATURAL FOODS WEST, INC.; AND/OR DOES: Failure to Provide**  
23 **Recovery Periods (Lab. Code § 226.7; Cal. Code Regs. Title 8 § 3395)**

24 114. Plaintiffs and those similarly situated Class members hereby incorporate by reference each  
25 and every other paragraph in this Complaint herein, as if fully plead.

26 115. Under California Code of Regulations, Title 8, section 3395(d)(1), "[w]hen the outdoor  
27 temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and  
28 maintain one or more areas with shade at all times while employees are present that are

1 either open to the air or provided with ventilation or cooling.” Cal. Code of Reg. Title 8, §  
2 3395(d)(1). Furthermore, “[t]he amount of shade present shall be at least enough to  
3 accommodate the number of employees on recovery or rest periods, so that they can sit in  
4 a normal posture fully in the shade without having to be in physical contact with each  
5 other.” *Id.*

6 116. “Employees shall be allowed and encouraged to take a preventative cool-down rest in the  
7 shade when they feel need to do so to protect themselves from overheating.” Cal. Code of  
8 Reg. Title 8, § 3395(d)(3). “Such access to shade shall be permitted at all times.” *Id.*

9 117. UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or  
10 DOES failed to permit access to shade and preventative cool down rest and/or recovery  
11 periods to Plaintiffs and the Class members when the temperature reached eighty (80)  
12 degrees Fahrenheit. Specifically, Plaintiffs and the Class members work in Sacramento  
13 during the summer and autumn months, when temperatures frequently exceed eighty (80)  
14 degrees Fahrenheit. However, Defendants UNITED NATURAL FOODS, INC.; UNITED  
15 NATURAL FOODS WEST, INC.; and/or DOES do not allow and encourage Plaintiffs  
16 and the Class members to take preventative cool-down rest recovery periods in shaded  
17 areas when the applicable temperatures are reached. Thus, Defendants UNITED  
18 NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or DOES  
19 failed to permit, allow, or encourage Plaintiffs and the Class members to take preventative  
20 cool down recovery periods in the shade to protect against overheating when the  
21 temperature exceeds eighty (80) degrees Fahrenheit.

22 118. Defendants UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST,  
23 INC.; and/or DOES failed to utilize any alternative procedures for providing access to  
24 shade or equivalent protection to Plaintiffs and the Class members. Defendants UNITED  
25 NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or DOES  
26 failed to implement other cooling measures in lieu of shade at least as effective as shade in  
27 allowing employees to cool.

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1 119. Therefore, UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST,  
2 INC.; and/or DOES failed to provide preventative cool down rest and/or recovery periods  
3 to Plaintiffs and the Class members in accordance with California Code of Regulations,  
4 Title 8, section 3395.

5 120. As a result of the unlawful acts of UNITED NATURAL FOODS, INC.; UNITED  
6 NATURAL FOODS WEST, INC.; and/or DOES, Plaintiffs and the Class they seek to  
7 represent have been deprived of premium wages, in amounts to be determined at trial, and  
8 are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees  
9 and costs, pursuant to Labor Code section 226.7.

10 121. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described  
11 below.

12 **SIXTH CAUSE OF ACTION AGAINST UNITED NATURAL FOODS, INC.;**  
13 **UNITED NATURAL FOODS WEST, INC.; AND/OR DOES: Knowing and**  
14 **Intentional Failure to Comply with Itemized Employee Wage Statement Provisions**  
**(Lab. Code §§ 226, 1174, 1175; IWC Wage Order No. 7; Cal. Code Regs., Title 8, §**  
15 **11040)**

16 122. Plaintiffs and those similarly situated Class members hereby incorporate by reference each  
17 and every other paragraph in this Complaint herein as if fully plead.

18 123. Labor Code section 226 subdivision (a) requires Defendants and/or DOES to, inter alia,  
19 itemize in wage statements and accurately report the total hours worked and total wages  
20 earned. UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.;  
21 and/or DOES have knowingly and intentionally failed to comply with Labor Code section  
22 226, subdivision (a), on each and every wage statement provided to Plaintiffs  
23 CHRISTOPHER BILLINGTON AND RONALD COOKSEY and members of the  
24 proposed Class.

25 124. Labor Code section 1174 requires UNITED NATURAL FOODS, INC.; UNITED  
26 NATURAL FOODS WEST, INC.; and/or DOES to maintain and preserve, in a centralized  
27 location, records showing the daily hours worked by and the wages paid to its employees.  
28 UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or

1 DOES have knowingly and intentionally failed to comply with Labor Code section 1174.  
2 The failure of UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST,  
3 INC.; and/or DOES, and each of them, to comply with Labor Code section 1174 is unlawful  
4 pursuant to Labor Code section 1175.

5 125. UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or  
6 DOES failed to maintain accurate time records - as required by IWC Wage Order No. 7-  
7 2001(7), and Cal. Code Regs., Title 8 section 11090 - showing, among other things, when  
8 the employee begins and ends each work period, the total daily hours worked in itemized  
9 wage statements, total wages, bonuses and/or incentives earned, and all deductions made.

10 126. UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or  
11 DOES have knowingly and intentionally failed to provide Plaintiffs and the Class members  
12 with accurate itemized wage statements which show: "(1) gross wages earned, (2) total  
13 hours worked by the employee, . . . (4) all deductions, provided that all deductions made  
14 on written orders of the employee may be aggregated and shown as one item, (5) net wages  
15 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name  
16 of the employee and only the last four digits of his or her social security number or an  
17 employee identification number other than a social security number, (8) the name and  
18 address of the legal entity that is the employer and, if the employer is a farm labor  
19 contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal  
20 entity that secured the services of the employer, and (9) all applicable hourly rates in effect  
21 during the pay period and the corresponding number of hours worked at each hourly rate  
22 by the employee[.]" Labor Code section 226(a).

23 127. As a direct result of UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS  
24 WEST, INC.; and/or DOES unlawful acts, Plaintiffs and the Class they intend to represent  
25 have been damaged and are entitled to recovery of such amounts; plus interest thereon,  
26 attorneys' fees, and costs, pursuant to Labor Code section 226.

27 128. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described  
28

1 below.

2 **SEVENTH CAUSE OF ACTION AGAINST UNITED NATURAL FOODS, INC.;**  
3 **UNITED NATURAL FOODS WEST, INC.; AND/OR DOES: Failure to Pay All**  
4 **Wages Due at the Time of Termination from Employment (Lab. Code §§ 201-203)**

5 129. Plaintiffs and those similarly situated Class members hereby incorporate by reference each  
6 and every other paragraph in this Complaint herein as if fully plead.

7 130. Plaintiffs CHRISTOPHER BILLINGTON AND RONALD COOKSEY terminated their  
8 employment with UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS  
9 WEST, INC.; and/or DOES.

10 131. Whether Plaintiffs CHRISTOPHER BILLINGTON AND RONALD COOKSEY  
11 voluntarily or involuntarily terminated their employment with UNITED NATURAL  
12 FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or DOES, Defendants  
13 and/or DOES did not timely pay them straight time wages owed at the time of their  
14 termination.

15 132. Whether Plaintiffs CHRISTOPHER BILLINGTON AND RONALD COOKSEY  
16 voluntarily or involuntarily terminated their employment with UNITED NATURAL  
17 FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or DOES, Defendants  
18 and/or DOES did not timely pay them overtime wages owed at the time of their termination.

19 133. Whether Plaintiffs CHRISTOPHER BILLINGTON AND RONALD COOKSEY  
20 voluntarily or involuntarily terminated their employment with UNITED NATURAL  
21 FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or DOES, Defendants  
22 and/or DOES did not timely pay them meal and/or rest period premiums owed at the time  
23 of their termination.

24 134. Numerous members of the Class are no longer employed by UNITED NATURAL  
25 FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or DOES. They were  
26 either fired or quit UNITED NATURAL FOODS, INC.'S; UNITED NATURAL FOODS  
27 WEST, INC.'S; and/or DOES' employ. UNITED NATURAL FOODS, INC.; UNITED  
28 NATURAL FOODS WEST, INC.; and/or DOES did not pay all timely wages owed at the

1 time of their termination. UNITED NATURAL FOODS, INC.; UNITED NATURAL  
2 FOODS WEST, INC.; and/or DOES did not pay all premium wages owed at the time of  
3 their termination.

4 135. Labor Code section 203 provides that, if an employer willfully fails to pay, without  
5 abatement or reduction, in accordance with Labor Code sections 201, 201.5, 202 and 205.5,  
6 any wages of an employee who is discharged or who quits, the wages of the employee shall  
7 continue at the same rate, for up to thirty (30) days from the due date thereof, until paid or  
8 until an action therefore is commenced.

9 136. UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or  
10 DOES failed to pay Plaintiffs CHRISTOPHER BILLINGTON AND RONALD  
11 COOKSEY a sum certain at the time of their termination or within seventy-two (72) hours  
12 of their resignation, and have failed to pay those sums for thirty (30) days thereafter.  
13 Pursuant to the provisions of Labor Code section 203, Plaintiffs CHRISTOPHER  
14 BILLINGTON AND RONALD COOKSEY is entitled to a penalty in the amount of their  
15 daily wage, multiplied by thirty (30) days.

16 137. When Plaintiffs and those members of the Class who are former employees of UNITED  
17 NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or DOES  
18 separated from Defendants' and/or DOES' employ, Defendants and/or DOES willfully  
19 failed to pay all straight time wages, overtime wages, meal period premiums, and/or rest  
20 period premiums owed at the time of termination.

21 138. UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or  
22 DOES failure to pay said wages to Plaintiffs CHRISTOPHER BILLINGTON AND  
23 RONALD COOKSEY and members of the Class they seek to represent, was willful in that  
24 UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or  
25 DOES and each of them knew the wages to be due, but failed to pay them.

26 139. As a consequence of UNITED NATURAL FOODS, INC.'S; UNITED NATURAL  
27 FOODS WEST, INC.'S; and/or DOES' willful conduct in not paying wages owed at the  
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1 time of separation from employment, Plaintiffs CHRISTOPHER BILLINGTON AND  
2 RONALD COOKSEY and members of the proposed Class are entitled to thirty (30) days'  
3 worth of wages as a penalty under Labor Code section 203, together with interest thereon  
4 and attorneys' fees and costs.

5 140. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described  
6 below.

7 **EIGHTH CAUSE OF ACTION AGAINST UNITED NATURAL FOODS, INC.;**  
8 **UNITED NATURAL FOODS WEST, INC.; AND/OR DOES: Violation of Unfair**  
9 **Competition Law (California Bus. & Prof. Code, § 17200, et seq.)**

10 141. Plaintiffs and those similarly situated Class members hereby incorporate by reference each  
11 and every other paragraph in this Complaint herein as if fully plead.

12 142. UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or  
13 DOES failure to pay all straight time and overtime wages earned, failure to provide  
14 compliant meal and/or rest breaks and/or compensation in lieu thereof, failure to itemize  
15 and keep accurate records, failure to pay all wages due at time of termination, as alleged  
16 herein, constitutes unlawful activity prohibited by California Business and Professions  
17 Code section 17200, et seq.

18 143. The actions of UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS  
19 WEST, INC.; and/or DOES in failing to pay Plaintiffs and members of the proposed Class  
20 in a lawful manner, as alleged herein, constitutes false, unfair, fraudulent and deceptive  
21 business practices, within the meaning of California Business and Professions Code section  
22 17200, et seq.

23 144. Plaintiffs is entitled to an injunction and other equitable relief against such unlawful  
24 practices in order to prevent future damage, for which there is no adequate remedy at law,  
25 and to avoid a multiplicity of lawsuits. Plaintiffs brings this cause individually and as  
26 members of the general public actually harmed and as a representative of all others subject  
27 to UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.;  
28 and/or DOES unlawful acts and practices.

1 145. As a result of their unlawful acts, UNITED NATURAL FOODS, INC.; UNITED  
2 NATURAL FOODS WEST, INC.; and/or DOES have reaped and continue to reap unfair  
3 benefits at the expense of Plaintiffs and the proposed Class they seek to represent. UNITED  
4 NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or DOES  
5 should be enjoined from this activity and made to disgorge these ill-gotten gains and restore  
6 Plaintiffs and the members of the proposed Class pursuant to Business and Professions  
7 Code section 17203. Plaintiffs is informed and believes, and thereon alleges, that  
8 Defendants and/or DOES are unjustly enriched through their policy of not all wages owed  
9 to Plaintiffs and members of the proposed Class.

10 146. Plaintiffs is informed and believes, and thereon alleges, that Plaintiffs and members of the  
11 proposed class are prejudiced UNITED NATURAL FOODS, INC.; UNITED NATURAL  
12 FOODS WEST, INC.; and/or DOES unfair trade practices.

13 147. As a direct and proximate result of the unfair business practices of UNITED NATURAL  
14 FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or DOES, and each of  
15 them, Plaintiffs, individually and on behalf of all employees similarly situated, are entitled  
16 to equitable and injunctive relief, including full restitution and/or disgorgement of all  
17 wages and premium pay which have been unlawfully withheld from Plaintiffs and  
18 members of the proposed Class as a result of the business acts and practices described  
19 herein and enjoining UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS  
20 WEST, INC.; and/or DOES from engaging in the practices described herein.

21 148. The illegal conduct alleged herein is continuing, and there is no indication that UNITED  
22 NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or DOES  
23 will cease and desist from such activity in the future. Plaintiffs alleges that if UNITED  
24 NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST, INC.; and/or DOES are  
25 not enjoined from the conduct set forth in this Complaint, they will continue the unlawful  
26 activity discussed herein.

27 149. Plaintiffs further requests that the Court issue a preliminary and permanent injunction  
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1 prohibiting UNITED NATURAL FOODS, INC.; UNITED NATURAL FOODS WEST,  
2 INC.; and/or DOES from continuing to not pay Plaintiffs and the members of the proposed  
3 Class overtime wages as discussed herein.

4 150. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described  
5 below.

6 **V. PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs prays for judgment as follows:

- 8 A. That the Court determine that this action may be maintained as a class action;
- 9 B. For compensatory damages, in an amount according to proof at trial, with interest  
10 thereon;
- 11 C. For economic and/or special damages in an amount according to proof with interest  
12 thereon;
- 13 D. For unpaid straight time and overtime wages, in an amount according to proof at trial,  
14 with interest thereon;
- 15 E. For compensation for all time worked;
- 16 F. For compensation for not being provided paid rest breaks;
- 17 G. For compensation for not being provided paid meal periods;
- 18 H. For compensation for not being provided paid preventative cool-down recovery  
19 periods;
- 20 I. For damages and/or monies owed for failure to comply with itemized employee wage  
21 statement provisions;
- 22 J. For all waiting time penalties owed;
- 23 K. That Defendants be found to have engaged in unfair competition in violation of sections  
24 17200 et-seq. of the California Business and Professions Code;
- 25 L. That Defendants be ordered and enjoined to make restitution to the Class due to their  
26 unfair competition, including disgorgement of their wrongfully withheld wages  
27 pursuant to California Business and Professions Code sections 17203 and 17204;
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M. That an order of specific performance of all penalties owed be issued under Business and Professions Code sections 17202;

N. That Defendants be enjoined from continuing the illegal course of conduct, alleged herein;

O. That Defendants further be enjoined to cease and desist from unfair competition in violation of section 17200 et seq. of the California Business and Professions Code;

P. That Defendants be enjoined from further acts of restraint of trade or unfair competition;

Q. For attorneys' fees;

R. For interest accrued to date;

S. For costs of suit and expenses incurred herein; and


T. For any such other and further relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a jury trial.

Dated: June 19, 2018

**THE TURLEY & MARA LAW FIRM, APLC**



William Turley, Esq.

David Mara, Esq.

Representing Plaintiffs CHRISTOPHER BILLINGTON AND RONALD COOKSEY on behalf of themselves, all others similarly situated, and on behalf of the general public.

# EXHIBIT C

E-FILED  
6/18/2018 10:39 AM  
Clerk of Court  
Superior Court of CA,  
County of Santa Clara  
18CV329895  
Reviewed By: R. Walker

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6 *Attorneys for Plaintiff Richard Cortez on behalf of*  
7 *himself, and all others similarly situated*

10 SUPERIOR COURT OF CALIFORNIA  
11 COUNTY OF SANTA CLARA

12 RICHARD B. CORTEZ on behalf of himself,  
13 and all others similarly situated,

14 Plaintiffs,

15 vs.

16 UNITED NATURAL FOODS, INC.,  
17 UNITED NATURAL FOODS WEST, INC.  
18 and DOES 1 through 50, inclusive,

18 Defendants.

**18CV329895**

No.

**CLASS ACTION COMPLAINT**

Unlimited Civil Case

The Amount Demanded Exceeds \$25,000

20 Plaintiff Richard B. Cortez ("Plaintiff"), hereby alleges as follows:

21 **GENERAL ALLEGATIONS**

22 1. This class action lawsuit arises from ongoing wrongful conduct by Defendants,  
23 United Natural Foods, Inc. and United Natural Foods West, Inc. ("UNFI" or "Defendants") for  
24 its unlawful failure to (1) compensate Plaintiff and similarly situated delivery drivers for the  
25 cost of and use of their personal cell phones for work as required by California Labor Code  
26 section 2802; (2) provide Plaintiff and similarly situated delivery drivers with rest and meal  
27 breaks, and compensation for missed rest and meal breaks, in violation of California Labor  
28 Code sections 512 and 226.7, and applicable Industrial Welfare Commission Orders; (3) timely

1 pay Plaintiff, and similarly situated delivery drivers, for all hours worked and overtime  
2 compensation owed in violation of California Labor Code sections 201-204b, 510 and 1194; (4)  
3 properly calculate the regular rate of pay for Plaintiff and other similarly situated delivery  
4 drivers, and therefore pay all regular and overtime wages owed, by failing to include all  
5 remuneration in the regular rate of pay calculation, and therefore pay all wages when due in  
6 violation of California Labor Code sections 201-204b, 510 and 1194; and, (5) provide accurate  
7 wage statements as required by Labor Code section 226(a)(1)(2) and (5), for Plaintiff and other  
8 similarly situated delivery drivers, in that UNFI did not list all wages owed or hours worked,  
9 does not pay the additional hour of compensation for missed rest or meal periods, and does not  
10 properly calculate the regular rate of pay for purposes of calculating overtime compensation. In  
11 addition, for all its employees, UNFI does not list either the last four digits of the social security  
12 number or an employee identification number on Plaintiff's and other employees' wage  
13 statements in violation of Labor Code section 226(a)(7).

14 2. Plaintiff Richard B. Cortez, a resident of the State of California, brings this  
15 action pursuant to California Labor Code Sections 201-204b, 226, 226.7, 510, 512, 558, 1174,  
16 1194, 2802 and California Business and Professions Code section 17200 et. seq.; and applicable  
17 Industrial Welfare and Commission Wage Orders made pursuant to California Labor Code  
18 sections 2699, 2699.3 and 2699.5.

19 3. UNFI is in the business of the distribution of natural foods. UNFI engages in  
20 this business throughout California.

21 4. Plaintiff is ignorant of the true names and capacities of Doe Defendants 1-50,  
22 inclusive. Plaintiff sues these Defendants by such fictitious names pursuant to California Code  
23 of Civil Procedure §474. Plaintiff will seek leave of Court to amend this Complaint to identify  
24 these Defendants when their identities are ascertained. Plaintiff is informed and believe, and on  
25 that basis alleges, that each of the fictitiously named Defendants was in some manner liable and  
26 legally responsible for the damages and injuries set forth herein.

27 5. Plaintiff was employed by Defendants for over a year from June 2016 to August  
28 2017. Plaintiff worked as a delivery driver for Defendants in Gilroy, California. This action

1 seeks relief on behalf of two subclasses of persons in the employ of Defendants in California  
2 within four years preceding the filing of the action to the present comprised of the following  
3 employees:

4 a. Subclass A: Those persons employed by Defendants as delivery drivers;  
5 and,

6 b. Subclass B: Those persons employed by Defendants to whom Defendants  
7 issued wage statements.

8 6. Given Plaintiff was employed by Defendants within four years of filing this  
9 complaint and was subject to the actions/inaction of Defendants of which he complains,  
10 Plaintiff is an adequate and proper class representative. Plaintiff brings this action in his  
11 individual capacity, on behalf of all others similarly situated, as an aggrieved employee, and  
12 pursuant to California Business & Professions Code section 17204, on behalf of the general  
13 public.

14 7. As a driver for UNFI, Plaintiff and other similarly situated delivery drivers, were  
15 required to use their personal cell phones to make and receive work-related calls both from  
16 other UNFI employees and from customers of UNFI. Until approximately July 2017, UNFI did  
17 not reimburse Plaintiff, or similarly situated delivery drivers, any amount for the costs  
18 associated with the use of their personal cell phone and internet usage. In approximately July  
19 2017, UNFI changed its policy and began providing a \$20/month lump sum reimbursement to  
20 Plaintiff and other delivery drivers for their personal cell phone usage. UNFI took no measures  
21 to determine whether this reimbursement was sufficient. Given the requirements placed on  
22 Plaintiff, and the other delivery drivers, the small reimbursement provided still was not  
23 sufficient to reimburse Plaintiff and the other delivery drivers for the costs incurred to use their  
24 personal cell phones for work.

25 8. UNFI routinely required Plaintiff, and similarly situated drivers, to work shifts  
26 longer than 5 hours without providing them rest breaks or meal breaks. Throughout Plaintiff's  
27 employment at UNFI, UNFI took no action to provide Plaintiff and similarly situated drivers  
28 with rest breaks or make rest breaks available; rather, UNFI stated that there was no time for



1 such break. UNFI also knew or should have known that its drivers worked through meal and  
2 rest periods, because the delivery locations and schedules informed UNFI of their various  
3 timing requirements on unloading goods. As a consequence, Plaintiff and similarly situated  
4 drivers would routinely work greater than six hours without a meal or rest break. During  
5 Plaintiff's employment, UNFI did not ask Plaintiff, or similarly situated employees, to sign  
6 meal period waivers.

7 9. UNFI also did not pay an additional hour of compensation if Mr. Cortez and  
8 those similarly situated delivery drivers were not provided with an actual meal or rest break.  
9 Further, as UNFI did not keep accurate records reflecting employees' actual meal breaks, and  
10 did not pay for the additional hour of compensation when drivers did not receive required rest  
11 and meal breaks, UNFI failed to provide accurate wage statements, in that it did not list all  
12 compensation on the wage statements and failed to pay all compensation owed as required by  
13 Labor Code sections 201, 202, 203, 204, and 204b.

14 10. During the last part of Plaintiff's employment, UNFI paid Plaintiff, and similarly  
15 situated delivery drivers for all hours worked, and overtime compensation due, and reflected  
16 such on the wage statements. During the initial part of Plaintiff's employment, however, UNFI  
17 did not do so. During the initial part of Plaintiff's employment, UNFI did not pay Plaintiff, and  
18 similarly situated delivery drivers, for all hours worked, or overtime compensation owed. As a  
19 result, Plaintiff, and similarly situated delivery drivers did not receive compensation for all  
20 hours worked and overtime compensation owed, as they routinely worked more than 8 hours a  
21 day and 40 hours a week and received no additional compensation. At all time periods, UNFI  
22 did not include all remuneration when calculating the regular rate of pay. Plaintiff, and other  
23 similarly situated drivers, routinely received driver bonuses. UNFI did not include this amount  
24 in the regular rate of pay, thereby paying inaccurate overtime rates to the delivery drivers.  
25 Because of Defendant's failure to pay for all hours worked, and overtime compensation owed,  
26 and failure to pay the correct overtime rate, UNFI failed to provide Plaintiff and those similarly  
27 situated employees with accurate wage statements in violation of Labor Code section 226. For  
28 the delivery drivers, the wage statements violated Labor Code sections 226(a)(1)(2) and (5).

1 With respect to all employees, UNFI did not list either the last four digits of the employees'  
2 social security number or an employee identification number on the wage statements in  
3 violation of Labor Code section 226(a)(7).

4 11. Plaintiff is informed and believes that the damages, back-wages, restitution,  
5 penalties, interest and attorneys' fees do not exceed an aggregate of \$4,999,999.99 and that  
6 Plaintiff's individual claims do not exceed \$74,999.99.

7 12. The proposed class is sufficiently numerous and the proposed class members are  
8 geographically dispersed throughout California, the joinder of whom in one action is  
9 impracticable, such that the disposition of those claims in a class action will provide substantial  
10 benefits to both the parties and the Court.

11 13. There is a well-defined community of interest in the questions of law and fact  
12 involved affecting the parties to be represented. The questions of law and fact common to  
13 Subclass A, the delivery drivers, predominate over questions that may affect individual class  
14 members. These questions include, but are not limited to, the following:

- 15 (a) Whether UNFI implemented and engaged in a practice whereby it unlawfully  
16 failed to reimburse Plaintiff and other delivery drivers for work-related expenses  
17 as required by law;
- 18 (b) Whether UNFI implemented and engaged in a systematic practice whereby it  
19 unlawfully failed to provide meal periods to Plaintiff and other delivery drivers as  
20 required by law and failed to pay Plaintiff and other delivery drivers **compensation**  
21 for the lack of meal periods;
- 22 (c) Whether UNFI implemented and engaged in a systematic practice whereby it  
23 unlawfully failed to provide rest periods to Plaintiff other delivery drivers as  
24 required by law and failed to pay class members compensation to Plaintiff and  
25 other delivery drivers for the lack of rest periods;
- 26 (d) Whether UNFI implemented and engaged in a practice whereby it failed to pay  
27 Plaintiff, and other delivery drivers, for all hours worked and overtime pay due;  
28

1 (e) Whether UNFI implemented and engaged in a practice whereby it failed to include  
2 all remuneration in the calculation of the regular rate of pay, thereby failing to pay  
3 Plaintiff and other delivery drivers all earned regular and overtime pay;

4 (f) Whether the acts and practices of UNFI as alleged herein violated, inter alia,  
5 applicable provisions of the California Labor Code, including but not limited to  
6 sections 201, 202, 203, 204, 204b, 226, 226.7, 510, 512, 558, 1174, 1194, 2802,  
7 and 2698, et seq., and applicable Industrial Welfare Commission Orders, and  
8 California Business & Professions Code section 17200, et seq.

9 The questions of law and fact common to Subclass B predominate over questions that  
10 may affect individual class members. These questions include, but are not limited to, the  
11 following:

12 (a) Whether UNFI implemented and engaged in a practice whereby it failed to  
13 provide accurate and compliant wage statements to Plaintiff and other  
14 employees, in that UNFI failed to show the last four digits of employees' social  
15 security numbers, or an employee identification number, on wage statement;

16 (b) Whether the acts and practices of UNFI as alleged herein violated, inter alia,  
17 applicable provisions of the California Labor Code, including but not limited to  
18 sections 226 and 2698, et seq., and applicable Industrial Welfare Commission  
19 Orders, and California Business & Professions Code section 17200, et seq.

20 14. Because Defendant required Plaintiff to incur work-related expenses without  
21 reimbursement, failed to provide Plaintiff with rest or meal periods, or compensation for missed  
22 meal or rest periods, failed to pay Plaintiff for all hours worked and overtime compensation  
23 owed, failed to include all remuneration in the regular rate of pay calculation for Plaintiff, and  
24 failed to provide Plaintiff with accurate wage statements as required by the California Labor  
25 Code, Plaintiff asserts claims in accord with the claims of both Subclasses.

26 15. Plaintiff will fairly and adequately represent and protect the interests of the  
27 proposed class members in that he has no disabling conflict of interest that would be  
28 antagonistic to those of the other members of the proposed Subclasses. Plaintiff retained

1 counsel who are competent and experienced in the prosecution of class action wage and hour  
2 violations.

3 16. Because Plaintiff and the members of the proposed Subclasses all similarly  
4 suffered irreparable harm and damages as a result of UNFI's unlawful and wrongful conduct,  
5 class treatment is especially appropriate and this action will provide substantial benefits to both.  
6 Absent this action, UNFI's unlawful conduct will continue unremedied and uncorrected.

7 **FIRST CAUSE OF ACTION**

8 **(Violation of California Labor Code § 2802)**

9 **(Subclass A)**

10 17. Plaintiff, and members of the proposed Subclasses, reallege and incorporate by  
11 reference the allegations contained in the foregoing paragraphs as if fully set forth herein.

12 18. California Labor Code section 2802 provides that an employer "shall indemnify  
13 his or her employee for all necessary expenditures or losses incurred by the employee in direct  
14 consequence of the discharge of his or her duties, . . ."

15 19. Plaintiff, and other delivery drivers, used their personal cell phones to make and  
16 receive work-related calls. UNFI either did not reimburse Plaintiff, and other delivery drivers,  
17 for any of the costs of using their personal cell phones for work or provide inadequate  
18 reimbursement.

19 20. Plaintiff, and other delivery drivers, have suffered damages as a direct  
20 consequence of UNFI's failure to comply with Labor Code section 2802 and they seek  
21 reimbursement for the expenditures they incurred in direct consequence of the discharge of their  
22 duties in an amount according to proof at time of trial with interest thereon, costs, applicable  
23 civil penalties and attorney's fees as set forth below.

24 21. Plaintiff and proposed members of Subclass A are therefore entitled to the relief  
25 requested below.

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**SECOND CAUSE OF ACTION**

**(Failure To Provide Rest And Meal Breaks As Required by Labor Code Sections 226.7 And 512 And Applicable Wage Orders)**

**(Subclass A)**

22. Plaintiff and the proposed Subclass members incorporate by reference the allegations contained in the foregoing paragraphs of this complaint as if fully set forth herein.

23. During all relevant periods, UNFI failed to take any action to provide Plaintiff and other delivery drivers with rest or meal breaks. UNFI likewise did not pay Plaintiff or other delivery drivers an additional hour of compensation if Plaintiff or the other delivery drivers did not receive the required rest and meal breaks. This failure violated California Labor Code sections 226.7 and 512. Given these failures, UNFI also did not provide Plaintiff and the other delivery drivers with accurate wage statements, in that the wage statements did not set forth all compensation earned in violation of California Labor Code section 226.

24. As a result of UNFI’s failures, Plaintiff and the other delivery drivers are entitled to recover the additional hour of compensation as set forth in California Labor Code section 226.7 and damages and penalties as allowed under section 226, and other applicable Labor Code provisions.

25. Plaintiff and the members of the proposed Subclasses members are therefore entitled to the relief requested below.

**THIRD CAUSE OF ACTION**

**(Failure to Provide Accurate, Itemized Wage Statements Labor Code Section 226(a))**

**(Subclasses A & B)**

26. Plaintiff and members of the proposed Subclasses reallege and incorporate by reference the allegations contained in the foregoing paragraphs as if fully set forth herein.

27. Labor Code section 226(a) provides that employers shall provide accurate itemized statements showing, among other things, “gross wages earned,” “total hours worked,” “net wages earned,” and “the name of the employee and only the last four digits of his or her

1 social security number or an employee identification number other than a social security  
2 number.”

3 28. UNFI failed to provide timely, accurate, itemized wage statements to Plaintiff,  
4 and those members of proposed Subclasses A & B, in accordance with Labor Code section  
5 226(a). In particular, with respect to Subclass A, the wage statements UNFI provided Plaintiff,  
6 and the other delivery drivers, do not accurately reflect the actual gross or net wages earned and,  
7 for part of the class period, did not reflect all hours worked. The wage statements were also  
8 inaccurate because UNFI did not pay the additional hour of compensation for missed rest or  
9 meal breaks or properly calculate the regular rate of pay thereby inaccurately calculating  
10 overtime compensation. With respect to Subclass B, UNFI did not set forth either the  
11 employees’ last four digits of their social security numbers of employee identification number  
12 in violation of Labor Code section 226(a)(7).

13 29. UNFI’s failure to comply with Labor Code section 226(a) was, and continues to  
14 be, knowing and intentional. Although, as alleged herein, UNFI was aware that, for part of the  
15 pertinent time period, that Plaintiff, and the other delivery drivers, worked hours for which they  
16 received no regular or overtime compensation and these hours were not listed on wage  
17 statements, and for the entire proposed class period Plaintiff and other similarly situated deliver  
18 drivers did not receive meal and rest breaks, or compensation for same, and the regular rate of  
19 pay did not include all remuneration for delivery drivers, UNFI systematically failed to include  
20 this information on the wage statements. UNFI was also aware that the employees’ last four  
21 digits of their social security numbers, or employee identification numbers, do not appear on  
22 wage statements. As a result, Plaintiff, and those similarly situated in both Subclasses A & B,  
23 suffered actual damages.

24 30. Defendant is liable to Plaintiff, and those in both Subclasses A & B, for all  
25 recovery allowed pursuant to Labor Code sections 226(e) and 226.3, with interest thereon, and  
26 penalties as provided in the Labor Code. Furthermore, Plaintiffs and the proposed subclasses  
27 are entitled to an award of attorneys’ fees and costs as set forth below.

28 31. Plaintiff and Subclass members are therefore entitled to the relief requested below.

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**FOURTH CAUSE OF ACTION**

**(Failure to Pay Regular and Overtime Wages Pursuant to Labor Code Sections 510, 558, and 1194)**

**(Subclass A)**

32. Plaintiff and members of the proposed Subclasses reallege and incorporate by reference the allegations contained in the foregoing paragraphs as if fully set forth herein.

32. During portions of the relevant time period, UNFI did not pay Plaintiff, and other similarly situated delivery drivers, for all hours worked or overtime compensation due. Defendant required Plaintiff and other delivery drivers to work in excess of 8 hours per day and 40 hours per week but did not provide regular or overtime compensation for the additional hours for the work performed. In addition, UNFI did not include all remuneration when calculating the regular rate of pay, thereby not paying the accurate overtime rate when it did pay overtime compensation.

33. During all relevant periods, both the California Labor Code and the pertinent Industrial Welfare Commission Wage Orders required that employers pay employees for all hours worked and that all work performed by an employee in excess of 8 hours per day and 40 hours per week be compensated at no less than one and one-half times the employee's regular rate of pay. UNFI failed to pay for all hours worked and failed to pay overtime wages for all overtime hours worked and failed to include all compensation when calculating the regular rate of pay and overtime rates of pay, and therefore failed to compensate Plaintiff, and other similarly situated delivery drivers, for all hours they worked. As a result, UNFI failed to pay Plaintiff, and similarly situated employees, earned regular and overtime wages, failed to properly calculate overtime compensation, and failed to provide Plaintiff and similarly situated delivery drivers with accurate wage statements as required by California Labor Code sections 226 and keep records as required by section 1174. Plaintiff and Subclass A members are entitled to recover their unpaid regular and overtime compensation and penalties arising therefrom.

34. Plaintiff and Subclass members are therefore entitled to the relief requested below.

**FIFTH CAUSE OF ACTION**

**(Failure to Pay Wages When Due Pursuant to California Labor Code §§ 201, 202, 203, 204, 204b)**

**(Subclass A)**

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4 35. Plaintiff and members of the proposed Subclasses reallege and incorporate by  
5 reference the allegations contained in the foregoing paragraphs as if fully set forth herein.

6 36. During all relevant periods, California Labor Code section 204 required that:  
7 “labor” performed by a semi-monthly paid employee shall be paid for no later than between the  
8 16<sup>th</sup> and the 26<sup>th</sup> of the month for labor performed between the 1<sup>st</sup> and the 15<sup>th</sup> of the month or  
9 between the 1<sup>st</sup> and the 10<sup>th</sup> day of the following month for labor performed between the 16<sup>th</sup>  
10 and the last day of the month. Labor Code section 204b also provides that “labor” performed by  
11 a weekly employee during any calendar week, and prior to or on the regular payday shall be  
12 paid for not later than the regular payday of the employer for such weekly-paid employer.  
13 Labor Code section 200 states that “‘wages’ includes all amounts for labor performed by  
14 employees of every description...” and “‘labor’ includes labor, work, or service whether  
15 rendered or performed under contract...or other agreement if the labor to be paid for is  
16 performed personally by the person demanding payment.”

17 37. For portions of the pertinent time period, Plaintiff, and those similarly situated  
18 delivery drivers, were required to work in excess of 8 hours in a day and 40 hours a week for  
19 which UNFI did not pay compensation. In addition, UNFI did not pay the additional hour of  
20 compensation when Plaintiff and those similarly situated delivery drivers did not get rest or  
21 meal breaks. UNFI also did not include all remuneration when calculating the regular rate of  
22 pay for purposed of determining the appropriate rate of pay for overtime hours worked.  
23 Because of these failures, UNFI did not timely pay all wages due as required by Labor Code  
24 sections 204 and 204b and did not pay all wages due upon termination for in violation of  
25 California Labor Code sections 201, 202 and 203.

26 38. Plaintiff and Subclass members are therefore entitled to the relief requested below.  
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**SIXTH CAUSE OF ACTION**

**(Unlawful, Unfair and Fraudulent Business Practices Pursuant To Business & Professions Code Section 17200, et seq.)**

**(Subclasses A & B)**

39. Plaintiff and members of the proposed Subclasses reallege and incorporate by reference the allegations contained in the foregoing paragraphs as if fully set forth herein.

40. California Business & Professions Code section 17200, et seq. prohibits acts of unfair competition, which shall mean and include any “unlawful business act or practice.”

41. The policies, acts and practices heretofore described were and are unlawful business acts or practices because UNFI failed to pay regular and overtime wages at the lawful rate, failed to pay wages for regular and overtime hours worked, failed to provide accurate and timely wage statements, and failed to reimburse employees for costs associated with performing their jobs in violation of applicable Labor Code sections, including but not limited to California Labor Code sections 201-204b, 226, 226.7, 510, 512, 558, 1174, 1194, 2802, applicable Industrial Welfare Commission Wage Orders, the Labor Code Private Attorney General Act of 2004 (“PAGA”), California Labor Code section 2698, et seq., and other provisions of California common and/or statutory law. Plaintiff reserves the right to allege additional statutory and common law violations by Defendants. Such conduct is ongoing to this date.

42. The policies, acts or practices described herein were and are an unfair business act or practice because any justifications for UNFI’s illegal and wrongful conduct were and are vastly outweighed by the harm such conduct caused Plaintiff, the proposed class members, and the members of the general public. Such conduct is ongoing to this date.

43. Plaintiff and Subclass members are therefore entitled to the relief requested below.

**SEVENTH CAUSE OF ACTION**

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

**(Subclasses A & B)**

44. Plaintiff and members of the proposed Subclasses reallege and incorporate by reference the allegations contained in the foregoing paragraphs as if fully set forth herein.



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- 5. Costs of this suit;
- 6. Pre- and post-judgment interest.

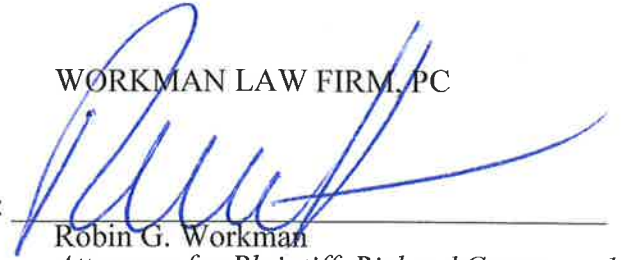
**JURY DEMAND**

Plaintiff hereby demands a trial by jury.

Date: June 15, 2018

WORKMAN LAW FIRM, PC

By:




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Robin G. Workman  
Attorneys for Plaintiff, Richard Cortez, and  
all others similarly situated

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11 Attorneys for Defendants

12 UNITED NATURAL FOODS, INC.  
UNITED NATURAL FOODS WEST, INC.

13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA  
15

16 SALVADOR GUERRA, individually  
and on behalf of other members of the  
17 general public similarly situated and on  
behalf of other aggrieved employees  
18 pursuant to the California Private  
Attorneys General Act,

19 Plaintiff,

20 v.

21 UNITED NATURAL FOODS, INC., an  
22 unknown business entity; UNITED  
NATURAL FOODS WEST, INC., a  
23 California corporation; UNFI, an  
unknown business entity; and DOES 1  
24 through 100, inclusive,

25 Defendants.  
26

Case No. 5:18-cv-02382

**DECLARATION OF LYNN  
KASSAB IN SUPPORT OF  
DEFENDANTS' NOTICE OF  
REMOVAL**

1 I, Lynn Kassab, declare under penalty of perjury and pursuant to 28 U.S.C.  
2 § 1746, that the following is true and correct:

3 1. I am the Director of Legal and Regulatory Affairs for Defendant  
4 United Natural Foods, Inc. ("UNFI") and my office is located at 313 Iron Horse  
5 Way in Providence, Rhode Island.

6 2. I am authorized to execute this declaration and am competent to testify  
7 as to the matters contained in it based on my personal knowledge.

8 3. I have information regarding UNFI's corporate status and office  
9 locations by virtue of my position as Director of Legal and Regulatory Affairs. In  
10 that position, I have learned that UNFI is a corporation organized and existing  
11 under and by virtue of the laws of the State of Delaware. UNFI is the parent  
12 company of Defendant United Natural Foods West, Inc.

13 4. UNFI's corporate headquarters and principal place of business is in the  
14 State of Rhode Island. The majority of UNFI's corporate books and records are  
15 located in Rhode Island at its corporate headquarters and the majority of its  
16 executive and administrative functions (including but not limited to operations,  
17 corporate finance, accounting, human resources, payroll, marketing, legal, and  
18 information systems) have been performed at UNFI's corporate headquarters in  
19 Rhode Island.

20 5. UNFI's corporate executives (including but not limited to its chief  
21 executive officer, chief financial officer, and corporate secretary) work out of  
22 UNFI's Rhode Island headquarters and its corporate activities are directed,  
23 controlled, and coordinated from there.

24 I declare under penalty of perjury under the laws of the United States that the  
25 foregoing is true and correct.

26 Executed on November 8, 2018 at Providence, RI.

27  
28   
Lynn Kassab

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10 Attorneys for Defendants

11 UNITED NATURAL FOODS, INC.  
12 UNITED NATURAL FOODS WEST, INC.

13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA

15  
16 SALVADOR GUERRA, individually  
and on behalf of other members of the  
17 general public similarly situated and on  
behalf of other aggrieved employees  
18 pursuant to the California Private  
Attorneys General Act,

19 Plaintiff,

20 v.

21 UNITED NATURAL FOODS, INC., an  
22 unknown business entity; UNITED  
NATURAL FOODS WEST, INC., a  
23 California corporation; UNFI, an  
unknown business entity; and DOES 1  
24 through 100, inclusive,

25 Defendants.  
26

Case No. 5:18-cv-02382

**DECLARATION OF ANNE-  
MARIE MOSHER IN SUPPORT  
OF DEFENDANTS' NOTICE  
OF REMOVAL**

1 I, Anne-Marie Mosher, declare, under penalty of perjury and pursuant to 28  
2 U.S.C. § 1746, that the following is true and correct:

3 1. I am the National Payroll Services Manager for Defendant United  
4 Natural Foods, Inc. (“UNFI”) and its subsidiaries, and my office is located at 1  
5 Albion Road in Lincoln, Rhode Island.

6 2. I am authorized to execute this declaration and am competent to testify  
7 as to the matters contained in it based on my personal knowledge.

8 3. I have been UNFI’s National Payroll Services Manager for more than  
9 eight years. As part of my duties, I have access to payroll and Human Resources  
10 data, including ADP Enterprise, Version 5 and ADP e-Time, Version 6 for  
11 Defendant UNFI and Defendant United Natural Foods West, Inc. (“Defendants”).  
12 Using this data, which includes employee dates of employment, names, position,  
13 classification, termination date (if applicable), and final pay rate, I compiled and  
14 reviewed a summary report for all employees employed in California from  
15 September 13, 2014 through September 13, 2018 in positions classified as non-  
16 exempt.

17 4. Based on my review of the data, 3,925 non-exempt employees were  
18 employed in California from September 13, 2014 through September 13, 2018. At  
19 least 1,178 non-exempt California employees terminated their employment between  
20 September 13, 2015 through September 13, 2018. During this three-year period,  
21 separated non-exempt employees had an average final hourly pay rate of  
22 approximately \$17.35.

23 5. Defendants’ non-exempt, employees have been paid weekly since  
24 January 13, 2017.

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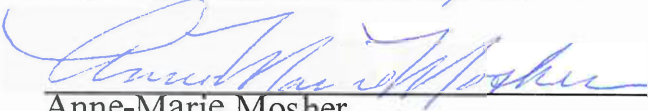
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6. During the one-year period of September 13, 2017 to September 13, 2018, Defendants issued weekly wage statements 53 times. During this period, the highest number of weekly wage statements Defendants issued to non-exempt California employees was 1,824 and the lowest number was 1,085.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on November 8, 2018 at 1250N RD. LINCOLN, RI.

  
\_\_\_\_\_  
Anne-Marie Mosher



# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Wage and Hour Suit Against United Natural Foods Removed to Federal Court](#)

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