

ENDORSED
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By Roni Gill Deputy

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 NORMA ZUNIGA, individually, and as
12 successor-in-interest to PEDRO ZUNIGA,
13 Deceased,

14 Plaintiff,

15 vs.

16 SAFEWAY INC.; ALBERTSONS
17 COMPANIES, INC.; and DOES 1
18 THROUGH 100, INCLUSIVE,

19 Defendants.

CASE NO. **HG20062742**

COMPLAINT FOR DAMAGES

- (1) Negligence
- (2) Gross Negligence
- (3) Violations of Federal Occupational Safety and Health Act of 1970 (29 U.S. Code § 654)
- (4) Violations of The California Occupational Safety and Health Act of 1973 (Title 8, California Code of Regulations § 3203 and California Labor Code § 6400 *et seq.*)
- (5) Fraudulent Concealment of Injury (California Labor Code § 3602(b)(2))
- (6) Wrongful Death

DEMAND FOR JURY TRIAL

23 COMES NOW Plaintiff NORMA ZUNIGA, individually, and as successor-in-interest to
24 PEDRO ZUNIGA, Deceased (hereinafter "Plaintiff"), by and through her undersigned attorneys,
25 alleges upon information and belief, and complains against Defendants SAFEWAY INC.;
26 ALBERTSONS COMPANIES, INC.; and DOES 1 THROUGH 100, INCLUSIVE (hereinafter
27 collectively "Defendants"), and each of them, as follows:
28

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Filed By Fax

THE PARTIES

1
2 1. At all relevant times herein, Decedent PEDRO ZUNIGA (hereinafter “Decedent” or
3 “Pedro”) was a domiciled resident of the City of Turlock, County of Stanislaus, State of California.
4 Decedent was an employee of Defendants SAFEWAY INC. and ALBERTSONS COMPANIES,
5 INC. at the Safeway Distribution Center in Tracy, California.
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7 2. At all relevant times herein, Plaintiff NORMA ZUNIGA, individually, as successor-
8 in-interest to PEDRO ZUNIGA, Deceased, was, and is now, a competent adult and a resident of the
9 County of Stanislaus, State of California. Plaintiff is the lawful wife and legal successor-in-interest
10 of the Decedent.

11 3. Plaintiff constitutes all the surviving heirs at law of Decedent pursuant to California
12 Code of Civil Procedure § 377.60. Plaintiff is Decedent’s lawful wife. No other person has a
13 superior right to commence the action or proceeding or to be substituted for the Decedent in the
14 pending action or proceeding. Plaintiff herein constitutes Decedent’s successor-in-interest as
15 defined in California Code of Civil Procedure § 377.11 and succeeds to Decedent’s interest in this
16 action. Plaintiff has complied with C.C.P. § 377.32 and has filed the requisite successor-in-interest
17 declaration herewith.
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19 4. At all relevant times herein, based on information and belief, Defendants
20 SAFEWAY INC. (hereinafter “SAFEWAY”) and DOES 1 through 10 were, and are now,
21 companies involved in food and drug retail and distribution, with supermarkets located in seventeen
22 U.S. states and the District of Columbia, incorporated in the State of California, licensed to do
23 business in the State of California, with their principal place of business in the County of Alameda,
24 State of California.
25

26 5. At all relevant times herein, based on information and belief, Defendants
27 ALBERTSONS COMPANIES, INC. (hereinafter “ALBERTSONS”) and DOES 11 through 20
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1 were, and are now, companies involved in food and drug retail and distribution with grocery stores
2 and supermarkets located throughout the United States, incorporated and licensed to do business in
3 the State of California. SAFEWAY and ALBERTSONS (hereinafter collectively “Defendants”)
4 owned and operated the Safeway Northern California Distribution Center (hereinafter “Distribution
5 Center”) located at 16900 Schulte Road in Tracy, California.
6

7 6. Defendants SAFEWAY and ALBERTSONS are alter egos and/or agents of each
8 other such that the corporate form should be disregarded.

9 7. ALBERTSONS has ownership and control over SAFEWAY and has claimed in
10 filings that it wholly owns SAFEWAY as a subsidiary.

11 8. ALBERTSONS and SAFEWAY share many of the same executive officers and
12 appear to use the same assets.

13 9. ALBERTSONS serves as the parent company for SAFEWAY, which it calls a
14 “banner” under which it owns and operates stores and distribution centers. ALBERTSONS exerts
15 control over SAFEWAY’s business and day-to-day operations.
16

17 10. The true names and capacities, whether individual, corporate, associate, agency,
18 familial, representative, or otherwise, of Defendants named herein as DOES 1 through 100,
19 inclusive, are unknown to Plaintiff at this time, and they are therefore sued by such fictitious names
20 pursuant to California Code of Civil Procedure §474. Plaintiff prays to amend this complaint to
21 allege the true names and capacities of DOES 1 through 100 when Plaintiff discovers such true
22 identities. Each of the DOE Defendants designated herein is negligently or otherwise in some
23 manner legally responsible for the events and happenings alleged herein, and negligently or
24 otherwise caused or contributed to the injuries and damages to Plaintiff as hereinafter alleged.
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26 11. At all times mentioned herein, each and every of the Defendants herein was the
27 agent, ostensible agent, licensee, servant, partner, joint venturer, employer, employee, affiliate,
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1 assistant, relative, or volunteer of each of the other Defendants, and each was at all times alleged
2 herein acting in the course and scope of said agency, ostensible agency, license, service,
3 partnership, joint venture, employment, affiliation, assistance, relation, and volunteering.
4

5 **JURISDICTION AND VENUE**

6 12. Venue is proper in the County of Alameda under California Code of Civil Procedure
7 §395.5, on the basis that the principal place of business of one or more Defendants is located in the
8 County of Alameda.

9 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

10 **COVID-19**

11 13. COVID-19 is an infectious respiratory disease caused by the SARS-CoV-2 virus.

12 14. The virus is highly contagious. Transmission of SARS-CoV-2 primarily occurs by
13 way of respiratory droplets in coughs and sneezes of infected persons in close proximity to others
14 and via contaminated surfaces.
15

16 15. There is presently no vaccine available for the prevention of COVID-19 in humans.

17 16. The incubation period for COVID-19 can range anywhere from 2-14 days.

18 17. Common symptoms of the virus include cough, fever, shortness of breath, chills,
19 muscle aches, headache, sore throat, and new loss of taste or smell. Symptoms vary in severity
20 and, in certain instances, can lead to hospitalization and death.
21

22 18. Due to the highly contagious nature of this virus, the risk of developing severe and
23 potentially fatal symptoms, and the lack of vaccine, experts recommend that individuals prevent the
24 spread of the virus by utilizing hand sanitizers and soaps, utilizing personal protective equipment
25 (“PPE”) when in close proximity to others, and maintaining a minimum of 6 feet of physical
26 distance between themselves and others.
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Timeline of Events

19. It is believed that the virus originated in Asia in late 2019.

20. In January 2020, the first cases of COVID-19 in the United States were reported, with the first recorded case of community-spread virus transmission in the United States occurring on January 30, 2020.

21. On that same day, January 30, 2020, the World Health Organization declared this novel coronavirus outbreak a “public health emergency of international concern.”

22. On March 4, 2020, California Governor Gavin Newsom declared a State of Emergency due to the global COVID-19 outbreak.

23. On March 9, 2020, the U.S. Department of Labor Occupational Safety and Health Administration released a publication titled “Guidance on Preparing Workplaces for COVID-19.” This detailed document explained that SARS-CoV-2 “has the potential to cause extensive outbreaks” in workplaces and provided employers with basic steps they should take to reduce the risk of employee exposure to SARS-CoV-2. These steps included:

- Develop an Infectious Disease Preparedness and Response Plan
- Prepare to Implement Basic Infection Prevention Measures, including:
 - o Maintaining regular housekeeping practices, including routine cleaning and disinfecting of surfaces, equipment, and other elements of the work environment
- Develop Policies and Procedures for Prompt Identification and Isolation of Sick People, if Appropriate
- Develop, Implement, and Communicate about Workplace Flexibilities and Protections
- Implement Workplace Controls
 - o Administrative Controls, including: Encouraging sick workers to stay home; minimizing contact between workers; alternating days or extra shifts that reduce the total number of employees in a facility at a given time, allowing them to maintain distance from one another while maintaining a full onsite work week; Developing emergency communications plans, including a forum for answering workers’ concerns and internet-based communications, if feasible; Providing workers with up-to-date education and training on COVID-19 risk factors and protective behaviors (e.g., cough etiquette and care of PPE).
 - o Personal Protective Equipment (PPE) Controls, including: Employers are obligated to provide their workers with PPE needed to keep them safe while

performing their jobs. The types of PPE required during a COVID-19 outbreak will be based on the risk of being infected with SARS-CoV-2.

- Follow Existing OSHA Standards

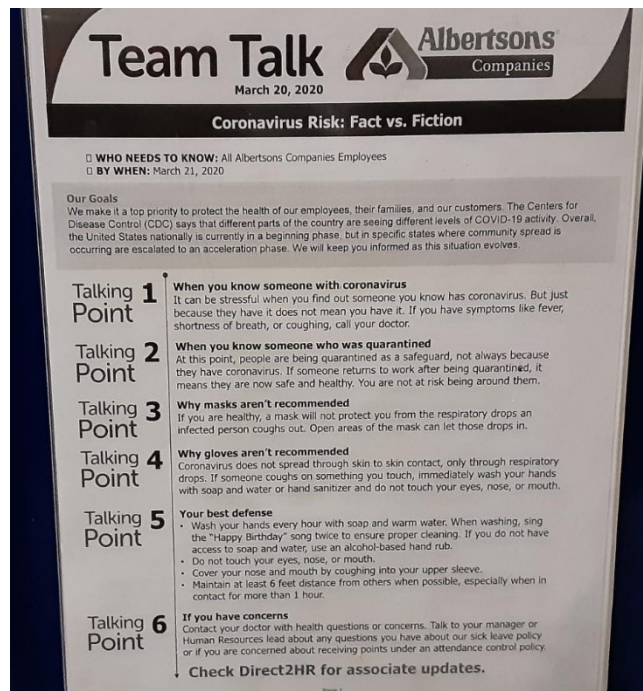
24. On March 11, 2020, due to “alarming levels of spread and severity,” the World Health Organization made the assessment that COVID-19 can be characterized as a pandemic.

25. In guidance issued by the U.S. Food and Drug Administration on March 17, 2020, the topic of workers in food processing and distribution facilities is directly addressed:

“If an employee is confirmed to have COVID-19, employers should inform fellow employees of their possible exposure to COVID-19 in the workplace.”

“While the primary responsibility in this instance is to take appropriate actions to protect other workers and people who might have come in contact with the ill employee, facilities should re-double their cleaning and sanitation efforts to control any risks that might be associated with workers who are ill regardless of the type of virus or bacteria. For example, facilities are required to maintain clean and sanitized facilities and food contact surfaces.”

26. On March 20, 2020, Defendants posted a “Team Talk” sign titled “Coronavirus Risk: Fact vs. Fiction” at the Distribution Center. This sign specifically informed workers that PPE such as masks and gloves were *not* recommended for use by employees at the Distribution Center, contrary to the guidance and advice issued by federal and state authorities.



1 27. In March 2020, workers at the Distribution Center began to fall ill with COVID-19.
2 These employees were mandated to continue working not only regular shifts, but also additional
3 shifts (6 days per week, rather than 4 or 5) with longer hours (16 hours per day).

4 28. By mid-March 2020, employees at the Distribution Center, including Pedro, began
5 complaining to their supervisors about the dangerous working conditions and their fears associated
6 with the same. These complaints were met by Defendants with threats of retaliatory disciplinary
7 action, including the potential for accruing ‘points’ which could lead to termination.

8 29. On April 1, 2020, after experiencing a fever and other symptoms, Decedent received
9 a COVID-19 test, which came back positive a few days later. He was admitted to the hospital on
10 April 4, 2020 with pneumonia and symptoms including coughing, trembling, and fever. On April
11 April 4, 2020 with pneumonia and symptoms including coughing, trembling, and fever. On April
12 5, 2020, he was transferred to the Intensive Care Unit, where he was intubated and placed in a
13 medically induced coma, and on April 13, 2020, he succumbed to the disease.

14 30. On approximately April 17, 2020, a SAFEWAY spokesperson confirmed that at
15 least 51 employees at the Distribution Center had tested positive for COVID-19. This figure
16 represented 3% of the approximately 1,700 employees at the Distribution Center.

17 31. It was not until after Pedro’s death that Defendants began to change their tune with
18 respect to safety measures at the Distribution Center – a woefully delayed move that can best be
19 described as “too little, too late.” In fact, these modest changes—consisting of the rearranging of
20 break rooms and the placement of one hand sanitizer stand (which was often left empty for hours)
21 for a department with over 100 employees on shift at any given time—continued to leave
22 Defendants’ employees particularly exposed and vulnerable to this virus.

23 32. In response to public outcry surrounding Pedro’s death and the mounting number of
24 COVID-positive employees at the Distribution Center, Governor Newsom directed his remarks
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1 during a press conference to workers like Pedro, stating: “You are not disposable. You are
2 essential.” Unfortunately for Decedent and his family, Defendants did not share this sentiment.

3 Pedro Zuniga

4 33. Pedro Zuniga was a happily married 52-year-old man, devoted to his wife,
5 NORMA, and their five children, Jose, Adilene, Marisol, Alicia, and Junior. He was a man of deep
6 faith and loved traveling, soccer, and spending time with his three grandchildren.
7

8 34. For approximately 22 years, Decedent was employed by Defendants as a loyal,
9 material handler in the produce department at the Distribution Center.

10 35. On April 13, 2020, Pedro died in the Intensive Care Unit at Memorial Medical
11 Center in Modesto, California, of cardiopulmonary arrest and hypoxic respiratory failure caused by
12 COVID-19.

13 36. Pedro’s death was the tragic and preventable result of Defendants’ failure to follow
14 federal guidelines, state guidelines, and common sense in order to provide for their Distribution
15 Center workers’ health and safety. Defendants instead prioritized their own greed over the physical
16 health and survival of their employees.
17

18 **FIRST CAUSE OF ACTION**

19 **(Negligence – As Against All Defendants)**

20 37. Plaintiff repeats and re-alleges, as if fully set forth herein, each and every allegation
21 contained in paragraphs 1-36 above, and further alleges:
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23 38. Defendants, and each of them, had a duty to: ensure that their facility operations
24 were conducted and managed in such a manner so as to safeguard the safety and well-being of their
25 employees, including Decedent; comply with Federal and State OSHA guidelines; comply with
26 U.S. Food and Drug Administration guidelines; implement an Infection Disease Preparedness and
27 Response Plan; develop and implement policies and procedures designed to prevent an outbreak
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1 from occurring at the Distribution Center, including policies and procedures to: screen workers
2 upon arrival at the facility each day, send exposed and potentially exposed workers home, maintain
3 physical distance between workers, provide appropriate PPE for workers, create disinfectant
4 stations throughout the facility; maintain housekeeping practices, including frequent cleaning and
5 disinfecting of surfaces, equipment, and other elements of the work environment; provide workers
6 with up-to-date education and training on COVID-19 risk factors and protective behaviors; respond
7 appropriately to workers' complaints and concerns regarding exposure and/or potential exposure to
8 the virus; not spread or disseminate false or misleading information about the transmission,
9 prospective exposure to, or contraction of the virus, including false or misleading statements or
10 information about the utilization of PPE; send workers who were obviously exhibiting known signs
11 and symptoms of COVID-19 home; not retaliate or threaten disciplinary action against workers
12 who were concerned that they were demonstrating signs and symptoms of COVID-19; not threaten
13 or take any adverse employment action against employees due to attendance issues or concerns
14 about their working environment in light of the COVID-19 pandemic; and develop and maintain
15 an adequate prophylactic infrastructure after the outbreak occurred. It was reasonably foreseeable
16 that if Defendants breached their duty of care owed to Decedent, Decedent could sustain injuries
17 and damages, including death.
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- 20
- 21 39. Defendants, and each of them, breached their duty of care owed to Decedent by:
- 22 a. Negligently failing to ensure that their facility operations were conducted and
23 managed in such a manner so as to safeguard the safety and well-being of their
24 employees, including Decedent;
- 25 b. Failing to comply with Federal and State OSHA guidelines;
- 26 c. Failing to comply with U.S. Food and Drug Administration guidelines;
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- d. Misleading employees into thinking that the utilization of PPE on the job was not necessary or even potentially helpful in the prevention of disease transmission;
- e. Failing to implement an Infection Disease Preparedness and Response Plan;
- f. Failing to develop and implement policies and procedures designed to prevent an outbreak from occurring at the Distribution Center, including policies and procedures to: screen workers upon arrival at the facility each day, send symptomatic, exposed, or potentially exposed workers home, maintain physical distance between workers, provide appropriate PPE for workers, create disinfectant stations throughout the facility;
- g. Failing to maintain housekeeping practices, including frequent cleaning and disinfecting of surfaces, equipment, and other elements of the work environment;
- h. Failing to implement, promote, and enforce social distancing guidelines promulgated by the state and federal governments;
- i. Failing to warn Decedent and other employees in a timely manner that other employees were experiencing COVID-19 symptoms and may have been infected at the Distribution Center;
- j. Failing to conduct periodic inspections of the condition and cleanliness of the Distribution Center to prevent and/or minimize the risk of transmission of the virus;
- k. Failing to develop procedures for identification and isolation of sick workers;
- l. Failing to properly train its personnel to implement and follow procedures designed to minimize the risk of contracting COVID-19;

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- m. Failing to provide workers with up-to-date education and training on COVID-19 risk factors and protective behaviors;
- n. Failing to respond appropriately to workers’ complaints and concerns regarding exposure and/or potential exposure to the virus;
- o. Failing to develop and maintain an adequate prophylactic infrastructure after the outbreak occurred;
- p. Threatening and/or taking adverse employment actions against employees due to attendance issues or concerns about their working environment in light of the COVID-19 pandemic.

In these negligent actions and inactions, Defendants exceeded the inherent risk associated with Decedent’s job.

40. The negligence, recklessness, carelessness, and other wrongdoing of Defendants, and each of them, was a direct and proximate cause of Decedent’s injuries and ultimate death on or about April 13, 2020. The harm, injuries, and damages caused by Defendants, and each of them, including Decedent’s predeath wage loss and medical bills for treatment of COVID-19, survive the death of the Decedent.

41. As a direct and proximate result of the negligence, recklessness, carelessness, and other wrongdoing of Defendants, and each of them, and the resulting death of Decedent, Plaintiff has been, and will continue to be, deprived of her husband’s love, companionship, society, comfort, care, attention, guidance, support, future financial dependence on Decedent, other future financial contributions, future gifts, services, and other (non-economic) damages in a sum in excess of the jurisdictional minimum of this Court, in an amount allowable by law, according to proof.

42. As a further direct, legal, and proximate result of the negligence, carelessness, recklessness, and wrongdoing of Defendants, and each of them, and the resulting death of

1 Decedent, Plaintiff has incurred funeral, cremation and/or burial, and other related expenses in a
2 sum according to proof.

3 43. Said conduct as herein alleged was undertaken by, authorized, approved of, and
4 ratified by managing agents of Defendants, and was done knowingly and willfully, and further was
5 malicious and oppressive in conscious disregard of Decedent's rights and safety, subjecting
6 Decedent to cruel and unjust hardship. As such, Decedent's legal successor-in-interest is entitled to
7 punitive or exemplary damages given that this claim survives his death.
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9 44. WHEREFORE, Plaintiff prays for judgment for damages as hereinafter set forth.

10 **SECOND CAUSE OF ACTION**

11 **(Gross Negligence – As Against All Defendants)**

12 45. Plaintiff repeats and re-alleges, as if fully set forth herein, each and every allegation
13 contained in paragraphs 1-44 above, and further alleges:
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15 46. Defendants, and each of them, had a duty to: ensure that their facility operations
16 were conducted and managed in such a manner so as to safeguard the safety and well-being of their
17 employees, including Decedent; comply with Federal and State OSHA guidelines; comply with
18 U.S. Food and Drug Administration guidelines; implement an Infection Disease Preparedness and
19 Response Plan; develop and implement policies and procedures designed to prevent an outbreak
20 from occurring at the Distribution Center, including policies and procedures to: screen workers
21 upon arrival at the facility each day, send exposed and potentially exposed workers home, maintain
22 physical distance between workers, provide appropriate PPE for workers, create disinfectant
23 stations throughout the facility; maintain housekeeping practices, including frequent cleaning and
24 disinfecting of surfaces, equipment, and other elements of the work environment; provide workers
25 with up-to-date education and training on COVID-19 risk factors and protective behaviors; respond
26 appropriately to workers' complaints and concerns regarding exposure and/or potential exposure to
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1 the virus; not spread or disseminate false or misleading information about the transmission,
2 prospective exposure to, or contraction of the virus, including false or misleading statements or
3 information about the utilization of PPE; send workers who were obviously exhibiting known signs
4 and symptoms of COVID-19 home; not retaliate or threaten disciplinary action against workers
5 who were concerned that they were demonstrating signs and symptoms of COVID-19; not threaten
6 or take any adverse employment action against employees due to attendance issues or concerns
7 about their working environment in light of the COVID-19 pandemic; and develop and maintain an
8 adequate prophylactic infrastructure after the outbreak occurred. It was reasonably foreseeable that
9 if Defendants breached their duty of care owed to Decedent, Decedent could sustain injuries and
10 damages, including death.
11

- 12 47. Defendants, and each of them, breached their duty of care owed to Decedent by:
- 13 a. Negligently failing to ensure that their facility operations were conducted and
14 managed in such a manner so as to safeguard the safety and well-being of their
15 employees, including Decedent;
 - 16 b. Failing to comply with Federal and State OSHA guidelines;
 - 17 c. Failing to comply with U.S. Food and Drug Administration guidelines;
 - 18 d. Misleading employees into thinking that the utilization of PPE on the job was
19 not necessary or even potentially helpful in the prevention of disease
20 transmission;
 - 21 e. Failing to implement an Infection Disease Preparedness and Response Plan;
 - 22 f. Failing to develop and implement policies and procedures designed to prevent an
23 outbreak from occurring at the Distribution Center, including policies and
24 procedures to: screen workers upon arrival at the facility each day, send
25 symptomatic, exposed, or potentially exposed workers home, maintain physical
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- distance between workers, provide appropriate PPE for workers, create disinfectant stations throughout the facility;
- g. Failing to maintain housekeeping practices, including frequent cleaning and disinfecting of surfaces, equipment, and other elements of the work environment;
 - h. Failing to implement, promote, and enforce social distancing guidelines promulgated by the state and federal governments;
 - i. Failing to warn Decedent and other employees in a timely manner that other employees were experiencing COVID-19 symptoms and may have been infected at the Distribution Center;
 - j. Failing to conduct periodic inspections of the condition and cleanliness of the Distribution Center to prevent and/or minimize the risk of transmission of the virus;
 - k. Failing to develop procedures for identification and isolation of sick workers;
 - l. Failing to properly train its personnel to implement and follow procedures designed to minimize the risk of contracting COVID-19
 - m. Failing to provide workers with up-to-date education and training on COVID-19 risk factors and protective behaviors;
 - n. Failing to respond appropriately to workers' complaints and concerns regarding exposure and/or potential exposure to the virus;
 - o. Failing to develop and maintain an adequate prophylactic infrastructure after the outbreak occurred;

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p. Threatening and/or taking adverse employment actions against employees due to attendance issues or concerns about their working environment in light of the COVID-19 pandemic.

In these negligent actions and inactions, Defendants exceeded the inherent risk associated with Decedent’s job.

48. Defendants knew of the high risk of viral transmission and contraction of COVID-19 by workers, including Decedent, at the Distribution Center. Despite having this knowledge, as the pandemic unfolded, Defendants forced employees, including Decedent, to work even more shifts with longer hours without taking any measures to ensure safe workplace conditions.

49. Defendants’ conduct in continuing to send their workers, including Decedent, into a dangerous and hazardous workplace without any protective measures in place in the midst of this pandemic, despite having knowledge of specific guidelines from state and federal agencies, demonstrates an intentional failure to do what reasonably careful companies would do under the circumstances, exhibits a willful and conscious disregard for the safety of Decedent and his fellow workers, and evidences reckless indifference by Defendants, which constitutes gross negligence.

50. The negligence, gross negligence, recklessness, carelessness, and other wrongdoing of Defendants, and each of them, was a direct and proximate cause of Decedent’s injuries and ultimate death on or about April 13, 2020. The harm, injuries, and damages caused by Defendants, and each of them, including Decedent’s predeath wage loss and medical bills for treatment of COVID-19, survive the death of the Decedent.

51. As a direct and proximate result of the negligence, gross negligence, recklessness, carelessness, and other wrongdoing of Defendants, and each of them, and the resulting death of Decedent, Plaintiff has been, and will continue to be, deprived of her husband’s love, companionship, society, comfort, care, attention, guidance, support, future financial dependence on

1 Decedent, other future financial contributions, future gifts, services, and other (non-economic)
2 damages in a sum in excess of the jurisdictional minimum of this Court, in an amount allowable by
3 law, according to proof.

4 52. As a further direct, legal, and proximate result of the negligence, gross negligence,
5 carelessness, recklessness, and wrongdoing of Defendants, and each of them, and the resulting
6 death of Decedent, Plaintiff has incurred funeral, cremation and/or burial, and other related
7 expenses in a sum according to proof.

8 53. Said conduct as herein alleged was undertaken by, authorized, approved of, and
9 ratified by managing agents of Defendants, and was done knowingly and willfully, and further was
10 malicious and oppressive in conscious disregard of Decedent's rights and safety, subjecting
11 Decedent to cruel and unjust hardship. As such, Decedent's legal successor-in-interest is entitled to
12 punitive or exemplary damages given that this claim survives his death.

13 54. WHEREFORE, Plaintiff prays for judgment for damages as hereinafter set forth.

14 **THIRD CAUSE OF ACTION**

15 **(Violations of Federal Occupational Safety and Health Act of 1970 (29 U.S. Code § 654) – As**
16 **Against All Defendants)**

17 55. Plaintiff repeats and re-alleges, as if fully set forth herein, each and every allegation
18 contained in paragraphs 1-54 above, and further alleges:

19 56. Section 5 of the Occupational Safety and Health Act of 1970 sets forth the basic
20 duties owed by an employer to its employees:

21 (a) Each employer –

22 (1) shall furnish to each of his employees employment and a place of employment
23 which are free from recognized hazards that are causing or are likely to cause
24 death or serious physical harm to his employees;

25 (2) shall comply with occupational safety and health standards promulgated under
26 this Act.
27
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1 57. Defendants, and each of them, breached their duty of care owed to Decedent
2 pursuant to Section 5 of the Occupational Safety and Health Act of 1970 by: failing to ensure that
3 their facility operations were conducted and managed in such a manner so as to safeguard the safety
4 and well-being of their employees, including Decedent; failing to comply with Federal and State
5 OSHA guidelines; failing to comply with U.S. Food and Drug Administration guidelines; failing to
6 implement an Infection Disease Preparedness and Response Plan; misleading employees into
7 thinking that the utilization of PPE on the job was not necessary or even potentially helpful in the
8 prevention of disease transmission; failing to develop and implement policies and procedures
9 designed to prevent an outbreak from occurring at the Distribution Center, including policies and
10 procedures to: screen workers upon arrival at the facility each day, send exposed and potentially
11 exposed workers home, maintain physical distance between workers, provide appropriate PPE for
12 workers, create disinfectant stations throughout the facility; failing to maintain regular
13 housekeeping practices, including routine cleaning and disinfecting of surfaces, equipment, and
14 other elements of the work environment; failing to provide workers with up-to-date education and
15 training on COVID-19 risk factors and protective behaviors; failing to respond appropriately to
16 workers' complaints and concerns regarding exposure and/or potential exposure to the virus; and
17 failing to develop and maintain an adequate prophylactic infrastructure after the outbreak occurred.
18 In these negligent actions and inactions, Defendants exceeded the inherent risk associated with
19 Decedent's job.
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22 58. The negligence, gross negligence, recklessness, carelessness, and other wrongdoing
23 of Defendants, and each of them, was a direct and proximate cause of Decedent's injuries and
24 ultimate death on or about April 13, 2020. The harm, injuries, and damages caused by Defendants,
25 and each of them, including Decedent's predeath wage loss and medical bills for treatment of
26 COVID-19, survive the death of the Decedent.
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1 64. The California Occupational Safety and Health Act of 1973 “was enacted by the
2 California Legislature to assure safe and healthful working conditions for all California working
3 men and women.”

4 65. California Code of Regulations § 3203 sets forth California’s workplace Injury and
5 Illness Prevention Program:
6

7 (a) Effective July 1, 1991, every employer shall establish, implement and maintain an
8 effective Injury and Illness Prevention Program (Program). The Program shall be in writing
and, shall, at a minimum:

9 (1) Identify the person or persons with authority and responsibility for implementing
the Program.

10 (2) Include a system for ensuring that employees comply with safe and healthy work
11 practices. Substantial compliance with this provision includes recognition of
employees who follow safe and healthful work practices, training and retraining
12 programs, disciplinary actions, or any other such means that ensures employee
compliance with safe and healthful work practices.

13 (3) Include a system for communicating with employees in a form readily
14 understandable by all affected employees on matters relating to occupational safety
and health, including provisions designed to encourage employees to inform the
15 employer of hazards at the worksite without fear of reprisal. Substantial compliance
with this provision includes meetings, training programs, posting, written
16 communications, a system of anonymous notification by employees about hazards,
labor/management safety and health committees, or any other means that ensures
17 communication with employees.

18 66. California Labor Code §6401.7 mirrors and expands upon this:
19

20 (a) Every employer shall establish, implement, and maintain an effective injury prevention
21 program. The program shall be written, except as provided in subdivision (e), and shall
include, but not be limited to, the following elements:

22 (1) Identification of the person or persons responsible for implementing the
program.

23 (2) The employer’s system for identifying and evaluating workplace hazards,
24 including scheduled periodic inspections to identify unsafe conditions and work
practices.

25 (3) The employer’s methods and procedures for correcting unsafe or unhealthy
26 conditions and work practices in a timely manner.

27 (4) An occupational health and safety training program designed to instruct
28 employees in general safe and healthy work practices and to provide specific
instruction with respect to hazards specific to each employee’s job assignment.

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(5) The employer’s system for communicating with employees on occupational health and safety matters, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal.

(6) The employer’s system for ensuring that employees comply with safe and healthy work practices, which may include disciplinary action.

(b) The employer shall correct unsafe and unhealthy conditions and work practices in a timely manner based on the severity of the hazard.

67. Defendants, and each of them, breached their duty of care owed to Decedent pursuant to The California Occupational Safety and Health Act of 1973 by: failing to ensure that their facility operations were conducted and managed in such a manner so as to safeguard the safety and well-being of their employees, including Decedent; failing to comply with Federal and State OSHA guidelines; failing to comply with U.S. Food and Drug Administration guidelines; failing to implement an Infection Disease Preparedness and Response Plan; misleading employees into thinking that the utilization of PPE on the job was not necessary or even potentially helpful in the prevention of disease transmission; failing to develop and implement policies and procedures designed to prevent an outbreak from occurring at the Distribution Center, including policies and procedures to: screen workers upon arrival at the facility each day, send exposed and potentially exposed workers home, maintain physical distance between workers, provide appropriate PPE for workers, create disinfectant stations throughout the facility; failing to maintain regular housekeeping practices, including routine cleaning and disinfecting of surfaces, equipment, and other elements of the work environment; failing to provide workers with up-to-date education and training on COVID-19 risk factors and protective behaviors; failing to respond appropriately to workers’ complaints and concerns regarding exposure and/or potential exposure to the virus; and failing to develop and maintain an adequate prophylactic infrastructure after the outbreak occurred. In these negligent actions and inactions, Defendants exceeded the inherent risk associated with Decedent’s job.

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68. The negligence, gross negligence, recklessness, carelessness, and other wrongdoing of Defendants, and each of them, was a direct and proximate cause of Decedent’s injuries and ultimate death on or about April 13, 2020. The harm, injuries, and damages caused by Defendants, and each of them, including Decedent’s predeath wage loss and medical bills for treatment of COVID-19, survive the death of the Decedent.

69. As a direct and proximate result of the negligence, gross negligence, recklessness, carelessness, and other wrongdoing of Defendants, and each of them, and the resulting death of Decedent, Plaintiff has been, and will continue to be, deprived of her husband’s love, companionship, society, comfort, care, attention, guidance, support, future financial dependence on Decedent, other future financial contributions, future gifts, services, and other (non-economic) damages in a sum in excess of the jurisdictional minimum of this Court, in an amount allowable by law, according to proof.

70. As a further direct, legal, and proximate result of the negligence, gross negligence, carelessness, recklessness, and wrongdoing of Defendants, and each of them, and the resulting death of Decedent, Plaintiff has incurred funeral, cremation and/or burial, and other related expenses in a sum according to proof.

71. Said conduct as herein alleged was undertaken by, authorized, approved of, and ratified by managing agents of Defendants, and was done knowingly and willfully, and further was malicious and oppressive in conscious disregard of Decedent’s rights and safety, subjecting Decedent to cruel and unjust hardship. p. As such, Decedent’s legal successor-in-interest is entitled to punitive or exemplary damages given that this claim survives his death.

72. WHEREFORE, Plaintiff prays for judgment for damages as hereinafter set forth.
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FIFTH CAUSE OF ACTION

(Fraudulent Concealment of Injury (California Labor Code § 3602(b)(2)) – As Against All Defendants)

73. Plaintiff repeats and re-alleges, as if fully set forth herein, each and every allegation contained in paragraphs 1-72 above, and further alleges:

74. Decedent was injured on the job at the Distribution Center when he was exposed to and contracted COVID-19 in approximately March 2020.

75. By virtue of the fact that employees were exhibiting recognized signs and symptoms of infection while at the Distribution Center, Defendants knew that there was an outbreak at the Distribution Center and that many of their employees, including Decedent, had suffered job related injuries in the form of COVID-19 exposure, contraction and infections. Moreover, Decedent’s superiors at the Distribution Center had knowledge that Pedro had been exposed to and contracted COVID-19 from his coworker in close proximity.

76. Despite having this knowledge, Defendants concealed the knowledge of the COVID-19 outbreak at the Distribution Center from their employees, including Decedent. In addition, despite their knowledge that Pedro had been exposed to and contracted COVID-19 from his coworker in close proximity, and despite having a duty to inform him of the same, Defendants concealed their knowledge of Pedro’s injury, who was not aware of his injury at all times relevant hereto.

77. Decedent’s injury was made worse by Defendants’ concealment, including Decedent experiencing a delay in being diagnosed and treated for the virus, which then eventually resulted in his death on April 13, 2020 after a hospitalization that included several days in the Intensive Care Unit.

78. The negligence, gross negligence, recklessness, carelessness, and other wrongdoing of Defendants, and each of them, was a direct and proximate cause of Decedent’s injuries and

1 ultimately his death on or about April 13, 2020. The harm, injuries, and damages caused by
2 Defendants, and each of them, including Decedent’s predeath wage loss and medical bills for
3 treatment of COVID-19, survive the death of the Decedent.

4 79. As a direct and proximate result of the negligence, gross negligence, recklessness,
5 carelessness, and other wrongdoing of Defendants, and each of them, and the resulting death of
6 Decedent, Plaintiff has been, and will continue to be, deprived of her husband’s love,
7 companionship, society, comfort, care, attention, guidance, support, future financial dependence on
8 Decedent, other future financial contributions, future gifts, services, and other (non-economic)
9 damages in a sum in excess of the jurisdictional minimum of this Court, in an amount allowable by
10 law, according to proof.

11 80. As a further direct, legal, and proximate result of the negligence, gross negligence,
12 carelessness, recklessness, and wrongdoing of Defendants, and each of them, and the resulting
13 death of Decedent, Plaintiff has incurred funeral, cremation and/or burial, and other related
14 expenses in a sum according to proof.

15 81. Said conduct as herein alleged was undertaken by, authorized, approved of, and
16 ratified by managing agents of Defendants, and was done knowingly and willfully, and further was
17 malicious and oppressive in conscious disregard of Decedent’s rights and safety, subjecting
18 Decedent to cruel and unjust hardship. As such, Decedent’s legal successor-in-interest is entitled to
19 punitive or exemplary damages given that this claim survives his death.
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22 82. WHEREFORE, Plaintiff prays for judgment for damages as hereinafter set forth.

23 **SIXTH CAUSE OF ACTION**

24 **(Wrongful Death – As Against All Defendants)**

25 83. Plaintiff repeats and re-alleges, as if fully set forth herein, each and every allegation
26 contained in paragraphs 1-82 above, and further alleges:
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G. For such other and further relief the Court may deem proper.

Dated: May 12, 2020

THE MATIASIC FIRM, P.C.



By: _____

Paul A. Matiasic
Hannah E. Mohr
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury.

Dated: May 12, 2020

THE MATIASIC FIRM, P.C.



By: _____

Paul A. Matiasic
Hannah E. Mohr
Attorneys for Plaintiff