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Attorneys for Defendant  
JO-ANN STORES, LLC.

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

BOBBY RAY MCCOY, on behalf of himself  
and others similarly situated,

Plaintiff,

vs.

JO-ANN STORES, LLC., and DOES 1 through  
50, inclusive,

Defendants.

Case No. 4:20-cv-4566

**DEFENDANT'S NOTICE OF REMOVAL  
OF CIVIL ACTION TO FEDERAL COURT**

*[concurrently filed with civil cover sheet;  
certification of interested parties; and  
declaration of Jill Ingram]*

Action Filed: May 11, 2020  
FAC Filed: June 9, 2020  
Trial Date: None

**TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT  
OF CALIFORNIA AND TO PLAINTIFF AND HIS COUNSEL OF RECORD:**

**PLEASE TAKE NOTICE THAT** defendant JO-ANN STORES, LLC. ("Defendant" or  
"JAS") removes this action from the Superior Court of the State of California for the County of  
Alameda, to the United States District Court for the Northern District of California pursuant to 28  
U.S.C. §§ 1332, 1441, 1446, and 1453. As discussed below, this Court has original jurisdiction  
over this matter pursuant to the Class Action Fairness Act ("CAFA").

**I. PROCEDURAL BACKGROUND**

1. On or about May 11, 2020, Plaintiff BOBBY RAY MCCOY ("Plaintiff") filed his  
Class Action Complaint for Damages ("Complaint") in the Superior Court of the State of  
California, County of Alameda, entitled *Bobby Ray McCoy v. Jo-Ann Stores, LLC.*, which was  
assigned case number RG20061158 (the "State Court Action"). A true and correct copy of the

1 Complaint is attached as **Exhibit A** to this Notice of Removal. The Complaint alleges seven  
2 causes of action: (1) Failure to Pay Lawful Wages Owed (Labor Code §§ 510, 1194); (2) Failure  
3 to Provide Lawful Meal Periods or Compensation in Lieu Thereof (Labor Code §§226.7, 512 and  
4 IWC Wage Orders); (3) Failure to Provide Lawful Rest Periods or Compensation in Lieu Thereof  
5 (Labor Code §§226.7 and IWC Wage Orders); (4) Failure to Timely Pay Wages (Labor Code  
6 §§201-203, 227.3); (5) Knowing and Intentional Failure to Comply with Itemized Employee Wage  
7 Statement Provisions (Labor Code §226); (6) Failure to Indemnify Employees (Labor Code  
8 §2802); and (7) Violations of Unfair Competition Law (Business and Professions Code §§17200-  
9 17208). A true and correct copy of the Civil Case Cover Sheet filed by Plaintiff is attached hereto  
10 as **Exhibit B**.

11 2. On June 9, 2020, Plaintiff served Defendant with a copy of the Complaint, as well  
12 as other documents filed in the State Court Action. A true and correct copy of the Summons is  
13 attached hereto as **Exhibit C** and a true and correct copy of the Proof of Service of Summons is  
14 attached hereto as **Exhibit D**.

15 3. On June 9, 2020, Plaintiff filed a First Amended Complaint (“FAC”) for this matter.  
16 On June 12, 2020 Plaintiff served the FAC upon Defendant. A true and correct copy of the FAC is  
17 attached as **Exhibit E** to this Notice of Removal. The FAC alleges eight causes of action: (1)  
18 Failure to Pay Lawful Wages Owed (Labor Code §§ 510, 1194); (2) Failure to Provide Lawful  
19 Meal Periods or Compensation in Lieu Thereof (Labor Code §§226.7, 512 and IWC Wage Orders);  
20 (3) Failure to Provide Lawful Rest Periods or Compensation in Lieu Thereof (Labor Code §§226.7  
21 and IWC Wage Orders); (4) Failure to Timely Pay Wages (Labor Code §§201-203, 227.3); (5)  
22 Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions  
23 (Labor Code §226); (6) Failure to Indemnify Employees (Labor Code §2802); (7) Violations of  
24 Unfair Competition Law (Business and Professions Code §§17200-17208); and (8) the Private  
25 Attorneys General Act (“PAGA”) (Labor Code §§2699 *et seq.*).

26 4. On July 8, 2020, Defendant filed its Answer to Plaintiff’s FAC for Damages. A true  
27 and correct copy of the answer is attached hereto as **Exhibit F**.

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5. Plaintiff has not yet identified any of the fictitious “Doe” defendants identified in the First Amended Complaint and the citizenship of “Doe” defendants is disregarded for the purposes of removal. 28 U.S.C. § 1441(a); *McCabe v. Gen. Foods Corp.*, 811 F.2d 1336, 1339 (9th Cir. 1987).

## **II. TIMELINESS OF REMOVAL**

6. A defendant in a civil action has thirty (30) days from the date it is served with a summons and complaint in which to remove the action to federal court. 28 U.S.C. § 1446(b); *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (1999). As Defendant’s registered agent for service of process were served with the summons and Plaintiff’s original Complaint on June 9, 2020, this Notice of Removal is timely. 28 U.S.C. § 1446(b), *see* Fed. R. Civ. P. 6(a)(1)(C); *Fleming v. United Teacher Assocs. Ins. Co.*, 250 F. Supp. 2d 658, 661 (S.D. W.Va. 2003) (removal petition was timely where 30th day after service fell on Thanksgiving and removal petition was filed the following day); *Johnson v. Harper*, 66 F.R.D. 103, 104-105 (E.D. Tenn. 1975) (removal was timely where 30th day after service fell on a Saturday and removal was filed the following Monday).

## **III. JURISDICTION UNDER THE CLASS ACTION FAIRNESS ACT**

7. This action is one over which this Court has original jurisdiction under CAFA and is one which may be removed by Defendant pursuant to 28 U.S.C. §§ 1441 and 1453, because the number of potential class members exceeds 100, the parties are citizens of different states, and the amount in controversy exceeds the aggregate value of \$5,000,000. *See* 28 U.S.C. §§ 1332(d)(2) and (d)(6).<sup>1</sup>

### **A. The Size of the Putative Class Exceeds 100 Members**

8. In his Complaint and FAC, Plaintiff defines the proposed class as follows: “All persons who are employed or have been employed by Defendants in the state of California and who are/were not classified as “Exempt” or primarily employed in executive, professional, or

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<sup>1</sup> Defendant is the only named defendant in this matter and, thus, there are no other defendants to consent to removal. Furthermore, an action may be removed by a single defendant under CAFA without the consent of the other defendants. *See* 28 U.S.C. § 1453(a).

administrative capacities and who occupied positions of ‘keyholder’, ‘assistant manager’ or similar positions within four (4) years prior to the date this lawsuit is filed... until resolution of this lawsuit.” Ex. A, F ¶ 21.

9. Defendant’s employment records show that there are over 9,000 current and former employees of Defendant. (Declaration of Jill Ingram (“Ingram Decl.”), ¶ 4.)

10. Accordingly, the CAFA numerosity requirement is fulfilled because there are more than 100 class members implicated in Plaintiff’s Complaint and FAC. 28 U.S.C. § 1332(d).

**B. The Diversity of Citizenship Requirement is Satisfied**

11. The minimal diversity requirement of 28 U.S.C. § 1332(d) is met in this action because the Court need only find that there is diversity between one putative class member and one defendant. 28 U.S.C. §§ 1332(d)(2), 1332(d)(5)(B), 1453(a).

12. Citizenship of Defendant. For diversity purposes, a limited liability company is a citizen of every state of which its members are citizens. *Johnson v. Columbia Properties Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006) (“We therefore join our sister circuits and hold that, like a partnership, an LLC is a citizen of every state of which its owners/members are citizens.”). Defendant JAS, an Ohio Limited Liability Company only has one member, Needle Holdings LLC, which was formed under the laws of the state of Delaware. In turn, Needle Holdings LLC only has one member, Jo-Ann Stores Holdings Inc., which was incorporated under the laws of the state of Delaware and does not have a principal place of business as a mere holding company. (Ingram Decl. ¶ 3.) Accordingly, JAS is a citizen of Delaware for purposes of diversity jurisdiction. (*Id.*).

13. Citizenship of Plaintiff. For diversity purposes, an individual is a “citizen” of the state in which he is domiciled. *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). An individual’s domicile is the place he resides with the intention to remain or to which he intends to return. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001). The Complaint and FAC alleges that “Plaintiff is, and at all times mentioned in this complaint was, a resident of California.” Ex. A, F at ¶ 6. Likewise, Defendant’s employment records confirm that

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throughout his employment with Defendant, Plaintiff has provided a California home address. Thus, Plaintiff is a citizen of the State of California.

14. Members of the proposed class, who by definition are or were employed in California, are presumed to be primarily citizens of the State of California. *See, e.g., Lew v. Moss*, 797 F.2d 747, 750 (9th Cir. 1986) (“place of employment” an important factor weighing in favor of citizenship). Thus, even if Plaintiff were somehow a citizen of Illinois or Delaware (and there is no evidence that she is), there is no possible way that the hundreds of putative class members, all of whom worked in California (Ex. A, F, ¶ 13), were also citizens of Illinois or Delaware.

15. Accordingly, the minimal diversity requirement of 28 U.S.C. 1332(d) is met in this action because Defendant is a citizen of Delaware and Illinois while Plaintiff, a putative class member, is a citizen of California.

**C. The Amount in Controversy Exceeds an Aggregate of \$5,000,000**

16. Plaintiff has not alleged a specific amount in controversy in the Complaint and FAC. In order to remove a class action pursuant to CAFA, the amount in controversy must exceed \$5,000,000, and it is the removing party’s burden to establish, “by a preponderance of evidence, that the aggregate amount in controversy exceeds the jurisdictional minimum.” *Rodriguez v. AT&T Mobility Servs. LLC*, 728 F.3d 975, 981 (9th Cir. 2013). To do so, the removing defendant must “produce underlying facts showing only that it is *more likely than not* that the amount in controversy exceeds \$5,000,000.00, assuming the truth of the allegations plead in the Complaint.” *Muniz v. Pilot Travel Ctrs. LLC*, No. CIV.S-07-0325 FCD EFB, 2007 WL 1302504, at \*5 (E.D. Cal. May 1, 2007) (emphasis in original).

17. In considering the evidence submitted by the removing defendant, the Court must “look beyond the complaint to determine whether the putative class action meets the [amount in controversy] requirements” adding “the potential claims of the absent class members” and attorneys’ fees. *Rodriguez*, 728 F.3d at 981 (citing *Standard Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345 (2013)); *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 705 (9th Cir. 2007). Furthermore, “[i]n considering whether the amount in controversy is clear from the face of the complaint, a court must assume that the allegations of the complaint are true and that a jury will

1 return a verdict for the plaintiff on all claims made in the complaint.” *Altamirano v. Shaw Indus.*,  
2 *Inc.*, No. C-13-0939 EMC, 2013 WL 2950600, at \*4 (N.D. Cal. June 14, 2013) (citing *Korn v. Polo*  
3 *Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1205 (E.D. Cal. 2008)); *see also Muniz*, 2007 WL  
4 1302504, at \*3.

5 18. Moreover, there is no antiremoval presumption for cases invoking the CAFA. *Arias*  
6 *v. Residence Inn by Marriott*, 936 F.3d 920, 922 (9th Cir. 2019). Three principles must apply to  
7 CAFA removals. First, a removing defendant’s notice of removal “need not contain evidentiary  
8 submissions” but only plausible allegations of the jurisdictional elements. *Id.* (quoting *Ibarra v.*  
9 *Manheim Investments, Inc.*, 775 F.3d 1193, 1197 (9th Cir. 2015)). “Second, when a defendant’s  
10 allegations of removal jurisdiction are challenged, the defendant’s showing on the amount in  
11 controversy may rely on reasonable assumptions. *Id.* “Third, when a statute or contract provides  
12 for the recovery of attorneys’ fees, prospective attorneys’ fees must be included in the assessment  
13 of the amount in controversy.” *Arias*, 936 F.3d at 922. In assessing the amount in controversy, a  
14 removing defendant is permitted to rely on “a chain of reasoning that includes assumptions.” *Id.* at  
15 925. An assumption may be reasonable if it is founded on the allegations of the complaint. *Id.*  
16 Assumptions made part of the defendant’s chain of reasoning need not be proven; they instead  
17 must only have ‘some reasonable ground underlying them.’” *Id.* at 927 (quoting *Ibarra*, 775 F.3d  
18 at 1199). “The amount in controversy is simply an estimate of the total amount in dispute, not a  
19 prospective assessment of defendant’s liability.” *Id.* at 927 (quoting *Lewis v. Verizon Commc’ns,*  
20 *Inc.*, 627 F.3d 395, 400 (9th Cir. 2010)). “In that sense, the amount in controversy reflects the  
21 maximum recovery the plaintiff could reasonably recover.” *Id.* at 927 (citing *Chavez v. JPMorgan*  
22 *Chase & Co.*, 888 F.3d 413, 417 (9th Cir. 2018) (explaining that the amount in controversy  
23 includes all amounts “at stake” in the litigation at the time of removal, “whatever the likelihood  
24 that [the plaintiff] will actually recover them”)).

25 19. Defendant denies the validity of Plaintiff’s claims and requests for relief, and does  
26 not concede in any way that the allegations in the Complaint and FAC are accurate, or that  
27 Plaintiff’s claims are amenable to classwide treatment, or that Plaintiff or the purported class are  
28 entitled to any of the requested relief. For the purposes of this removal, the allegations in the

Complaint and FAC show that it is more likely than not that the amount in controversy exceeds the jurisdictional minimum. *See Guglielmino*, 506 F.3d at 700.

20. In determining the amount in controversy to support its Notice of Removal, Defendant relies here on a conservative estimate of the amount in controversy based only on damages sought by Plaintiff as a result of the alleged: (1) unpaid overtime wages; (2) unpaid meal and rest break premiums; (3) failure to timely pay all wages owed upon termination; and (4) the alleged failure to provide accurate wage statements. Because the amounts in controversy for these claims alone exceed the jurisdictional minimum requirement of \$5 million, Defendant does not include additional analyses for estimates of the amounts placed in controversy by Plaintiff's other allegations in the Complaint and FAC.

**1. The Amount Placed in Controversy by the Overtime Claim Exceeds \$704,480.00**

21. In his First Cause of Action, Plaintiff alleges that Defendant maintained "policies, practices and work shift requirements [which] resulted in Non-Exempt Employees working 'off the clock' and not receiving compensation for all earned wages including overtime in violation of California state and wage hour laws." Ex. A, F, ¶ 33. Plaintiff further alleges that "Class Members were consistently underpaid and were required to work off the clock and without pay." Ex. F ¶ 12.

22. Plaintiff also alleges that the failure to pay overtime constitutes unfair competition within the meaning of the UCL. Ex. A, F, ¶ 62. The statute of limitations for claims under the UCL is four years. Bus. & Prof. Code § 17208 ("Any action to enforce any cause of action pursuant to this chapter shall be commenced within four years after the cause of action accrued"); *Cortez v. Purolator Air Filtration Prods. Co.*, 23 Cal. 4th 163, 178-179 (2000) (the four-year statute of limitations applies to any UCL claim, notwithstanding that the underlying claims have shorter statutes of limitation). Accordingly, the measure of potential damages for the unpaid overtime claim is based on a four year limitations period.

23. Based on Defendant's records, the minimum number of putative class members is 9,000 and they worked a minimum of 190,400 work shifts. (Ingram Decl., ¶ 4.) The average hourly rate of the putative class members was \$12.35. *Id.*



24. Defendant's calculation of the amount in controversy is based on the reasonable assumption, drawn from the allegations in the Complaint that class members were "consistently underpaid", of one hour of overtime for every workweek, or in other words, one total hour of overtime accumulated over a period of 5 shifts worked. The calculation is as follows: Plaintiff's claim for unpaid overtime wages at a rate of time and a half is **\$18.50** ( $\$18.50 (1.5 \times \$12.35) \times 1$  hour per every 5 shifts worked  $\times 38,080$  (20% of 190,400) = **\$704,480.00**. The computation of the amount in controversy is based on the data showing that the over 9,000 putative class members worked at least 190,400 shifts between April 3, 2016 and the present, and earned an average hourly rate of \$12.35.

25. An estimate of one hour of unpaid overtime for every week of work has been accepted by the federal courts as a reasonable and conservative figure. *See Jasso v. Money Mart Express, Inc.*, No. 11-CV-5500 YGR, 2012 WL 699465, at \*5-6 (N.D. Cal. Mar. 1, 2012) (holding that calculating at least one violation per week was a "sensible reading of the alleged amount in controversy"); *Ray v. Wells Fargo Bank, N.A.*, No. CV 11-01477 AHM (JCx), 2011 WL 1790123, at \*6-7 (C.D. Cal. May 9, 2011). This is especially the case where, as here, the plaintiff fails to provide specific allegations concerning the frequency of which he worked overtime without being provided the requisite compensation. *See Byrd v. Masonite Corp.*, No. EDCV 16-35 JGB (KKx), 2016 WL 2593912, at \*5 (C.D. Cal. May 5, 2016).

2. **The Amount Placed in Controversy by Plaintiff's Meal and Rest Break Claims Exceeds \$940,576.00**

26. In his Second Cause of Action, Plaintiff alleges "By their failure to provide thirty (30) minute uninterrupted meal periods by the end of the fifth hour for days on which Non-Exempt Employees work(ed) work periods in excess of five (5) hours and failing to provide compensation such statutorily non-compliant meal periods..." Ex. A, F, ¶ 39." Plaintiff also alleges that he and putative class members "frequently" carried radios with them on meal and rest breaks, and that "at least several times a month" work requirements resulted in interrupted or missed meal breaks. Ex. F, ¶ 13.

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1           27. In his Third Cause of Action, Plaintiff alleges “By their failure to authorize and  
2 permit a minimum ten (10) minute rest period for every four (4) hours or major fraction thereof per  
3 day by Non-Exempt Employees, and failing to provide compensation for such non-provided rest  
4 periods....” Ex. A, F, ¶ 43. Plaintiff also alleges that he “was frequently required to work without  
5 the ability to take a 10 minute rest period for every four hours or major fraction thereof worked.”  
6 Ex. F, ¶ 15.

7           28. Under California law, employees who miss meal and rest periods are entitled to one  
8 hour of premium pay for each day that a meal or a rest period is missed. *See Marlo v. United*  
9 *Parcel Serv., Inc.*, No. CV 03-04336 DDP (RZx), 2009 WL 1258491, at \*7 (C.D. Cal. May 5,  
10 2009). Meal and rest period claims are properly considered in determining the amount in  
11 controversy. *See, e.g., Muniz*, 2007 WL 1302504, at \*4; *Helm v. Alderwoods Grp., Inc.*, No. C 08-  
12 01184 SI, 2008 WL 2002511, at \*8 (N.D. Cal. May 7, 2008). Plaintiff also alleges that the failure  
13 to pay meal and rest break premiums constitutes unfair competition within the meaning of the UCL  
14 (Ex. A, F, ¶ 62) and therefore applicable statute of limitations for the meal and rest break claims is  
15 four years. Bus. & Prof. Code § 17208.

16           29. Plaintiff’s allegations are that “at least several times a month” the work  
17 requirements prevented putative class members from taking compliant meal breaks, and  
18 “frequently” prevented putative class members from taking compliant rest breaks. Based on these  
19 allegations, a reasonable assumption of an alleged violation rate is one meal break violation, and  
20 one rest break violation, per week, or in other words, for every 5 shifts worked. Defendant’s  
21 calculation of the amount in controversy for Plaintiff’s meal and rest break claims is thus  
22 **\$940,576.00** (\$12.35 rest period penalty + \$12.35 meal period penalty) x **38,080** (20% of 190,400  
23 shifts)). The computation of the amount in controversy is based on the data showing that the 9,000  
24 putative class members worked at least 190,400 shifts between April 3, 2016 and the present, and  
25 earned an average hourly rate of \$12.35. (Ingram Decl., ¶ 4.)

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3. **The Amount Placed in Controversy by Plaintiff's Waiting Time Penalty Claim Exceeds \$4,149,600.00**

30. In his Fourth Cause of Action, Plaintiff alleges that Defendant has a “More than 30 days have passed since Plaintiff and Class Members have left Defendants’ employer, and on information and belief have not received payment pursuant to Labor Code §203.” Ex. A, F, ¶ 49. Plaintiff alleges that, as a result, “As a consequence Defendants’ willful conduct in not paying all earned wages, certain Class Members are entitled to 30 days’ wages as a penalty under Labor Code section 203 for failure to pay legal wages.” *Id.* Plaintiff also alleges that penalties are due based on Defendant’s alleged failure to pay all wages earned, “including compensation for non provided rest and meal periods, ...” Ex. F, ¶48. Because Plaintiff also alleged that putative class members are “consistently underpaid” (¶12), and are “frequently” required to keep their radios on during their meal breaks, which results in being prevented from taking compliant meal breaks “at least several times a month” (¶ 13), and are “frequently” prevented from taking compliant rest breaks (¶ 15), it is reasonable to assume, based on the allegations in the First Amended Complaint, that Plaintiff has placed an amount on controversy equal to the amount of maximum 203 penalties that would apply to every former employee in the putative class.

31. Section 203 penalties “accrue not only on the days that the employee might have worked, but also on nonworkdays,” for up to 30 days, and the accrual of these penalties “has nothing to do with the number of days an employee works during the month.” *Mamika v. Barca*, 68 Cal. App. 4th 487, 492-93 (1998). As the “targeted wrong” addressed by Section 203 is “the delay in payment” of wages, that wrong “continues so long as payment is not made”; therefore, “[a] proper reading of section 203 mandates a penalty equivalent to the employee’s daily wages for each day he or she remained unpaid up to a total of 30 days.” *Id.* at 493.

32. Based on Defendant’s records, the number of putative class members who were terminated in the three years is more than 1,400 and their average rate of pay was \$12.35 per hour. (Ingram Decl., ¶ 5.)

33. Defendant’s calculation of the amount in controversy for Plaintiff’s waiting time penalty claim is **\$4,149,600.00** (1,400 class members x \$12.35 average hourly rate x 8 hours per

day x 30 days). The computation of the amount in controversy is based on conservative estimate that each one of the 1,400 terminated class members was owed but not paid at least some of their wages at termination, and accrued 30 days of waiting time penalties based on those unpaid wages. This is a reasonable assumption because Plaintiff's section 203 claim is not premised only on the theory that Defendant failed to timely deliver final paychecks to terminated employees. In light of the fact that, through his Complaint and FAC, Plaintiff is also seeking to recover alleged unpaid minimum wage and overtime wages allegedly owed, it is clear that Plaintiff's theory is that such alleged unpaid wages still have not been paid to Plaintiff and putative class members. It is therefore reasonable to calculate the amount in controversy for this claim based on a 30-day penalty calculated at each former employee's daily wage rate. *See Quintana v. Claire's Stores, Inc.*, No. 13-0368-PSG, 2013 WL 1736671, at \*6 (N.D. Cal. Apr. 22, 2013) (finding that the defendants' waiting time penalties calculation was "supported by Plaintiffs' allegations" and was "a reasonable estimate of the potential value of the claims" where the complaint alleged that the defendants "regularly required" putative class members to work off-the-clock without compensation, and the defendants estimated that each putative class member "potentially suffered at least one violation that continues to be unpaid"); *Stevenson v. Dollar Tree Stores, Inc.*, No. CIV S-11-1433 KJM DAD, 2011 WL 4928753, at \*4 (E.D. Cal. Oct. 17, 2011) (finding it reasonable for the defendant to assume, in light of the allegations in the complaint that members of the putative class "routinely" missed meal periods, that "all members of the proposed class . . . would have missed a meal period as described in the complaint at least once and were thus entitled to the waiting time penalty").

#### 4. Summary of the Amount Placed In Controversy

34. As described above, based on Plaintiff's allegations, and the actual data on the size of the putative class and the number of shifts worked, Plaintiff has placed more than \$5,000,000 in controversy. This excludes additional claims asserted by Plaintiff in the Complaint and FAC and potential attorneys' fees, both of which would add to the amount in controversy in support of removal of the matter under CAFA if necessary. *See Fritsch v. Swift Transp. Co. of Arizona, LLC*, 899 F.3d 785, 788 (9th Cir. 2018) ("We conclude that if a plaintiff would be entitled under contract

or statute to future attorney's fees, such fees are at stake in the litigation and should be included in the amount in controversy."). Again, just last year, the Ninth Circuit emphasized that when a statute or contract provides for the recovery of attorneys' fees, prospective attorneys' fees *must* be included in the assessment of the amount in controversy. *Arias*, 920 F.3d at 922.

Claim	Amount in Controversy
Unpaid Overtime	<b>\$704,480.00</b>
Meal Break Claim	<b>\$470,288.00</b>
Rest Break Claim	<b>\$470,288.00</b>
Waiting Time Penalty Claim	<b>\$4,149,600.00</b>
<b>Total</b>	<b>\$5,794,656.00</b>

35. Consequently, the amount placed in controversy by Plaintiff's claims exceeds the \$5,000,000 jurisdictional threshold of 28 U.S.C. § 1332(d). In the event this Court has any question regarding the propriety of this Notice of Removal, Defendant requests that the Court issue an Order to Show Cause so that Defendant may have an opportunity to more fully brief the basis for this removal.

#### **IV. THE PROCEDURAL REQUIREMENTS OF 28 U.S.C. § 1146 ARE SATISFIED**

36. In accordance with 28 U.S.C. §1446(a), this Notice of Removal is filed in the District in which the action is pending. The Alameda County Superior Court is located within the Northern District of California. Therefore, venue is proper in this Court because it is the "district and division embracing the place where such action is pending." 28 U.S.C. § 1441(a).

37. In accordance with 28 U.S.C. §1446(a), copies of all process, pleadings, and orders served upon Defendants are attached as Exhibits to this Notice.

38. In accordance with 28 U.S.C. §1446(d), a copy of this Notice is being served upon counsel for Plaintiff, and a notice will be filed with the Clerk of the Superior Court of California for the County of Alameda. Notice of compliance shall be filed promptly afterwards with this Court.

39. As required by Federal Rule of Civil Procedure 7.1 and Local Rule 3-15, Defendant concurrently filed its Certificate of Interested Parties.

WHEREFORE, Defendants remove the above-captioned action to the United States District Court for the Northern District of California.

DATED: July 9, 2020

OGLETREE, DEAKINS, NASH, SMOAK &  
STEWART, P.C.

By:



Michael J. Nader  
Rabia Z. Reed

Attorneys for Defendant  
JO-ANN STORES, LLC.

42580860.2

# **EXHIBIT A**

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Attorneys for Plaintiff, BOBBY RAY MCCOY  
on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR COUNTY OF ALAMEDA

BOBBY RAY MCCOY on behalf of himself  
and all others similarly situated

Plaintiff,

vs.

JO-ANN STORES, LLC., and DOES 1 through  
50, inclusive,

Defendants.

Case No. **RG20061158**  
ASSIGNED FOR ALL PURPOSES TO:  
JUDGE:  
DEPT:

**CLASS ACTION COMPLAINT**

- 1) Failure to pay Lawful Wages Owed;
- 2) Failure to Provide Lawful Meal  
Periods or Compensation in Lieu  
Thereof;
- 3) Failure to Provide Lawful Rest  
Periods or Compensation in Lieu  
Thereof;
- 4) Failure to Timely Pay Wages;
- 5) Knowing and Intentional Failure to  
Comply With Itemized Employee  
Wage Statement Provisions;
- 6) Failure to Indemnify Employees; and
- 7) Violations of the Unfair Competition  
Law

**JURY TRIAL DEMANDED**

Plaintiff BOBBY RAY MCCOY (hereinafter "Plaintiff") on behalf of himself and all  
others similarly situated assert claims against Defendant JO-ANN STORES, LLC, and DOES 1  
through 50 (hereinafter collectively referred to as "Defendants") as follows:

**ENDORSED  
FILED  
ALAMEDA COUNTY**

**MAY 11 2020**

CLERK OF THE SUPERIOR COURT  
Deputy

**MARGARET J. DOWNTON**





## I.

**INTRODUCTION**

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, brought against Defendants and any subsidiaries and affiliated companies on behalf of Plaintiff and all Non-Exempt Employees employed by Defendants in California who occupied positions of “key holders”, “assistant managers” and similar positions (hereinafter “Non-Exempt Employees” or “Class Members”)

2. During the liability period, defined as the applicable statute of limitations for each and every cause of action contained herein, Defendants enforced shift schedules, employment policies and practices and/or workload requirements wherein Plaintiff and Non-Exempt Employees were, amongst other statutory violations not paid all lawful wages owed; not provided compliant rest and meal periods; not provided accurate itemized wage statements; not paid correct overtime; not indemnified for expenses, and not paid timely wages at termination.

3. Plaintiff, on behalf of himself and Class Members, bring this action pursuant to Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 558, 1194, 1198, 2802 Title 8, Ssection 11070 and any other applicable Industrial Welfare Commission (“IWC”) Wage Orders, seeking unpaid lawful wages, unpaid rest and meal period compensation, penalties and other equitable relief, and reasonable attorneys’ fees and costs.

4. Plaintiff, on behalf of himself and all Class Members, pursuant to Business and Professions Code sections 17200-17208, also seeks restitution from Defendants based on Defendants’ violations of California Labor Code of Regulations, Title 8, section 11050 *et seq.*

## II.

**VENUE**

5. Venue as to each Defendant is proper in this judicial district pursuant to Code of Civil Procedure section 395. Defendant conducts substantial and continuous business activities in Alameda County, California and is within the jurisdiction of this Court for service of process purposes. Defendants employ numerous Class Members in Alameda County, California.

### III.

## PARTIES

6. Plaintiff is, and at all times mentioned in this complaint was, a resident of California.

7. On information and belief, Plaintiff alleges that Defendants were licensed and qualified to transact business throughout California.

8. The true names and capacities of Defendants, whether individual, corporate, associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes, and based thereon alleges that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

9. Plaintiff is informed and believes, and based thereon alleges, that Defendants acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants.

#### IV.

## FACTUAL BACKGROUND

10. Defendants own and operate a chain of retail stores that provide a wide range of fabrics, sewing, arts and craft supplies in California and throughout the United States.

11. Plaintiff was employed by Defendants from on or about October 9, 2018 through about April 9, 2019. During his employment, Plaintiff occupied the non-exempt position of Key Holder. His job duties included, but were not limited to, opening and closing the stores, handling operational procedures, assisting store management, scheduling, inventory and providing customer service. Plaintiff was typically scheduled to work shifts from 6:00 a.m. to 2:00 p.m. or from 2:00 p.m. to 10:00 p.m.

1           12. During the liability period, the liability period, Defendants implemented a  
2 timekeeping policy and practice for Non-Exempt Employees which rounded their clock-in and  
3 clock-out times in a manner that resulted in a loss of time worked. As a result, Class Members  
4 were consistently underpaid and were required to work off the clock and without pay. Plaintiff  
5 contends this policy is not neutral and results, over time, to the Class members' detriment by  
6 systematically undercompensating without pay.

7           13. During the liability period, due to the demands of the work shifts Plaintiff and  
8 Class Members were required to work during meal breaks and/or had their meal periods  
9 interrupted. For instance, Plaintiff and Class Members carried radios during their work shifts to  
10 communicate with staff. Plaintiff and Class Members frequently carried radios with them on rest  
11 and meal breaks in the event that they were needed to resolve a problem or issue that arose in the  
12 store. Plaintiff estimates that at least several times a month, he either had his meal break  
13 interrupted or was unable to take 30 minute meal break due to the demands of the work shift.  
14 Defendants automatically deducted 30 minutes for meal breaks during each shift regardless of  
15 whether Plaintiff and Class Members were able to take one. As a result, during said meal  
16 periods, Plaintiff and Class Members worked "off the clock" and without pay.

17           14. During the liability period, due to the demands of work shifts, Plaintiff and Class  
18 Members were at times required to work in excess of five (5) hours without being provided an  
19 uninterrupted thirty (30) minute meal period by the end of the fifth hour and were not  
20 compensated one (1) hour of pay at their regular rate of compensation for each workday that a  
21 compliant meal period was not provided.

22           15. During the liability period, due to the workload requirements and time constraints  
23 resulting from the demands of work shifts, Plaintiff and Class Members were not permitted to  
24 take a minimum ten (10) minute rest period for every four hours or major fraction thereof  
25 worked. Plaintiff was frequently required to work without the ability to take a 10 minute rest  
26 period for every four hours or major fraction thereof worked. For instance, Plaintiff and Class  
27 Members carried radios during their work shifts to communicate with store personnel regarding  
28 daily operations. Plaintiff and Class Members frequently carried radios with them on rest and

1 meal breaks in the event that they were needed to resolve a problem or issue that arose in the  
 2 store. Plaintiff and Class Members were not compensated one (1) hour of pay at his regular rate  
 3 of compensation for each workday that a rest period was not provided, in violation of California  
 4 labor laws, regulations, and IWC Wage Orders.

5 16 On information and belief, Defendants willfully failed to pay all earned wages in a  
 6 timely manner to Non-Exempt Employees; nor have Defendants paid to Plaintiff and Class  
 7 Members, upon or after termination of their employment, all compensation due, including but not  
 8 limited to all wages owed and compensation for having failed to properly provide rest periods  
 9 and meal periods.

10 17. Defendants have also failed to maintain accurate itemized records reflecting total  
 11 hours worked and have failed to provide Non-Exempt Employees with accurate, itemized wage  
 12 statements reflecting total hours worked and appropriate rates of pay for those hours worked.

13 18. Defendants have also failed indemnify Plaintiff and Class Members for expenses  
 14 incurred in direct consequence of the discharge of their duty. For example, Plaintiff and Class  
 15 members were required to use their personal phones during shifts. They received calls and texts  
 16 from management and communicated with other employees of Defendants regarding work  
 17 related issues.

18 19. Upon information and belief, Plaintiff alleges that Defendants currently employ  
 19 and during the relevant period have employed over one hundred (100) employees in the State of  
 20 California in non-exempt hourly positions.

21 20. Non-Exempt Employees employed by Defendants all times pertinent hereto, have  
 22 been non-exempt employees within the meaning of the California Labor Code, and the  
 23 implementing rules and regulations of the IWC California Wage Orders.

#### 24 V.

#### 25 CLASS ACTION ALLEGATIONS

26 21. Plaintiff seeks to represent a Class comprised of and defined as: All persons who  
 27 are employed or have been employed by Defendants in the state of California and who are/were  
 28 not classified as "Exempt" or primarily employed in executive, professional, or administrative

1 capacities and who occupied positions of “key holder”, “assistant manager” and similar positions  
2 within four (4) years prior to the date this lawsuit is filed (“liability period”) until resolution of  
3 this lawsuit (collectively referred to as the “Class” and/or Class Members”).

4 22. Plaintiff also seeks to represent Subclasses which are composed of persons  
5 satisfying the following definitions:

6 a. All Non-Exempt Employees employed by Defendants in California  
7 who occupied positions of “key holder” “assistant manager” and similar positions within the  
8 statutory liability period and were not accurately and fully paid all lawful wages owed to them  
9 including minimum wages for all hours worked;

10 b. All Non-Exempt Employees employed by Defendants in California who  
11 occupied positions of “key holder” “assistant manager” and similar positions within the  
12 statutory liability period and were not accurately and fully paid all lawful wages owed to them  
13 including proper overtime compensation for all their hours worked;

14 c. All Non-Exempt Employees employed by Defendants in California who  
15 occupied positions of “key holder” “assistant manager” and similar positions within the  
16 statutory liability period and have not been provided an uninterrupted thirty (30) minute meal  
17 period when they worked over five hours in a work shift by the end of the fifth hour and were  
18 not provided compensation in lieu thereof;

19 d. All Non-Exempt Employees employed by Defendants in California who  
20 occupied positions of “key holder” “assistant manager” and similar positions within the  
21 statutory liability period and have not been provided a minimum ten (10) minute rest period for  
22 every four (4) hours or major fraction thereof worked per day and were not provided  
23 compensation in lieu thereof;

24 e. All Non-Exempt Employees employed by Defendants in California who  
25 occupied positions of “key holder” “assistant manager” and similar positions within the  
26 statutory liability period and were not timely paid all wages due and owed to them upon the  
27 termination of their employment with Defendants; and

28 f. All Non-Exempt Employees employed by Defendants in California who

1 occupied positions of “key holder” “assistant manager” and similar positions within the  
 2 statutory liability period and were not provided with accurate and complete itemized wage  
 3 statements.

4 g. All Non-Exempt Employees employed by Defendants in California who  
 5 occupied positions of “key holder” “assistant manager” and similar positions within the  
 6 statutory liability period and were not indemnified for expenses incurred in direct consequence  
 7 of the discharge of their duty.

8 23. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to  
 9 amend or modify the class description with greater specificity or further division into  
 10 subclasses or limitation to particular issues.

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

14 **A. Numerosity**

15 25. The potential members of the Class as defined are so numerous that joinder of  
 16 all the members of the Class is impracticable. While the precise number of Class Members has  
 17 not been determined at this time, Plaintiff is informed and believes that Defendants currently  
 18 employ, and/or during the relevant time period employed, approximately over 100 Non-Exempt  
 19 Employees in California who are or have been affected by Defendants' unlawful practices as  
 20 alleged herein.

21 **B. Commonality**

22 26. There are questions of law and fact common to the Class predominating over  
 23 any questions affecting only individual Class Members. These common questions of law and  
 24 fact include, without limitation:

- 25 i. Whether Defendants, through their time clock rounding practices and policies  
 26 violated Labor Code §§510, 1194 and applicable IWC Wage Orders by failing to pay all  
 27 earned wages including overtime compensation to Non Exempt Employees who  
 28

1 worked in excess of eight (8) hours in a work day and/or more than forty (40) hours in a  
2 work week for time spent under Defendants' control and working "off the clock";

3 ii. Whether Defendants violated Labor Code §§510, 1194 and applicable IWC  
4 Wage Orders by automatically deducting thirty (30) minutes for meal periods and  
5 failing to pay all earned wages including overtime compensation to Non-Exempt  
6 Employees who worked "off the clock" during their meal breaks;

7 iii. Whether Defendants, through their time clock rounding practices and policies  
8 violated also violated Labor Codes sections 200, 1194, and 1197 for failing to pay  
9 minimum wages to Non-Exempt Employees for time spent under Defendants' control  
10 and working "off the clock" without pay;

11 iv. Whether Defendants violated sections 226.7, 512 of the Labor Code and  
12 applicable IWC Wage Order by failing to provide statutorily compliant thirty (30)  
13 minute meal periods to Non-Exempt Employees on days in which they worked in  
14 excess of five (5) hours and failing to compensate said employees one hour wages in  
15 lieu of meal periods;

16 v. Whether Defendants violated Labor Code section 226.7 and applicable IWC  
17 Wage Orders by failing to authorize and permit minimum ten (10) minute rest periods  
18 to Non-Exempt Employees for every four hours or major fraction thereof worked and  
19 failing to compensate said employees one (1) hours wages in lieu of rest periods;

20 vi. Whether Defendants violated sections 201-203 of the Labor Code by failing to  
21 pay all earned wages and/or premium wages due and owing at the time that any Non-  
22 Exempt Employees' employment with Defendants terminated;

23 vii. Whether Defendants violated section 226 of the Labor Code and applicable  
24 IWC Wage Orders by failing to, among other violations, maintain accurate records of  
25 Non-Exempt Employees' earned wages, work periods, meal periods and deductions;

26 viii. Whether Defendants violated section 2802 of the Labor Code by not  
27 indemnifying Non-Exempt employees for expenses incurred in being required to use  
28 their personal phones in the performance of their job duties.



ix. Whether Defendants violated section 17200 *et seq.* of the Business and Professions Code through their violation of the above-referenced Labor Code and Civil Code sections and applicable IWC Wage Orders which violation constitutes a violation of fundamental public policy; and

**C. Typicality**

27. The claims of the named Plaintiff are typical of the claims of the Class. Plaintiff and all members of the Class sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of California laws, regulations, and statutes as alleged herein.

**D. Adequacy of Representation**

28. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Counsel who represents Plaintiff is competent and experienced in litigating large employment class actions.

**E. Superiority of Class Action**

29. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each member of the Class has been damaged and is entitled to recovery by reason of Defendants' unlawful policy and/or practice herein complained of.

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

**VI.**

**CAUSES OF ACTION**

**First Cause of Action**

Failure to Pay Lawful Wages Including Overtime Wages and/or Minimum Wages  
(Lab. Code §§ 510, 1194)  
(Against All Defendants)

32. During the liability period, Defendants implemented a timekeeping policy and practice for Non-Exempt Employees which rounded their clock-in and clock-out times in a manner that resulted in a loss of time worked. As a result, Non-Exempt Employees were consistently underpaid and were required to work off the clock and without pay.

34. During the liability period, Defendants' policies and/or practices resulted in Non-Exempt Employees working off the clock and in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without receiving the proper compensation at the rate of time and one-half (1 1/2) of such employee's regular rate of pay.

35. During the liability period, Defendants' policies and/or practices resulted in Plaintiff and Non-Exempt Employees not receiving minimum wages for time spent working off the clock while subject to the control of Defendant all without pay.

36. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to represent have been deprived of compensation for all earned wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code section 1194.

37. WHEREFORE, Plaintiff, and the Class he seeks to represent, request relief as described herein and below.

**Second Cause of Action**  
**Failure to Provide Lawful Meal Periods**  
**Or Compensation in Lieu Thereof**  
**(Lab. Code §§226.7, 512, IWC Wage Orders)**  
**(Against All Defendants)**

38. Plaintiff repeats and incorporates herein by reference every allegation set forth above, as though fully set forth herein.

39. By their failure to provide thirty (30) minute uninterrupted meal periods by the end of the fifth hour for days on which Non Exempt Employees work(ed) work periods in excess of five (5) hours and failing to provide compensation for such statutorily non-compliant meal periods, Defendants violated the provisions of Labor Code §512 and applicable IWC Wage Orders.

40. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to represent have been deprived of premium wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon under Labor Code §226.7.

41. WHEREFORE, Plaintiff, and the Class he seeks to represent, request relief as described herein and below.

**Third Cause of Action**  
 Failure to Provide Rest Periods  
 Or Compensation in Lieu Thereof  
 (Lab. Code §§226.7, IWC Wage Orders)  
(Against All Defendants)

42. Plaintiff repeats and incorporates herein by reference every allegation set forth above, as though fully set forth herein.

43. By their failure to authorize and permit a minimum ten (10) minute rest period for every four (4) hours or major fraction thereof worked per day by Non-Exempt Employees, and failing to provide compensation for such non-provided rest periods, as alleged above, Defendants willfully violated the provisions of Labor Code section 226.7 and IWC applicable Wage Orders.

44. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to represent have been deprived of premium wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon under Labor Code §226.7.

45. WHEREFORE, Plaintiff, and the Class he seeks to represent, request relief as described herein and below.

**Fourth Cause of Action**  
**Failure to Timely Pay Wages Due At Termination**  
**Lab. Code §§ 201-203, 227.3)**  
**(Against All Defendants)**

46. Plaintiff incorporates by reference and realleges every allegation contained above, as though fully set forth herein.

47. Sections 201 and 202 of the California Labor Code require Defendants to pay its employees all wages due within 72 hours of termination of employment. Section 203 of the Labor Code provides that if an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject employees' wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

48. Plaintiff and class members are entitled to compensation for all forms of wages earned, including compensation for non provided rest and meal periods, but to date have not received such compensation therefore entitling them Labor Code section 203 penalties.

49. More than 30 days have passed since Plaintiff and Class Members have left Defendants' employ, and on information and belief, have not received payment pursuant to Labor Code §203. As a consequence of Defendants' willful conduct in not paying all earned wages, certain Class Members are entitled to 30 days' wages as a penalty under Labor Code section 203 for failure to pay legal wages.

50. WHEREFORE, Plaintiff, and the Class he seeks to represent, request relief as described herein and below.

**Fifth Cause of Action**  
**Knowing and Intentional Failure to Comply With Itemized Employee**  
**Wage Statement Provisions**  
**(Lab. Code § 226)**  
**(Against All Defendants)**

51. Plaintiff repeats and incorporates herein by reference every allegation set forth above, as though fully set forth herein.

52. Section 226(a) of the California Labor Code requires Defendants to itemize in wage statements all deductions from payment of wages and to accurately report total hours

1 worked by Plaintiff and the members of the proposed class. IWC Wage Orders require  
 2 Defendants to maintain time records showing, among others, when the employee begins and ends  
 3 each work period, meal periods, split shift intervals and total daily hours worked in an itemized  
 4 wage statement, and must show all deductions and reimbursements from payment of wages, and  
 5 accurately report total hours worked by Plaintiff and the members of the proposed class. On  
 6 information and belief, Defendants have failed to record all or some of the items delineated in  
 7 Industrial Wage Orders and Labor Code §226.

8 53. Defendants violated Section 226(a)(2) by failing to provide Plaintiff and class  
 9 members with statements of wages that accurately showed the total hours worked by Plaintiff and  
 10 the other class members. Defendants violated Section 226(a)(5) by failing to provide Plaintiff  
 11 and the class members with statements of wages that accurately showed the net wages earned for  
 12 regular hours worked, overtime hours worked. Defendants violated Section 226(a)(9) by failing  
 13 to provide Plaintiff and the other class members with statements of wages that accurately showed  
 14 the applicable hourly rates in effect during the pay period and the corresponding number of hours  
 15 worked at each hourly rate.

16 54. Plaintiff and Class Members have been injured by Defendants' actions by rendering  
 17 them unaware of the full compensation to which they were entitled under applicable provisions  
 18 of the California Labor Code and applicable IWC Wage Orders.

19 55. Pursuant Labor Code §226, Plaintiff and Class Members are entitled up to a  
 20 maximum of \$4,000.00 each for record-keeping violations.

21 56. WHEREFORE, Plaintiff, and the Class he seeks to represent, request relief as  
 22 described herein and below.

23 **Sixth Cause of Action**  
 24 Failure to Indemnify Employees for Expenditures  
 25 (Lab. Code § 2802)  
 (Against All Defendants)

26 57. Plaintiff repeats and incorporates herein by reference every allegation set forth  
 27 above, as though fully set forth herein.

28 58. As set forth above, Section 2802 of the California Labor Code requires

1 Defendants to indemnify employees for all necessary expenditures incurred in direct consequence  
2 of the discharge of his duties.

3 59. Defendants violated Section 2802 by, among other things, failing to indemnify  
4 Plaintiff and Class Members for expenditures incurred for using personal cellular phone in the  
5 performance of job duties.

6 60. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to  
7 represent have incurred expenditures in amounts to be determined at trial.

8 61. WHEREFORE, Plaintiff, and the Class he seeks to represent, request relief as  
9 described herein and below.

10 **Seventh Cause of Action**  
11 Violation of Unfair Competition Law  
(Bus. & Prof. Code, §§ 17200-17208)  
12 (Against All Defendants)

13 62. Plaintiff repeats and incorporates herein by reference each and every allegation  
14 set forth above, as though fully set forth herein.

15 63. Business & Professions Code Section 17200 provides:

16 As used in this chapter, unfair competition shall mean and include any *unlawful*,  
17 *unfair* or fraudulent business act or practice and unfair, deceptive, untrue or  
18 misleading advertising and any act prohibited by Chapter 1 (commencing with  
19 Section 17500) of Part 3 of Division 7 of the Business and Professions Code.)  
(Emphasis added.)

20 64. Defendants' violations of the Labor Code and Wage Order provisions set forth  
21 above constitute unlawful and/or unfair business acts or practices.

22 65. The actions of Defendants, as alleged within this Complaint, constitute false,  
23 fraudulent, unlawful, unfair, fraudulent and deceptive business practices, within the meaning of  
24 Business and Professions Code section 17200, *et seq.*

25 66. Plaintiff and Class Members have been personally aggrieved by Defendants'  
26 unlawful and unfair business acts and practices alleged herein.

27 67. As a direct and proximate result of the unfair business practices of Defendants,  
28 and each of them, Plaintiff, individually and on behalf of all employees similarly situated, is

1 entitled to restitution of all wages which have been unlawfully withheld from Plaintiff and  
2 members of the Plaintiff Class as a result of the business acts and practices described herein.

3 68. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as  
4 described herein and below.

5 **VII.**

6 **PRAYER**

7 WHEREFORE, Plaintiff prays for judgment as follows:

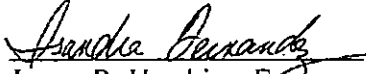
- 8 1. That the Court determine that this action may be maintained as a class action;  
9 2. For compensatory damages in an amount according to proof with interest thereon;  
10 3. For economic and/or special damages in an amount according to proof with interest  
11 thereon;  
12 4. For premium wages pursuant to Labor Code §§226.7 and 512;  
13 5. For premium pay and penalties pursuant to Labor Code §§203, 226;  
14 6. For attorneys' fees, interests and costs of suit under Labor Code §§226, 1194 and  
15 2802; and  
16 7. For such other and further relief as the Court deems just and proper.

17  
18 **DEMAND FOR JURY TRIAL**

19 Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

20  
21 **Dated: April 3, 2020**

**JAMES HAWKINS, APLC**

22  
23   
24 James R. Hawkins, Esq.  
Isandra Y. Fernandez, Esq.  
25 Attorneys for Plaintiff  
BOBBY RAY MCCOY



# **EXHIBIT B**

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): James Hawkins, SBN 192925 Isandra Fernandez, SBN 220482 JAMES HAWKINS APLC 9880 Research Dr., Suite 200 Irvine, CA 92618 TELEPHONE NO.: (949) 387-7200 FAX NO.: (949) 387-6676 ATTORNEY FOR (Name): Bobby Ray McCoy		FOR COURT USE ONLY  <b>ENDORSED FILED ALAMEDA COUNTY</b>  <b>MAY 11 2020</b>  CLERK OF THE SUPERIOR COURT <b>MARGARET J. DOWNEY</b> Deputy	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1225 Fallon St. MAILING ADDRESS: CITY AND ZIP CODE: Oakland, 94612 BRANCH NAME: Rene C. Davidson Courthouse		<b>RG20061158</b>  JUDGE:  DEPT:	
CASE NAME: McCoy v. Jo-Ann Stores, LLC			
<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)		<b>Complex Case Designation</b> <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)	

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 (46) <b>Other PI/PD/WD (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 PI/PD/WD (23) <b>Non-PI/PD/WD (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-PI/PD/WD 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</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <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<br>b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve<br>c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | d. <input checked="" type="checkbox"/> Large number of witnesses<br>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<br>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): 7
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: April 3, 2020  
 Isandra Fernandez, Esq.

(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.

## 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 PI/PD/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 PI/PD/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 PI/PD/WD

## Non-PI/PD/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-PI/PD/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

## F. ADDENDUM TO CIVIL CASE COVER SHEET

Short Title: <b>McCoy v. Jo-Ann Stores, LLC</b>	Case Number:
---	--------------

## CIVIL CASE COVER SHEET ADDENDUM

THIS FORM IS REQUIRED IN ALL NEW <u>UNLIMITED</u> CIVIL CASE FILINGS IN THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA			
<input checked="" type="checkbox"/> Oakland, Rene C. Davidson Alameda County Courthouse (446)		<input type="checkbox"/> Hayward Hall of Justice (447) <input type="checkbox"/> Pleasanton, Gale-Schenone Hall of Justice (448)	
Civil Case Cover Sheet Category	Civil Case Cover Sheet Case Type	Alameda County Case Type (check only one)	
Auto Tort	Auto tort (22)	<input type="checkbox"/> 34 Auto tort (G) Is this an uninsured motorist case? <input type="checkbox"/> yes <input type="checkbox"/> no	
Other PI /PD / WD Tort	Asbestos (04) Product liability (24) Medical malpractice (45) Other PI/PD/WD tort (23)	<input type="checkbox"/> 75 Asbestos (D) <input type="checkbox"/> 89 Product liability ( <u>not</u> asbestos or toxic tort/environmental) (G) <input type="checkbox"/> 97 Medical malpractice (G) <input type="checkbox"/> 33 Other PI/PD/WD tort (G)	
Non - PI /PD / WD Tort	Bus tort / unfair bus. practice (07) Civil rights (08) Defamation (13) Fraud (16) Intellectual property (19) Professional negligence (25) Other non-PI/PD/WD tort (35)	<input type="checkbox"/> 79 Bus tort / unfair bus. practice (G) <input type="checkbox"/> 80 Civil rights (G) <input type="checkbox"/> 84 Defamation (G) <input type="checkbox"/> 24 Fraud (G) <input type="checkbox"/> 87 Intellectual property (G) <input type="checkbox"/> 59 Professional negligence - non-medical (G) <input type="checkbox"/> 03 Other non-PI/PD/WD tort (G)	
Employment	Wrongful termination (36) Other employment (15)	<input type="checkbox"/> 38 Wrongful termination (G) <input checked="" type="checkbox"/> 85 Other employment (G) <input type="checkbox"/> 53 Labor comm award confirmation <input type="checkbox"/> 54 Notice of appeal - L.C.A.	
Contract	Breach contract / Wrnty (06) Collections (09) Insurance coverage (18) Other contract (37)	<input type="checkbox"/> 04 Breach contract / Wrnty (G) <input type="checkbox"/> 81 Collections (G) <input type="checkbox"/> 86 Ins. coverage - non-complex (G) <input type="checkbox"/> 98 Other contract (G)	
Real Property	Eminent domain / Inv Cdm (14) Wrongful eviction (33) Other real property (26)	<input type="checkbox"/> 18 Eminent domain / Inv Cdm (G) <input type="checkbox"/> 17 Wrongful eviction (G) <input type="checkbox"/> 36 Other real property (G)	
Unlawful Detainer	Commercial (31) Residential (32) Drugs (38)	<input type="checkbox"/> 94 Unlawful Detainer - commercial <input type="checkbox"/> 47 Unlawful Detainer - residential <input type="checkbox"/> 21 Unlawful detainer - drugs <div style="text-align: right;">Is the deft. in possession of the property?  <input type="checkbox"/> Yes <input type="checkbox"/> No           </div>	
Judicial Review	Asset forfeiture (05) Petition re: arbitration award (11) Writ of Mandate (02) Other judicial review (39)	<input type="checkbox"/> 41 Asset forfeiture <input type="checkbox"/> 62 Pet. re: arbitration award <input type="checkbox"/> 49 Writ of mandate Is this a CEQA action (Publ.Res.Code section 21000 et seq) <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> 64 Other judicial review	
Provisionally Complex	Antitrust / Trade regulation (03) Construction defect (10) Claims involving mass tort (40) Securities litigation (28) Toxic tort / Environmental (30) Ins covrg from cmplx case type (41)	<input type="checkbox"/> 77 Antitrust / Trade regulation <input type="checkbox"/> 82 Construction defect <input type="checkbox"/> 78 Claims involving mass tort <input type="checkbox"/> 91 Securities litigation <input type="checkbox"/> 93 Toxic tort / Environmental <input type="checkbox"/> 95 Ins covrg from complex case type	
Enforcement of Judgment	Enforcement of judgment (20)	<input type="checkbox"/> 19 Enforcement of judgment <input type="checkbox"/> 08 Confession of judgment	
Misc Complaint	RICO (27) Partnership / Corp. governance (21) Other complaint (42)	<input type="checkbox"/> 90 RICO (G) <input type="checkbox"/> 88 Partnership / Corp. governance (G) <input type="checkbox"/> 68 All other complaints (G)	
Misc. Civil Petition	Other petition (43)	<input type="checkbox"/> 06 Change of name <input type="checkbox"/> 69 Other petition	

# **EXHIBIT C**

JUN 09 2020 e930

SUM-100

# SUMMONS (CITACION JUDICIAL)

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

JO-ANN STORES, LLC., and DOES 1 through 50, inclusive,

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

BOBBY RAY MCCOY on behalf of himself and all others similarly situated

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

**ENDORSED  
FILED  
ALAMEDA COUNTY**

MAY 11 2020

CLERK OF THE SUPERIOR COURT  
Deputy

MARGARET J. DOWNING

**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 a continuación.

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

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services ([www.lawhelpcalifornia.org](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 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es): Rene C. Davidson Courthouse  
1225 Fallon St., Oakland, CA 94612

CASE NUMBER:  
(Número del Caso):

RG20061158

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):  
JAMES HAWKINS APLC, 9880 Research Drive, Suite 200 Irvine CA 92618 (949) 387-7200

DATE: MAY 11 2020  
(Fecha)

Chad Fink

Clerk, by

(Secretario)

MARGARET J. DOWNING

Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

### NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): Jo-Ann Stores LLC

- 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): LLC

4. ☒ by personal delivery on (date):

JUN 09 2020

Page 1 of 1

FAXED

# **EXHIBIT D**





**Service of Process  
Transmittal**

06/09/2020

CT Log Number 537761707

**TO:** ANN ABER  
Jo-Ann Stores, LLC  
5555 DARROW RD  
HUDSON, OH 44236-4054

**RE: Process Served in California**

**FOR:** Jo-Ann Stores, LLC (Domestic State: OH)

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

**TITLE OF ACTION:** BOBBY RAY MCCOY, etc., Pltf. vs. Jo-Ann Stores, LLC, et al., Dfts.

**DOCUMENT(S) SERVED:** -

**COURT/AGENCY:** None Specified  
Case # RG20061158

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

**DATE AND HOUR OF SERVICE:** By Process Server on 06/09/2020 at 09:34

**JURISDICTION SERVED :** California

**APPEARANCE OR ANSWER DUE:** None Specified

**ATTORNEY(S) / SENDER(S):** None Specified

**ACTION ITEMS:** CT has retained the current log, Retain Date: 06/09/2020, Expected Purge Date: 06/14/2020

Image SOP

Email Notification, ANN ABER ann.aber@joann.com

Email Notification, Liz Sargent liz.sargent@joann.com

Email Notification, Robert Icsman bob.icsman@joann.com

Email Notification, MELANA COLLINS melana.collins@joann.com

Email Notification, JAMES WEIKAMP james.weikamp@joann.com

**SIGNED:** C T Corporation System

**ADDRESS:** 208 South LaSalle Street  
Suite 814  
Chicago, IL 60604

**For Questions:** 866-331-2303  
CentralTeam1@wolterskluwer.com

# **EXHIBIT E**



**Service of Process  
Transmittal**

06/12/2020

CT Log Number 537783894

**TO:** ANN ABER  
Jo-Ann Stores, LLC  
5555 DARROW RD  
HUDSON, OH 44236-4054

**RE: Process Served in California**

**FOR:** Jo-Ann Stores, LLC (Domestic State: OH)

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

**TITLE OF ACTION:** BOBBY RAY MCCOY, on Behalf of Himself and all other Similarly Situated,  
Pltf. vs. Jo-Ann Stores, LLC and Does 1 Through 50, etc., Dfts.

**DOCUMENT(S) SERVED:** -

**COURT/AGENCY:** None Specified  
Case # RG20061158

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

**DATE AND HOUR OF SERVICE:** By Regular Mail on 06/12/2020 postmarked on 06/09/2020

**JURISDICTION SERVED :** California

**APPEARANCE OR ANSWER DUE:** None Specified

**ATTORNEY(S) / SENDER(S):** None Specified

**ACTION ITEMS:** CT has retained the current log, Retain Date: 06/12/2020, Expected Purge Date:  
06/17/2020

Image SOP

Email Notification, ANN ABER ann.aber@joann.com

Email Notification, Liz Sargent liz.sargent@joann.com

Email Notification, Robert Icsman bob.icsman@joann.com

Email Notification, MELANA COLLINS melana.collins@joann.com

Email Notification, JAMES WEIKAMP james.weikamp@joann.com

**SIGNED:** C T Corporation System

**ADDRESS:** 208 South LaSalle Street  
Suite 814  
Chicago, IL 60604

**For Questions:** 866-331-2303  
CentralTeam1@wolterskluwer.com



**Service of Process  
Transmittal**

06/12/2020

CT Log Number 537783894

**TO:** ANN ABER  
Jo-Ann Stores, LLC  
5555 DARROW RD  
HUDSON, OH 44236-4054

**RE: Process Served in California**

**FOR:** Jo-Ann Stores, LLC (Domestic State: OH)

**DOCKET HISTORY:**

<b>DOCUMENT(S) SERVED:</b>	<b>DATE AND HOUR OF SERVICE:</b>	<b>TO:</b>	<b>CT LOG NUMBER:</b>
-	By Process Server on 06/09/2020	ANN ABER Jo-Ann Stores, LLC	537761707

James R. Hawkins, Esq. SBN 192925  
Isandra Fernandez, Esq. SBN 220482  
**JAMES HAWKINS APLC**  
9880 Research Drive, Suite 200  
Irvine, CA 92618  
TEL: (949) 387-7200  
FAX: (949) 387-6676

Attorneys for Plaintiff, BOBBY RAY MCCOY  
on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR COUNTY OF ALAMEDA

BOBBY RAY MCCOY on behalf of himself  
and all others similarly situated

Plaintiff,

vs.

JO-ANN STORES, LLC., and DOES 1 through  
50, inclusive,

Defendants.

Case No. RG20061158  
ASSIGNED FOR ALL PURPOSES TO:  
JUDGE: TBD  
DEPT: TBD

**FIRST AMENDED CLASS ACTION  
COMPLAINT**

- 1) Failure to pay Lawful Wages Owed;
- 2) Failure to Provide Lawful Meal Periods or Compensation in Lieu Thereof;
- 3) Failure to Provide Lawful Rest Periods or Compensation in Lieu Thereof;
- 4) Failure to Timely Pay Wages;
- 5) Knowing and Intentional Failure to Comply With Itemized Employee Wage Statement Provisions;
- 6) Failure to Indemnify Employees; and
- 7) Violations of the Unfair Competition Law
- 8) Labor Code Private Attorney General Act (Lab. Code § 2699 *et seq.*)

**JURY TRIAL DEMANDED**

1 Plaintiff BOBBY RAY MCCOY (hereinafter "Plaintiff") on behalf of himself and all  
 2 others similarly situated assert claims against Defendant JO-ANN STORES, LLC, and DOES 1  
 3 through 50 (hereinafter collectively referred to as "Defendants") as follows:

4 I.

5 **INTRODUCTION**

6 1. This is a Class Action, pursuant to Code of Civil Procedure section 382, brought  
 7 against Defendants and any subsidiaries and affiliated companies on behalf of Plaintiff and all  
 8 Non-Exempt Employees employed by Defendants in California who occupied positions of "key  
 9 holders", "assistant managers" and similar positions (hereinafter "Non-Exempt Employees" or  
 10 "Class Members")

11 2. During the liability period, defined as the applicable statute of limitations for each  
 12 and every cause of action contained herein, Defendants enforced shift schedules, employment  
 13 policies and practices and/or workload requirements wherein Plaintiff and Non-Exempt  
 14 Employees were, amongst other statutory violations not paid all lawful wages owed; not provided  
 15 compliant rest and meal periods; not provided accurate itemized wage statements; not paid  
 16 correct overtime; not indemnified for expenses, and not paid timely wages at termination.

17 3. Plaintiff, on behalf of himself and Class Members, bring this action pursuant to  
 18 Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 558, 1194, 1198, 2802, 2699 Title 8,  
 19 Ssection 11070 and any other applicable Industrial Welfare Commission ("IWC") Wage Orders,  
 20 seeking unpaid lawful wages, unpaid rest and meal period compensation, penalties and other  
 21 equitable relief, and reasonable attorneys' fees and costs.

22 4. Plaintiff, on behalf of himself and all Class Members, pursuant to Business and  
 23 Professions Code sections 17200-17208, also seeks restitution from Defendants based on  
 24 Defendants' violations of California Labor Code of Regulations, Title 8, section 11050 *et seq.*

25 II.

26 **VENUE**

27 5. Venue as to each Defendant is proper in this judicial district pursuant to Code of  
 28 Civil Procedure section 395. Defendant conducts substantial and continuous business activities

1 in Alameda County, California and is within the jurisdiction of this Court for service of process  
2 purposes. Defendants employ numerous Class Members in Alameda County, California.

### 3 III.

#### 4 PARTIES

5 6. Plaintiff is, and at all times mentioned in this complaint was, a resident of  
6 California.

7 7. On information and belief, Plaintiff alleges that Defendants were licensed and  
8 qualified to transact business throughout California.

9 8. The true names and capacities of Defendants, whether individual, corporate,  
10 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to  
11 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure  
12 section 474. Plaintiff is informed and believes, and based thereon alleges that each of the  
13 Defendants designated herein as a DOE is legally responsible in some manner for the unlawful  
14 acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the  
15 true names and capacities of the Defendants designated hereinafter as DOES when such identities  
16 become known.

17 9. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
18 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a  
19 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each  
20 Defendant are legally attributable to the other Defendants.

### 21 IV.

#### 22 FACTUAL BACKGROUND

23 10. Defendants own and operate a chain of retail stores that provide a wide range of  
24 fabrics, sewing, arts and craft supplies in California and throughout the United States.

25 11. Plaintiff was employed by Defendants from on or about October 9, 2018 through  
26 about April 9, 2019. During his employment, Plaintiff occupied the non-exempt position of Key  
27 Holder. His job duties included, but were not limited to, opening and closing the stores, handling  
28 operational procedures, assisting store management, scheduling, inventory and providing

1 customer service. Plaintiff was typically scheduled to work shifts from 6:00 a.m. to 2:00 p.m. or  
2 from 2:00 p.m. to 10:00 p.m.

3 12. During the liability period, the liability period, Defendants implemented a  
4 timekeeping policy and practice for Non-Exempt Employees which rounded their clock-in and  
5 clock-out times in a manner that resulted in a loss of time worked. As a result, Class Members  
6 were consistently underpaid and were required to work off the clock and without pay,. Plaintiff  
7 contends this policy is not neutral and results, over time, to the Class members' detriment by  
8 systematically undercompensating without pay.

9 13. During the liability period, due to the demands of the work shifts Plaintiff and  
10 Class Members were required to work during meal breaks and/or had their meal periods  
11 interrupted. For instance, Plaintiff and Class Members carried radios during their work shifts to  
12 communicate with staff. Plaintiff and Class Members frequently carried radios with them on rest  
13 and meal breaks in the event that they were needed to resolve a problem or issue that arose in the  
14 store. Plaintiff estimates that at least several times a month, he either had his meal break  
15 interrupted or was unable to take 30 minute meal break due to the demands of the work shift.  
16 Defendants automatically deducted 30 minutes for meal breaks during each shift regardless of  
17 whether Plaintiff and Class Members were able to take one. As a result, during said meal  
18 periods, Plaintiff and Class Members worked "off the clock" and without pay.

19 14. During the liability period, due to the demands of work shifts, Plaintiff and Class  
20 Members were at times required to work in excess of five (5) hours without being provided an  
21 uninterrupted thirty (30) minute meal period by the end of the fifth hour and were not  
22 compensated one (1) hour of pay at their regular rate of compensation for each workday that a  
23 compliant meal period was not provided.

24 15. During the liability period, due to the workload requirements and time constraints  
25 resulting from the demands of work shifts, Plaintiff and Class Members were not permitted to  
26 take a minimum ten (10) minute rest period for every four hours or major fraction thereof  
27 worked. Plaintiff was frequently required to work without the ability to take a 10 minute rest  
28 period for every four hours or major fraction thereof worked. For instance, Plaintiff and Class



Members carried radios during their work shifts to communicate with store personnel regarding daily operations. Plaintiff and Class Members frequently carried radios with them on rest and meal breaks in the event that they were needed to resolve a problem or issue that arose in the store. Plaintiff and Class Members were not compensated one (1) hour of pay at his regular rate of compensation for each workday that a rest period was not provided, in violation of California labor laws, regulations, and IWC Wage Orders.

16. On information and belief, Defendants willfully failed to pay all earned wages in a timely manner to Non-Exempt Employees; nor have Defendants paid to Plaintiff and Class Members, upon or after termination of their employment, all compensation due, including but not limited to all wages owed and compensation for having failed to properly provide rest periods and meal periods.

17. Defendants have also failed to maintain accurate itemized records reflecting total hours worked and have failed to provide Non-Exempt Employees with accurate, itemized wage statements reflecting total hours worked and appropriate rates of pay for those hours worked.

18. Defendants have also failed indemnify Plaintiff and Class Members for expenses incurred in direct consequence of the discharge of their duty. For example, Plaintiff and Class members were required to use their personal phones during shifts. They received calls and texts from management and communicated with other employees of Defendants regarding work related issues.

19. Upon information and belief, Plaintiff alleges that Defendants currently employ and during the relevant period have employed over one hundred (100) employees in the State of California in non-exempt hourly positions.

20. Non-Exempt Employees employed by Defendants all times pertinent hereto, have been non-exempt employees within the meaning of the California Labor Code, and the implementing rules and regulations of the IWC California Wage Orders.

## V.

### CLASS ACTION ALLEGATIONS

21. Plaintiff seeks to represent a Class comprised of and defined as: All persons who

1 are employed or have been employed by Defendants in the state of California and who are/were  
2 not classified as "Exempt" or primarily employed in executive, professional, or administrative  
3 capacities and who occupied positions of "key holder", "assistant manager" and similar positions  
4 within four (4) years prior to the date this lawsuit is filed ("liability period") until resolution of  
5 this lawsuit (collectively referred to as the "Class" and/or Class Members").

6 22. Plaintiff also seeks to represent Subclasses which are composed of persons  
7 satisfying the following definitions:

8 a. All Non-Exempt Employees employed by Defendants in California  
9 who occupied positions of "key holder" "assistant manager" and similar positions within the  
10 statutory liability period and were not accurately and fully paid all lawful wages owed to them  
11 including minimum wages for all hours worked;

12 b. All Non-Exempt Employees employed by Defendants in California who  
13 occupied positions of "key holder" "assistant manager" and similar positions within the  
14 statutory liability period and were not accurately and fully paid all lawful wages owed to them  
15 including proper overtime compensation for all their hours worked;

16 c. All Non-Exempt Employees employed by Defendants in California who  
17 occupied positions of "key holder" "assistant manager" and similar positions within the  
18 statutory liability period and have not been provided an uninterrupted thirty (30) minute meal  
19 period when they worked over five hours in a work shift by the end of the fifth hour and were  
20 not provided compensation in lieu thereof;

21 d. All Non-Exempt Employees employed by Defendants in California who  
22 occupied positions of "key holder" "assistant manager" and similar positions within the  
23 statutory liability period and have not been provided a minimum ten (10) minute rest period for  
24 every four (4) hours or major fraction thereof worked per day and were not provided  
25 compensation in lieu thereof;

26 e. All Non-Exempt Employees employed by Defendants in California who  
27 occupied positions of "key holder" "assistant manager" and similar positions within the  
28 statutory liability period and were not timely paid all wages due and owed to them upon the

1 termination of their employment with Defendants; and

2 f. All Non-Exempt Employees employed by Defendants in California who  
3 occupied positions of "key holder" "assistant manager" and similar positions within the  
4 statutory liability period and were not provided with accurate and complete itemized wage  
5 statements.

6 g. All Non-Exempt Employees employed by Defendants in California who  
7 occupied positions of "key holder" "assistant manager" and similar positions within the  
8 statutory liability period and were not indemnified for expenses incurred in direct consequence  
9 of the discharge of their duty.

10 23. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to  
11 amend or modify the class description with greater specificity or further division into  
12 subclasses or limitation to particular issues.

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

16 **A. Numerosity**

17 25. The potential members of the Class as defined are so numerous that joinder of  
18 all the members of the Class is impracticable. While the precise number of Class Members has  
19 not been determined at this time, Plaintiff is informed and believes that Defendants currently  
20 employ, and/or during the relevant time period employed, approximately over 100 Non-Exempt  
21 Employees in California who are or have been affected by Defendants' unlawful practices as  
22 alleged herein.

23 **B. Commonality**

24 26. There are questions of law and fact common to the Class predominating over  
25 any questions affecting only individual Class Members. These common questions of law and  
26 fact include, without limitation:

- 27 i. Whether Defendants, through their time clock rounding practices and policies  
28 violated Labor Code §§510, 1194 and applicable IWC Wage Orders by failing to pay all

1 earned wages including overtime compensation to Non-Exempt Employees who  
2 worked in excess of eight (8) hours in a work day and/or more than forty (40) hours in a  
3 work week for time spent under Defendants' control and working "off the clock";

4 ii. Whether Defendants violated Labor Code §§510, 1194 and applicable IWC  
5 Wage Orders by automatically deducting thirty (30) minutes for meal periods and  
6 failing to pay all earned wages including overtime compensation to Non-Exempt  
7 Employees who worked "off the clock" during their meal breaks;

8 iii. Whether Defendants, through their time clock rounding practices and policies  
9 violated also violated Labor Codes sections 200, 1194, and 1197 for failing to pay  
10 minimum wages to Non-Exempt Employees for time spent under Defendants' control  
11 and working "off the clock" without pay;

12 iv. Whether Defendants violated sections 226.7, 512 of the Labor Code and  
13 applicable IWC Wage Order by failing to provide statutorily compliant thirty (30)  
14 minute meal periods to Non-Exempt Employees on days in which they worked in  
15 excess of five (5) hours and failing to compensate said employees one hour wages in  
16 lieu of meal periods;

17 v. Whether Defendants violated Labor Code section 226.7 and applicable IWC  
18 Wage Orders by failing to authorize and permit minimum ten (10) minute rest periods  
19 to Non-Exempt Employees for every four hours or major fraction thereof worked and  
20 failing to compensate said employees one (1) hours wages in lieu of rest periods;

21 vi. Whether Defendants violated sections 201-203 of the Labor Code by failing to  
22 pay all earned wages and/or premium wages due and owing at the time that any Non-  
23 Exempt Employees' employment with Defendants terminated;

24 vii. Whether Defendants violated section 226 of the Labor Code and applicable  
25 IWC Wage Orders by failing to, among other violations, maintain accurate records of  
26 Non-Exempt Employees' earned wages, work periods, meal periods and deductions;

27 viii. Whether Defendants violated section 2802 of the Labor Code by not  
28 indemnifying Non-Exempt employees for expenses incurred in being required to use

1 their personal phones in the performance of their job duties.

2 ix. Whether Defendants violated section 17200 *et seq.* of the Business and  
3 Professions Code through their violation of the above-referenced Labor Code and Civil  
4 Code sections and applicable IWC Wage Orders which violation constitutes a violation  
5 of fundamental public policy; and

6 **C. Typicality**

7 27. The claims of the named Plaintiff are typical of the claims of the Class. Plaintiff  
8 and all members of the Class sustained injuries and damages arising out of and caused by  
9 Defendants' common course of conduct in violation of California laws, regulations, and statutes  
10 as alleged herein.

11 **D. Adequacy of Representation**

12 28. Plaintiff will fairly and adequately represent and protect the interests of the  
13 members of the Class. Counsel who represents Plaintiff is competent and experienced in  
14 litigating large employment class actions.

15 **E. Superiority of Class Action**

16 29. A class action is superior to other available means for the fair and efficient  
17 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and  
18 questions of law and fact common to the Class predominate over any questions affecting only  
19 individual members of the Class. Each member of the Class has been damaged and is entitled to  
20 recovery by reason of Defendants' unlawful policy and/or practice herein complained of.

21 30. Class action treatment will allow those similarly situated persons to litigate their  
22 claims in the manner that is most efficient and economical for the parties and the judicial system.  
23 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this  
24 action that would preclude its maintenance as a class action.

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**VI.**  
**CAUSES OF ACTION**

**First Cause of Action**

Failure to Pay Lawful Wages Including Overtime Wages and/or Minimum Wages  
(Lab. Code §§ 510, 1194)  
(Against All Defendants)

31. Plaintiff repeats and incorporates herein by reference every allegation set forth above, as though fully set forth herein.

32. During the liability period, Defendants implemented a timekeeping policy and practice for Non-Exempt Employees which rounded their clock-in and clock-out times in a manner that resulted in a loss of time worked. As a result, Non-Exempt Employees were consistently underpaid and were required to work off the clock and without pay.

33. Defendants' policies, practices and work shift requirements resulted in Non-Exempt Employees working "off the clock" and not receiving compensation for all earned wages including overtime in violation of California state wage and hour laws.

34. During the liability period, Defendants' policies and/or practices resulted in Non-Exempt Employees working off the clock and in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without receiving the proper compensation at the rate of time and one-half (1 1/2) of such employee's regular rate of pay.

35. During the liability period, Defendants' policies and/or practices resulted in Plaintiff and Non-Exempt Employees not receiving minimum wages for time spent working off the clock while subject to the control of Defendant all without pay.

36. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to represent have been deprived of compensation for all earned wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code section 1194.

37. WHEREFORE, Plaintiff, and the Class he seeks to represent, request relief as described herein and below.

**Second Cause of Action**

**Failure to Provide Lawful Meal Periods  
Or Compensation in Lieu Thereof  
(Lab. Code §§226.7, 512, IWC Wage Orders)  
(Against All Defendants)**

38. Plaintiff repeats and incorporates herein by reference every allegation set forth above, as though fully set forth herein.

39. By their failure to provide thirty (30) minute uninterrupted meal periods by the end of the fifth hour for days on which Non-Exempt Employees work(ed) work periods in excess of five (5) hours and failing to provide compensation for such statutorily non-compliant meal periods, Defendants violated the provisions of Labor Code §512 and applicable IWC Wage Orders.

40. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to represent have been deprived of premium wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon under Labor Code §226.7.

41. WHEREFORE, Plaintiff, and the Class he seeks to represent, request relief as described herein and below.

**Third Cause of Action**

**Failure to Provide Rest Periods  
Or Compensation in Lieu Thereof  
(Lab. Code §§226.7, IWC Wage Orders)  
(Against All Defendants)**

42. Plaintiff repeats and incorporates herein by reference every allegation set forth above, as though fully set forth herein.

43. By their failure to authorize and permit a minimum ten (10) minute rest period for every four (4) hours or major fraction thereof worked per day by Non-Exempt Employees, and failing to provide compensation for such non-provided rest periods, as alleged above, Defendants willfully violated the provisions of Labor Code section 226.7 and IWC applicable Wage Orders.

44. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to

1 represent have been deprived of premium wages in amounts to be determined at trial, and are  
 2 entitled to recovery of such amounts, plus interest and penalties thereon under Labor Code  
 3 §226.7.

4 45. WHEREFORE, Plaintiff, and the Class he seeks to represent, request relief as  
 5 described herein and below.

6 **Fourth Cause of Action**  
 7 Failure to Timely Pay Wages Due At Termination  
 8 Lab. Code §§ 201-203, 227.3)  
 9 (Against All Defendants)

10 46. Plaintiff incorporates by reference and realleges every allegation contained above,  
 11 as though fully set forth herein.

12 47. Sections 201 and 202 of the California Labor Code require Defendants to pay its  
 13 employees all wages due within 72 hours of termination of employment. Section 203 of the  
 14 Labor Code provides that if an employer willfully fails to timely pay such wages the employer  
 15 must, as a penalty, continue to pay the subject employees' wages until the back wages are paid in  
 16 full or an action is commenced. The penalty cannot exceed 30 days of wages.

17 48. Plaintiff and class members are entitled to compensation for all forms of wages  
 18 earned, including compensation for non provided rest and meal periods, but to date have not  
 19 received such compensation therefore entitling them Labor Code section 203 penalties.

20 49. More than 30 days have passed since Plaintiff and Class Members have left  
 21 Defendants' employ, and on information and belief, have not received payment pursuant to Labor  
 22 Code §203. As a consequence of Defendants' willful conduct in not paying all earned wages,  
 23 certain Class Members are entitled to 30 days' wages as a penalty under Labor Code section 203  
 24 for failure to pay legal wages.

25 50. WHEREFORE, Plaintiff, and the Class he seeks to represent, request relief as  
 26 described herein and below.

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28 //

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**Fifth Cause of Action**  
**Knowing and Intentional Failure to Comply With Itemized Employee**  
**Wage Statement Provisions**  
**(Lab. Code § 226)**  
**(Against All Defendants)**

51. Plaintiff repeats and incorporates herein by reference every allegation set forth above, as though fully set forth herein.

52. Section 226(a) of the California Labor Code requires Defendants to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by Plaintiff and the members of the proposed class. IWC Wage Orders require Defendants to maintain time records showing, among others, when the employee begins and ends each work period, meal periods, split shift intervals and total daily hours worked in an itemized wage statement, and must show all deductions and reimbursements from payment of wages, and accurately report total hours worked by Plaintiff and the members of the proposed class. On information and belief, Defendants have failed to record all or some of the items delineated in Industrial Wage Orders and Labor Code §226.

53. Defendants violated Section 226(a)(2) by failing to provide Plaintiff and class members with statements of wages that accurately showed the total hours worked by Plaintiff and the other class members. Defendants violated Section 226(a)(5) by failing to provide Plaintiff and the class members with statements of wages that accurately showed the net wages earned for regular hours worked, overtime hours worked. Defendants violated Section 226(a)(9) by failing to provide Plaintiff and the other class members with statements of wages that accurately showed the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

54. Plaintiff and Class Members have been injured by Defendants' actions by rendering them unaware of the full compensation to which they were entitled under applicable provisions of the California Labor Code and applicable IWC Wage Orders.

55. Pursuant Labor Code §226, Plaintiff and Class Members are entitled up to a maximum of \$4,000.00 each for record-keeping violations.

1           56.     WHEREFORE, Plaintiff, and the Class he seeks to represent, request relief as  
2 described herein and below.

3                               **Sixth Cause of Action**  
4                               Failure to Indemnify Employees for Expenditures  
5                               (Lab. Code § 2802)  
6                               (Against All Defendants)

7           57.     Plaintiff repeats and incorporates herein by reference every allegation set forth  
8 above, as though fully set forth herein.

9           58.     As set forth above, Section 2802 of the California Labor Code requires  
10 Defendants to indemnify employees for all necessary expenditures incurred in direct consequence  
11 of the discharge of his duties.

12           59.     Defendants violated Section 2802 by, among other things, failing to indemnify  
13 Plaintiff and Class Members for expenditures incurred for using personal cellular phone in the  
14 performance of job duties.

15           60.     As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to  
16 represent have incurred expenditures in amounts to be determined at trial.

17           61.     WHEREFORE, Plaintiff, and the Class he seeks to represent, request relief as  
18 described herein and below.

19                               **Seventh Cause of Action**  
20                               Violation of Unfair Competition Law  
21                               (Bus. & Prof. Code, §§ 17200-17208)  
22                               (Against All Defendants)

23           62.     Plaintiff repeats and incorporates herein by reference each and every allegation  
24 set forth above, as though fully set forth herein.

25           63.     Business & Professions Code Section 17200 provides:

26               As used in this chapter, unfair competition shall mean and include any *unlawful,*  
27 *unfair* or fraudulent business act or practice and unfair, deceptive, untrue or  
28 misleading advertising and any act prohibited by Chapter 1 (commencing with  
Section 17500) of Part 3 of Division 7 of the Business and Professions Code.)  
(Emphasis added.)

          64.     Defendants' violations of the Labor Code and Wage Order provisions set forth

1 above constitute unlawful and/or unfair business acts or practices.

2 65. The actions of Defendants, as alleged within this Complaint, constitute false,  
3 fraudulent, unlawful, unfair, fraudulent and deceptive business practices, within the meaning of  
4 Business and Professions Code section 17200, *et seq.*

5 66. Plaintiff and Class Members have been personally aggrieved by Defendants'  
6 unlawful and unfair business acts and practices alleged herein.

7 67. As a direct and proximate result of the unfair business practices of Defendants,  
8 and each of them, Plaintiff, individually and on behalf of all employees similarly situated, is  
9 entitled to restitution of all wages which have been unlawfully withheld from Plaintiff and  
10 members of the Plaintiff Class as a result of the business acts and practices described herein.

11 68. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as  
12 described herein and below.

13 **Eighth Cause of Action**

14 Labor Code Private Attorney General Act  
15 (Cal. Labor Code §2699 et seq.)  
16 (Against All Defendants)

17 69. Plaintiff repeats and incorporates herein by reference each and every allegation set  
18 forth above, as though fully set forth herein.

19 70. Plaintiff brings these claims for civil penalties as a representative action on behalf  
20 of himself and all Non Exempt Employees employed by, or formerly employed by Defendants in  
21 the state of California during the applicable liability period under Lab. Code §2699.

22 71. Plaintiff gave written timely notice by certified mail to the Labor and Workforce  
23 Development Agency (the "Agency") in or about April 3, 2020 and the employer of the specific  
24 provisions of the California Labor Code alleged to have been violated as required by Lab. Code §  
25 2699.3. Plaintiff did not receive a response from the Agency within the proscribed time period.

26 72. The policies, acts and practices of Defendants, heretofore described give rise to  
27 statutory penalties including but not limited to Labor Code §§ 201, 202, 203, 226, 226.7, 510,  
28 512, 558, 1194, 1198, 2802 through Defendants' failure to pay all wages earned including:  
failure to provide proper rest periods and meal breaks and failure to provide accurate wage

1 statements to Plaintiff and other similarly situated aggrieved employees.

2 73. Plaintiff as an aggrieved employee hereby seeks recovery of civil penalties as  
3 prescribed by the Labor Code Private Attorney General Act of 2007 on behalf of himself and  
4 other current and former employees of Defendants against whom one or more of the violations of  
5 the Labor Code was committed during the applicable period.

6 **VII.**

7 **PRAYER**

8 WHEREFORE, Plaintiff prays for judgment as follows:

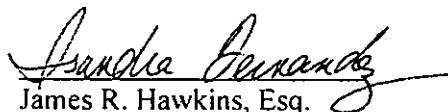
- 9 1. That the Court determine that this action may be maintained as a class action;  
10 2. For compensatory damages in an amount according to proof with interest thereon;  
11 3. For economic and/or special damages in an amount according to proof with interest  
12 thereon;  
13 4. For premium wages pursuant to Labor Code §§226.7 and 512;  
14 5. For premium pay and penalties pursuant to Labor Code §§203, 226;  
15 6. For attorneys' fees, interests and costs of suit under Labor Code §§226, 1194, 2802  
16 and 2699; and  
17 7. For such other and further relief as the Court deems just and proper.

18  
19 **DEMAND FOR JURY TRIAL**

20 Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

21  
22 **Dated: June 9, 2020**

**JAMES HAWKINS, APLC**

23  
24 

25 James R. Hawkins, Esq.  
Isandra Y. Fernandez, Esq.  
26 Attorneys for Plaintiff  
BOBBY RAY MCCOY  
27  
28

**PROOF OF SERVICE, COUNTY OF ORANGE**

I am a resident of the State of California, County of Orange. I am over the age of eighteen years and not a party to the within action. My business address is 9880 Research Drive., Suite 200, Irvine, California 92618.

On June 9, 2020, I served on the interested parties in this action the following document(s) entitled:

• **FIRST AMENDED CLASS ACTION COMPLAINT**

[XX] BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List below and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

**SERVICE LIST**

Jo-Ann Stores, LLC

Agent for Service of Process:

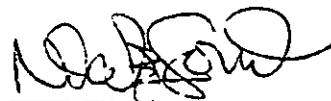
CT Corporation System

818 West Seventh Street, Suite 930

Los Angeles, CA 90017

[ X ] STATE: I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct.

Executed on June 9, 2020, at Irvine, California



Nicole Solt

# **EXHIBIT F**

MICHAEL J. NADER, SBN 200425  
michael.nader@ogletree.com  
RABIA Z. REED SBN 317288  
rabia.reed@ogletree.com  
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.  
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Sacramento, CA 95814  
Telephone: 916.840.3150  
Facsimile: 916.840.3159

Attorneys for Defendant  
JO-ANN STORES, LLC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA**

BOBBY RAY MCCOY, on behalf of himself  
and others similarly situated,

Plaintiff,

vs.

JO-ANN STORES, LLC., and DOES 1 through  
50, inclusive,

Defendants.

Case No. RG20061158

**DEFENDANT'S ANSWER TO  
PLAINTIFF'S FIRST AMENDED CLASS  
ACTION COMPLAINT**

Action Filed: May 11, 2020  
FAC Filed: June 9, 2020  
Trial Date: None

TO PLAINTIFF BOBBY RAY MCCOY AND HIS ATTORNEYS OF RECORD:

Defendant JO-ANN STORES, LLC. ("Defendant") hereby answers the Class Action  
Complaint ("Complaint") filed by plaintiff BOBBY RAY MCCOY ("Plaintiff") as follows:

**GENERAL DENIAL**

Pursuant to the provisions of section 431.30 of the California Code of Civil Procedure,  
Defendant denies, generally and specifically, that Plaintiff and the putative members of the  
purported class have been injured in the amount and/or manner alleged, or in any other manner  
whatsoever, and that Plaintiff and the putative members of the purported class are entitled to  
damages or to any other relief whatsoever.

Defendant also hereby gives notice that it intends to rely upon such other and further  
affirmative defenses as may become available during investigation and discovery in this action.

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Defendant reserves the right to amend this Answer to assert any such defenses, or to modify its admissions and denials herein, based on such investigation and discovery.

**AFFIRMATIVE DEFENSES**

Without waiving any of the foregoing answers and defenses, Defendant asserts the following affirmative defenses to Plaintiff's Complaint.

**FIRST AFFIRMATIVE DEFENSE**

**(Failure to State a Cause of Action)**

1. As a separate and affirmative defense to Plaintiff's Complaint and to each cause of action alleged therein, Defendant alleges that the Complaint fails to state facts sufficient to constitute a cause of action upon which relief can be granted against Defendant

**SECOND AFFIRMATIVE DEFENSE**

**(Statute of Limitations)**

2. As a separate and affirmative defense to Plaintiff's Complaint and to each cause of action alleged therein, Defendant alleges that the claims brought by Plaintiff and/or members of the putative class are barred, in whole or in part, by one or more of the applicable statutes of limitations, including, without limitations, Cal. Code Civ. Proc. §§ 337, 338, 339, 340, Cal. Labor Code § 203, and Cal. Bus. & Prof. Code § 17208.

**THIRD AFFIRMATIVE DEFENSE**

**(Estoppel)**

3. As a separate and affirmative defense to Plaintiff's Complaint and to each cause of action alleged therein, Defendant alleges that the claims brought by Plaintiff and/or putative members of the class are barred, in whole or in part, by the doctrine of estoppel

**FOURTH AFFIRMATIVE DEFENSE**

**(Laches)**

4. As a separate and affirmative defense to Plaintiff's Complaint and to each cause of action alleged therein, Defendant alleges that the claims brought by Plaintiff and/or putative members of the class are barred, in whole or in part, by the doctrine of laches.



**FIFTH AFFIRMATIVE DEFENSE**

**(Res Judicata and Collateral Estoppel)**

5. As a separate and affirmative defense to Plaintiff's Complaint and to each cause of action alleged therein, Defendant alleges that the Complaint, each purported cause of action alleged therein, and the elements of relief sought therein are barred, in whole or in part, by res judicata and/or collateral estoppel.

**SIXTH AFFIRMATIVE DEFENSE**

**(Unclean Hands)**

6. As a separate and affirmative defense to Plaintiff's Complaint and to each cause of action alleged therein, Defendant alleges that the claims brought by Plaintiff and/or putative members of the class are barred, in whole or in part, by their own unclean hands and/or their inequitable or wrongful conduct.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Waiver)**

7. As a separate and affirmative defense to Plaintiff's Complaint and to each cause of action alleged therein, Defendant alleges that the claims brought by Plaintiff and/or putative members of the class are barred, in whole or in part, because such claims have been waived, discharged, and/or abandoned.

**EIGHTH AFFIRMATIVE DEFENSE**

**(Releases)**

8. As a separate and affirmative defense to Plaintiff's Complaint and to each cause of action alleged therein, Defendant alleges that the claims brought by Plaintiff and/or putative members of the class are barred, in whole or in part, to the extent that individuals who Plaintiff wishes to represent as putative class members may have released some or all of the claims against Defendant that are being asserted in Plaintiff's Complaint.

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**NINTH AFFIRMATIVE DEFENSE**

**(Failure to Mitigate)**

9. As a separate and affirmative defense to Plaintiff's Complaint and to each cause of action alleged therein, Defendant alleges that Plaintiff and/or putative members of the class are barred from recovery on their monetary claims, in whole or in part, by their failure to exercise diligence to mitigate any damages allegedly incurred, if any.

**TENTH AFFIRMATIVE DEFENSE**

**(Setoff, Offset, and/or Recoupment)**

10. As a separate and affirmative defense to Plaintiff's Complaint and to each cause of action alleged therein, Defendant alleges that, if any damages have been sustained by Plaintiff and/or any putative member of the purported class they purport to represent, although such is specifically denied, Defendant is entitled under the equitable doctrine of setoff and recoupment to offset all extra payments or overpayments and/or all obligations of Plaintiff or any putative members of the purported class owed to Defendant against any judgment that may be entered against Defendant.

**ELEVENTH AFFIRMATIVE DEFENSE**

**(No Willful Failure to Pay)**

11. As a separate and affirmative defense to Plaintiff's Complaint and to each cause of action alleged therein, Defendant alleges that Plaintiff and the putative members of the purported class are not entitled to any penalty award under any section of the California Labor Code because at all relevant times, Defendant did not willfully, knowingly, and/or intentionally fail to comply with the compensation provisions of the California Labor Code, but rather acted in good faith and had reasonable grounds for believing that it did not violate those provisions.

**TWELFTH AFFIRMATIVE DEFENSE**

**(De Minimis)**

12. As a separate and affirmative defense to Plaintiff's Complaint and to any wage claims alleged therein, Defendant alleges that, to the extent that Plaintiff and/or any putative members of the purported class were harmed in any way (which Defendant specifically denies), the

damages of Plaintiff and/or any putative members of the purported class are *de minimis* and, thus, not legally cognizable or not capable of determination.

### **THIRTEENTH AFFIRMATIVE DEFENSE**

#### **(Good Faith Dispute That Wages Are Due)**

13. As a separate and affirmative defense to Plaintiff's claims for violation of California Labor Code §§ 201 and 202, Defendant alleges that Plaintiff and the putative members of the purported class are not entitled to any penalties under California Labor Code § 203 because, at all relevant times, there has been a good-faith dispute that any wages are or have been due, thereby precluding the imposition of any waiting time penalties against Defendant.

### **FOURTEENTH AFFIRMATIVE DEFENSE**

#### **(Adequate Remedy at Law)**

14. As a separate and affirmative defense to Plaintiff's claim for violation of California Business and Professions Code § 17200 *et seq.*, Defendant alleges that the claims of Plaintiff and putative members of the purported class action are barred in light of the fact that Plaintiff and the putative class members have an adequate remedy at law.

### **FIFTEENTH AFFIRMATIVE DEFENSE**

#### **(Avoidable Consequences)**

15. As a separate and affirmative defense to Plaintiff's Complaint and to each cause of action alleged therein, Defendant alleges that the claims brought by Plaintiff and/or putative members of the class are barred, in whole or in part, under California law by the doctrine of avoidable consequences on the grounds that they unreasonably failed to make use of Defendant's practices and/or procedures by failing to timely and properly report any purportedly unlawful actions and/or omissions alleged in the Complaint.

### **SIXTEENTH AFFIRMATIVE DEFENSE**

#### **(Lack of Standing – Class Action)**

16. As a separate and affirmative defense to Plaintiff's Complaint and to each cause of action alleged therein by Plaintiff on behalf of putative members of the purported class, Defendant

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alleges that Plaintiff lacks standing and cannot represent the interests of the other alleged class members as to some or all of the purported class claims.

### **SEVENTEENTH AFFIRMATIVE DEFENSE**

#### **(Constitutional Defense to Penalties)**

17. As a separate and affirmative defense to Plaintiff's Complaint and to each cause of action alleged therein, Defendant alleges that Plaintiff and the purported class members are not entitled to recover any penalties under California or federal law, and any award of penalties would in general or in fact violate Defendant's rights under the United States and California constitutions, including, but not limited to, the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution and the excessive fines and cruel and unusual punishment clauses of the Eighth Amendment to the United States Constitution, as well as the due process, excessive fines, and cruel and unusual punishment clauses in the California Constitution.

### **EIGHTEENTH AFFIRMATIVE DEFENSE**

#### **(Due Process / Class Certification)**

18. As a separate and affirmative defense to Plaintiff's Complaint and to each cause of action alleged therein, Defendant alleges that certification of a class action would be an unconstitutional denial of Defendant's rights to due process under the Fourteenth Amendment to the United States Constitution and the California Constitution.

### **NINETEENTH AFFIRMATIVE DEFENSE**

#### **(Failure to Satisfy Class Action Requirements)**

19. As a separate and affirmative defense to Plaintiff's Complaint and to each purported cause of action therein, Defendant alleges that Plaintiff's claims against Defendant are barred, in whole or in part, because Plaintiff has failed to, and cannot, satisfy the requirements for maintenance of a class action, including, but not limited to, the required elements of ascertainability, commonality, typicality, adequacy, predominance, and superiority.

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**TWENTIETH AFFIRMATIVE DEFENSE**

**(Preemption / Void Laws)**

20. As a separate and affirmative defense to Plaintiff's Complaint and to each purported cause of action therein, Defendant alleges that Plaintiff's purported causes of action set forth in the Complaint are barred to the extent that the statutes or laws relied upon are preempted or otherwise invalid, void, and/or unenforceable.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

**(Avoidable Consequences)**

21. As a separate and affirmative defense to Plaintiff's Complaint and to each cause of action alleged therein, Defendant alleges that the claims brought by Plaintiff and/or putative members of the class are barred, in whole or in part, under California law by the doctrine of avoidable consequences on the grounds that he and/or they unreasonably failed to make use of Defendant's practices and/or procedures by failing to timely and properly report any purportedly unlawful actions and/or omissions alleged in the Complaint, and some or all of the alleged damages would have been avoided by such action.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

**(Accord and Satisfaction)**

22. As a separate and affirmative defense to Plaintiff's Complaint and to each purported cause of action therein, Defendant alleges that Plaintiff's purported causes of action set forth in the Complaint and the claims of some or all of the purported class members are barred, in whole or in part, by the principles of accord and satisfaction, and payment.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

**(Not Injured by Wage Statements)**

23. Plaintiff and/or the proposed class members are not entitled to any penalties pursuant to California Labor Code § 226(e) because he and/or they did not suffer injury as a result of a knowing and intentional failure by Defendant to comply with California Labor Code § 226(a), including, but not limited to, because Plaintiff and/or the proposed class members could promptly

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1 and easily determine from the wage statements all of the information set forth in California Labor  
2 Code § 226(2)(B)(i) through (iii).

3 **RESERVATION OF RIGHTS**

4 Defendant reserves the right to assert any additional defenses and matters in avoidance that  
5 may be disclosed during the course of additional investigation and discovery, when and if the same  
6 have been ascertained.

7 **PRAYER**

8 WHEREFORE, Defendant prays for judgment as follows:

- 9 1. That the Court deny any request(s) by Plaintiff and/or putative members of the  
10 purported class to certify this action as a class action;
- 11 2. That Plaintiff and members of the putative class take nothing by the Complaint;
- 12 3. That Plaintiff's Complaint herein be dismissed in its entirety, with prejudice;
- 13 4. That judgment be entered against Plaintiff and in favor of Defendant on all causes of  
14 action asserted in the Complaint;
- 15 5. That Defendant be awarded its attorneys' fees incurred herein;
- 16 6. That Defendant be awarded its costs of suit herein; and
- 17 7. For such other and further relief as the Court deems just and proper.
- 18

19 DATED: July 9, 2020

OGLETREE, DEAKINS, NASH, SMOAK &  
STEWART, P.C.

21  
22 By: 

23 Michael J. Nader  
24 Rabia Z. Reed

25 Attorneys for Defendant  
26 JO-ANN STORES, LLC.  
27  
28

1 MICHAEL J. NADER, SBN 200425  
michael.nader@ogletree.com  
2 RABIA Z. REED SBN 317288  
rabia.reed@ogletree.com  
3 OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.  
500 Capitol Mall, Suite 2500  
4 Sacramento, CA 95814  
Telephone: 916.840.3150  
5 Facsimile: 916.840.3159

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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
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11 BOBBY RAY MCCOY, on behalf of himself  
and others similarly situated,

12 Plaintiff,

13 vs.

14 JO-ANN STORES, LLC., and DOES 1 through  
15 50, inclusive,

16 Defendants.  
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Case No. 4:20-cv-4566

**DECLARATION OF JILL INGRAM IN  
SUPPORT OF DEFENDANT'S NOTICE  
OF REMOVAL**

*[concurrently filed with civil cover sheet;  
certification of interested parties; and notice of  
removal]*

Action Filed: May 11, 2020  
FAC Filed: June 9, 2020  
Trial Date: None

DECLARATION OF JILL INGRAM

I, Jill Ingram certify and declare as follows:

1. I am currently employed by Jo-Ann Stores, LLC (“Defendant”) as an HRIS Manager. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently to these facts under oath. In my position, I am familiar with and have personal knowledge of Defendant’s corporate organization, operations, policy-making procedures, workforce distribution and general business affairs.

2. I submit this declaration in support of Defendant’s Notice of Removal filed concurrently herewith.

3. Defendant Jo-Ann Stores, LLC is and has been for the duration of this matter a limited liability company incorporated under the laws of the State of Ohio. Jo-Ann Stores, LLC only has one member, Needle Holdings, LLC, which was formed under the laws of the state of Delaware. In turn, Needle Holdings, LLC only has one member, Jo-Ann Stores Holdings, Inc., which was incorporated under the state of Delaware and does not have a principal place of business as a mere business holding entity. Accordingly, Jo-Ann Stores, LLC is a citizen of Delaware.

4. In my position as HRIS Manager, I regularly have access to the companies timekeeping and payroll records, as well as the companies HRIS records of current and former employees. For the purposes of this declaration, I have reviewed these records and can testify to the following:

- a. Defendant’s employment records show that there are over 9,000 current and former employees of Defendant who fall within Plaintiff’s proposed class between April 3, 2016 through the present.
- b. During this time period, the same employment records show that the over 9,000 employees worked a minimum of 190,400 work shifts. The average hourly rate of all of these 9,000 employees was \$12.35 per hour.
- c. According to Defendant’s employment records, there were approximately 1,400 employees who were terminated between April 3, 2017 and the present.
- d. The putative class members earned an average hourly rate of approximately \$12.35 per hour.



1 I declare under penalty of perjury under the laws of the United States that the foregoing is true and  
2 correct. This declaration was executed on July 6, 2020 in Hudson, Ohio.  
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4 DATED: July 6, 7/6/2020  
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6 By:   
7 Jill Ingram  
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CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

Bobby Ray McCoy

(b) County of Residence of First Listed Plaintiff California  
(EXCEPT IN U.S. PLAINTIFF CASES)

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

DEFENDANTS

Jo-Ann Stores, LLC

County of Residence of First Listed Defendant Hudson, Ohio  
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)  
Michael J. Nader (200425); Rabia Z. Reed (317288)  
Ogletree, Deakins, Nash, Smoak & Stewart P.C.  
500 Capitol Mall, Suite 2500  
95814 Sacramento, CA

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

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question  
(U.S. Government Not a Party)

4 Diversity  
(Indicate Citizenship of Parties in Item III)

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

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<div>110 Insurance</div> <div>120 Marine</div> <div>130 Miller Act</div> <div>140 Negotiable Instrument</div> <div>150 Recovery of Overpayment Of Veteran's Benefits</div> <div>151 Medicare Act</div> <div>152 Recovery of Defaulted Student Loans (Excludes Veterans)</div> <div>153 Recovery of Overpayment of Veteran's Benefits</div> <div>160 Stockholders' Suits</div> <div>190 Other Contract</div> <div>195 Contract Product Liability</div> <div>196 Franchise</div>	<div><div>PERSONAL INJURY</div><div>310 Airplane</div><div>315 Airplane Product Liability</div><div>320 Assault, Libel &amp; Slander</div><div>330 Federal Employers' Liability</div><div>340 Marine</div><div>345 Marine Product Liability</div><div>350 Motor Vehicle</div><div>355 Motor Vehicle Product Liability</div><div>360 Other Personal Injury</div><div>362 Personal Injury -Medical Malpractice</div></div> <div><div>PERSONAL INJURY</div><div>365 Personal Injury – Product Liability</div><div>367 Health Care/ Pharmaceutical Personal Injury Product Liability</div><div>368 Asbestos Personal Injury Product Liability</div></div> <div><div>PERSONAL PROPERTY</div><div>370 Other Fraud</div><div>371 Truth in Lending</div><div>380 Other Personal Property Damage</div><div>385 Property Damage Product Liability</div></div> <div><div>CIVIL RIGHTS</div><div>440 Other Civil Rights</div><div>441 Voting</div><div>442 Employment</div><div>443 Housing/ Accommodations</div><div>445 Amer. w/Disabilities– Employment</div><div>446 Amer. w/Disabilities–Other</div><div>448 Education</div></div> <div><div>PRISONER PETITIONS</div><div>HABEAS CORPUS</div><div>463 Alien Detainee</div><div>510 Motions to Vacate Sentence</div><div>530 General</div><div>535 Death Penalty</div><div>OTHER</div><div>540 Mandamus &amp; Other</div><div>550 Civil Rights</div><div>555 Prison Condition</div><div>560 Civil Detainee– Conditions of Confinement</div></div>	<div>625 Drug Related Seizure of Property 21 USC § 881</div> <div>690 Other</div> <div><div>LABOR</div><div>710 Fair Labor Standards Act</div><div>720 Labor/Management Relations</div><div>740 Railway Labor Act</div><div>751 Family and Medical Leave Act</div><div><input checked="" type="checkbox"/> 790 Other Labor Litigation</div><div>791 Employee Retirement Income Security Act</div><div><div>IMMIGRATION</div><div>462 Naturalization Application</div><div>465 Other Immigration Actions</div></div></div>	<div>422 Appeal 28 USC § 158</div> <div>423 Withdrawal 28 USC § 157</div> <div><div>PROPERTY RIGHTS</div><div>820 Copyrights</div><div>830 Patent</div><div>835 Patent–Abbreviated New Drug Application</div><div>840 Trademark</div><div><div>SOCIAL SECURITY</div><div>861 HIA (1395ff)</div><div>862 Black Lung (923)</div><div>863 DIWC/DIWW (405(g))</div><div>864 SSID Title XVI</div><div>865 RSI (405(g))</div><div><div>FEDERAL TAX SUITS</div><div>870 Taxes (U.S. Plaintiff or Defendant)</div><div>871 IRS–Third Party 26 USC § 7609</div></div></div></div>	<div>375 False Claims Act</div> <div>376 Qui Tam (31 USC § 3729(a))</div> <div>400 State Reapportionment</div> <div>410 Antitrust</div> <div>430 Banks and Banking</div> <div>450 Commerce</div> <div>460 Deportation</div> <div>470 Racketeer Influenced &amp; Corrupt Organizations</div> <div>480 Consumer Credit</div> <div>485 Telephone Consumer Protection Act</div> <div>490 Cable/Sat TV</div> <div>850 Securities/Commodities/ Exchange</div> <div>890 Other Statutory Actions</div> <div>891 Agricultural Acts</div> <div>893 Environmental Matters</div> <div>895 Freedom of Information Act</div> <div>896 Arbitration</div> <div>899 Administrative Procedure Act/Review or Appeal of Agency Decision</div> <div>950 Constitutionality of State Statutes</div>

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

1 Original Proceeding

☒ 2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from Another District (specify)

6 Multidistrict Litigation–Transfer

8 Multidistrict Litigation–Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. §§ 1332, 1441, 1446, and 1453

Brief description of cause:  
Wage and hour class action suit

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.

DEMAND \$

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

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only)

☒ SAN FRANCISCO/OAKLAND

☐ SAN JOSE

☐ EUREKA-MCKINLEYVILLE

DATE 7/9/2020

SIGNATURE OF ATTORNEY OF RECORD

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

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

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
  - c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
  - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

1 MICHAEL J. NADER, SBN 200425  
michael.nader@ogletree.com  
2 RABIA Z. REED SBN 317288  
rabia.reed@ogletree.com  
3 OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.  
500 Capitol Mall, Suite 2500  
4 Sacramento, CA 95814  
Telephone: 916.840.3150  
5 Facsimile: 916.840.3159  
  
6 Attorneys for Defendant  
JO-ANN STORES, LLC.  
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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

10 BOBBY RAY MCCOY, on behalf of himself  
11 and others similarly situated,

12 Plaintiff,

13 vs.

14 JO-ANN STORES, LLC., and DOES 1 through  
15 50, inclusive,

16 Defendants.  
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Case No. 4:20-cv-4566

**CERTIFICATE OF SERVICE**

Action Filed: May 11, 2020  
FAC Filed: June 9, 2020  
Trial Date: None

**CERTIFICATE OF SERVICE**  
***Bobby Ray McCoy v. Jo-Ann Stores LLC***  
**US District Court, Northern District, Case No.:**

I am and was at all times herein mentioned over the age of 18 years and not a party to the action in which this service is made. At all times herein mentioned I have been employed in the County of Sacramento in the office of a member of the bar of this court at whose direction the service was made. My business address is 500 Capitol Mall, Suite 2500, Sacramento, CA 95814.

On July 9, 2020, I served the following document(s):

**DEFENDANT'S NOTICE OF REMOVAL OF CIVIL ACTION TO FEDERAL COURT;  
DECLARATION OF JILL INGRAM; CIVIL COVER SHEET; DEFENDANT'S  
DISCLOSURE OF INTERESTED PARTIES**

by placing ☐ (the original) ☒ (a true copy thereof) in a sealed envelope addressed as stated on the following party(ies):

James R. Hawkins  
Isandra Fernandez  
James Hawkins, APLC  
9880 Research Drive, Suite 200  
Irvine, CA 92618

*Plaintiff's Counsel*  
Bobby Ray McCoy

☒ **BY MAIL:** I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Ogletree, Deakins, Nash, Smoak & Stewart, P.C.'s practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

☐ **BY OVERNIGHT DELIVERY:** I placed the sealed envelope(s) or package(s) designated by the express service carrier for collection and overnight delivery by following the ordinary business practices of Ogletree, Deakins, Nash, Smoak & Stewart P.C., Sacramento, California. I am readily familiar with Ogletree, Deakins, Nash, Smoak & Stewart P.C.'s practice for collecting and processing of correspondence for overnight delivery, said practice being that, in the ordinary course of business, correspondence for overnight delivery is deposited with delivery fees paid or provided for at the carrier's express service offices for next-day delivery.

☐ **BY FACSIMILE** by transmitting a facsimile transmission a copy of said document(s) to the following addressee(s) at the following number(s), in accordance with:

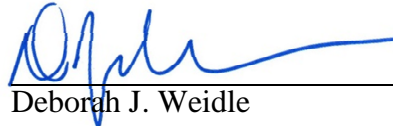
☐ the written confirmation of counsel in this action:

☐ [State Court motion, opposition, or reply only] Code of Civil Procedure section 1005(b):

☐ [Federal Court] the written confirmation of counsel in this action and order of the court:

- 1 ☐ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an  
2 agreement of the parties to accept service by e-mail or electronic transmission, I caused the  
3 documents to be sent to the person(s) at the e-mail addresses listed on the attached service  
4 list. I did not receive, within a reasonable time after the transmission, any electronic  
5 message or other indication that the transmission was unsuccessful.  
6 ☒ **(State)** I declare under penalty of perjury under the laws of the State of California that  
7 the above is true and correct.  
8 ☐ **(Federal)** I declare that I am employed in the office of a member of the State Bar of this  
9 Court at whose direction the service was made. I declare under penalty of  
10 perjury under the laws of the United States of America that the above is true and  
11 correct.  
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13 Executed on July 9, 2020, at Sacramento, California.  
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Deborah J. Weidle

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Former Jo-Ann Stores Key Holder Files Class Action Alleging California Labor Code Violations](#)

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