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12 Attorneys for Plaintiff, KIYANA ESCO, an individual,
13 on her own behalf and on behalf of all others similarly situated

14 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
15 **COUNTY OF SACRAMENTO**

16 KIYANA ESCO, an individual, on her own
17 behalf and on behalf of all others similarly
18 situated,

19 Plaintiffs,

20 v.

21 DOLLAR TREE STORES, INC., a Virginia
22 corporation; and DOES 1 through 50,
23 inclusive,

24 Defendants.

CASE NO.

CLASS ACTION COMPLAINT FOR:

1. **Public Nuisance**
2. **Unfair Business Practices (*Business and Professions Code § 17200*)**

DEMAND FOR JURY TRIAL



25 Plaintiff KIYANA ESCO (hereinafter referred to as "Plaintiff"), hereby submits her Class
26 Action Complaint against Defendants DOLLAR TREE STORES, INC., a Virginia corporation
27 ("Dollar Tree") and Does 1-50 (hereinafter collectively referred to as "Defendants") on behalf of
28 herself and the class of all other similarly situated prospective, current and former employees and
common law employees of Defendants as follows:

BY FAX

1 **INTRODUCTION**

2 1. For DollarTree, the COVID-19 pandemic was initially a boom for its business. At
3 the end of March, the company reported it has seen quarter-to-date same-store sales up 7.1% at
4 Dollar Tree and up 14.4% at Family Dollar through March 29¹.

5 2. Shares of Dollar Tree, Inc. DLTR have rallied 15.7% in the past three months,
6 outperforming the industry's growth of 0.3%².

7 3. About six out of every ten Dollar Tree stores are located in areas where the
8 government has ordered the population to shelter in place, according to estimates from Chuck
9 Grom, an analyst with Gordon Haskett Research Advisors³. Another third are in areas where
10 there have been partial mandates⁴.

11 4. CEO Gary Philbin was quoted as saying, "customers rely on Dollar Tree and
12 Family Dollar as an essential retailer for their daily shopping needs....Our stores experienced an
13 unprecedented spike in demand for certain products."

14 5. As Forbes notes, however, "Dollar Tree took an unusual stance to the coronavirus
15 pandemic when lockdown orders began rolling out across the country in mid-March: The discount
16 retailer effectively shut down its website and announced that it would no longer take online
17 orders."⁵

18 6. Such a move forced customers into its brick-and-mortar stores and employees,
19 foisted a heavy burden on its hardworking, yet low wage earning, employees. DollarTree
20 however, failed to support its employees, its customers, and its communities by failing to
21 implement proper safety measures in compliance with California law.

22 _____
23 ¹ <https://progressivegrocer.com/dollar-tree-reports-stunning-covid-19-sales> (last viewed June 2,
2020.)

24 ² <https://finance.yahoo.com/news/dollar-tree-more-15-3-141202210.html> (last viewed June 2,
25 2020.)

26 ³ [https://www.forbes.com/sites/lauredebter/2020/03/31/dollar-tree-online-orders-](https://www.forbes.com/sites/lauredebter/2020/03/31/dollar-tree-online-orders-coronavirus/#679188951843)
27 [coronavirus/#679188951843](https://www.forbes.com/sites/lauredebter/2020/03/31/dollar-tree-online-orders-coronavirus/#679188951843) (last viewed June 2, 2020.)

27 ⁴ Id.

28 ⁵ [https://www.forbes.com/sites/lauredebter/2020/03/31/dollar-tree-online-orders-](https://www.forbes.com/sites/lauredebter/2020/03/31/dollar-tree-online-orders-coronavirus/#679188951843)
[coronavirus/#679188951843](https://www.forbes.com/sites/lauredebter/2020/03/31/dollar-tree-online-orders-coronavirus/#679188951843) (last viewed June 2, 2020.)

1 Labor Code and the California Civil Code.

2 15. Defendant DOLLAR TREE is a Virginia corporation doing business throughout
3 the United States. DOLLAR TREE's headquarters are in Chesapeake, Virginia.

4 16. Based upon information and belief, DOLLAR TREE is an operator of discount
5 variety stores, including Dollar Tree and Family Dollar. The Dollar Tree segment is the operator
6 of discount variety stores offering merchandise at a fixed price.

7 17. The members of the proposed class are likewise prospective, current and former
8 employees of the DOLLAR TREE during the Class Period.

9 18. Plaintiff is informed and believes and based thereon alleges that at all times herein
10 mentioned Defendants and DOES 1 through 50, are and were corporations, business entities,
11 individuals, and partnerships, licensed to do business and actually doing business in the State of
12 California.

13 19. Plaintiff does not know the true names or capacities, whether individual, partner
14 or corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason,
15 said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
16 complaint when the true names and capacities are known. Plaintiff is informed and believes and
17 based thereon alleges that each of said fictitious Defendants were responsible in some way for the
18 matters alleged herein and proximately caused Plaintiff and members of the general public and
19 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

20 20. At all times herein mentioned, each of the said Defendants participated in the doing
21 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
22 Defendants, and each of them, were the agents, servants and employees of each of the other
23 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
24 within the course and scope of said agency and employment.

25 21. Plaintiff is informed and believes and based thereon alleges that at all times
26 material hereto, each of the Defendants named herein were the agent, employee, alter ego and/or
27 joint venturer of, or working in concert with each of the other co-Defendants and were acting
28 within the course and scope of such agency, employment, joint venture, or concerted activity. To

1 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
2 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
3 Defendants.

4 22. At all times herein mentioned, Defendants, and each of them, were members of,
5 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
6 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

7 23. At all times herein mentioned, the acts and omissions of various Defendants, and
8 each of them, concurred and contributed to the various acts and omissions of each and all of the
9 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
10 herein mentioned, Defendants, and each of them, ratified each and every act or omission
11 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided
12 and abetted the acts and omissions of each and all of the other Defendants in proximately causing
13 the damages as herein alleged.

14 24. The members of the putative class, including the representative Plaintiff named
15 herein, have been employed during the Class Period in California. The practices and policies
16 which are complained of by way of this Complaint are enforced throughout the United States.

17 **GENERAL FACTUAL ALLEGATIONS**

18 **Dollar Trees General Business Operations**

19 25. Dollar Tree is an American chain of discount variety stores that sells items for \$1
20 or less. Headquartered in Chesapeake, Virginia, it is a Fortune 500 company and operates 15,115
21 stores throughout the 48 contiguous U.S. states and Canada. Departments found in a Dollar Tree
22 store include health and beauty, food and snacks, party, seasonal décor, housewares, glassware,
23 dinnerware, household cleaning supplies, candy, toys, gifts, gift bags and wrap, stationery, craft
24 supplies, teaching supplies, automotive, electronics, pet supplies, and books. Most Dollar Tree
25 stores also sell frozen foods and dairy items such as milk, eggs, pizza, ice cream, frozen dinners,
26 and pre-made baked goods.

27 26. Dollar Tree employs a number of non-exempt individuals to run its retail stores in
28 various positions including: cashiers, stockers, warehouse associates.

1 **COVID-19**

2 27. Coronavirus disease 2019 (COVID-19) is a respiratory illness that spreads from
3 person to person. COVID-19 appeared in Wuhan, a city in China, in December 2019. Although health
4 officials are still tracing the exact source of this new coronavirus, early hypotheses thought it may be
5 linked to a seafood market in Wuhan, China. Some people who visited the market developed viral
6 pneumonia caused by the new coronavirus. A study that came out on Jan. 25, 2020, notes that the
7 individual with the first reported case became ill on Dec. 1, 2019, and had no link to the seafood
8 market. Investigations are ongoing as to how this virus originated and spread.

9 28. COVID-19 is now a pandemic affecting many countries globally, including the
10 United States.

11 29. The virus is thought to spread mainly between people who are in close contact with
12 one another (within about six feet) through respiratory droplets produced when the infected person
13 coughs or sneezes. It also may be possible that persons can get COVID-19 by touching surfaces or
14 objects that has the virus on it and then touching their own mouth, nose or possibly their eyes.

15 30. Infection with SARS-CoV-2, the virus that causes COVID-19, can cause illness
16 ranging from mild to severe and, in some cases, can be fatal⁶.

17 31. The Center for Disease Control has identified the following symptoms associated with
18 COVID-19 after two-fourteen days of exposure⁷:

- 19
- Fever
 - Chills
 - Repeated shaking with chills
 - Headache
 - New loss of taste or smell
 - Cough
 - Shortness of breath or difficulty breathing
 - Muscle pain
 - Sore throat
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24 32. As of June 10, 2020, 411,694 deaths have been attributed to COVID-19⁸.

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27 ⁶ <https://www.osha.gov/Publications/OSHA3990.pdf>

28 ⁷ <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>

⁸ <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus>

1 33. Recent studies have suggested that COVID-19 may be spread by people who are
2 not manifesting symptoms⁹.

3 34. Some populations are especially vulnerable to the consequences of COVID-19,
4 including individuals 65 years and older, people living in a nursing home or long-term care
5 facility, and others of all ages with underlying medical conditions, such as people with lung
6 disease, asthma, heart conditions, severe obesity, diabetes, kidney disease, or liver disease and
7 people who are immunocompromised.

8 **California's Response to COVID-19**

9 35. On March 4, 2020, California Governor Gavin Newsom proclaimed a "state of
10 emergency" as a result of the threat of COVID-19.

11 36. Thereafter, on March 11, 2020, the World Health Organization declared the
12 Coronavirus a pandemic.

13 37. On March 19, 2020, California Executive Order N-33-20 established stay-at-home
14 requirements for individuals living in the State of California, subject to essential worker
15 exemptions. The executive order did not set a date for the lifting of the "stay-at-home"
16 requirement.

17 38. Additionally, numerous cities, counties and municipalities throughout California
18 have issued orders related to COVID-19 including the City of Los Angeles, County of Los
19 Angeles, the City and County of San Francisco, and the City of San Jose.

20 39. On April 4, 2020, Riverside County issued an order requiring everyone to wear a
21 face covering when leaving home, including essential workers¹⁰.

22 40. On April 6, 2020, the County of Santa Barbara issued an order requiring face
23 covers for all food workers while engaged in food preparation, serving, maintenance or other
24 activities at a food facility. Such orders also provided that employers should Provide all workers
25 or volunteers with clean face covers at the start of each shift / work day and as needed if a face
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27 ⁹ <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>

28 ¹⁰ https://www.rivcoph.org/Portals/0/Documents/CoronaVirus/April/4.4.20_HO_order_face_coverings.pdf?ver=2020-04-04-172943-200×tamp=1586046633879

1 cover becomes soiled during the work shift.¹¹

2 41. On April 7, 2020, the San Bernardino County Health Officer issued an order
3 requiring everyone in San Bernardino County to wear a face covering when leaving home¹².

4 42. On April 7, 2020, the City of Los Angeles issued a Worker Protection Order
5 (WPO) as a follow-up to the city's March 19 Safer at Home Order. Based on the outsized risk of
6 exposure to the COVID-19 virus faced by many workers of essential businesses, the WPO states
7 that each employee of essential businesses including the following must wear a face mask or face
8 covering:

- 9 • Grocery stores, supermarkets, convenience stores, warehouse stores,
10 farmers markets and other businesses that sell food;
- 11 • Restaurants and retail food facilities that offer food to individuals via
12 delivery, drive-thru or for pick up;
- 13 • Individuals and businesses that deliver groceries, food and beverages
14 directly to residences or businesses;

15 43. On April 8, 2020, the City of Inglewood directed all individuals in Inglewood to
16 wear a face covering when interacting with anyone who is not a member of their household in
17 public and private spaces¹³.

18 44. Effective April 9, 2020, the County of San Diego required all employees who may
19 have contact with the public in any restaurant or other essential business that serves food, grocery
20 store, pharmacy/drug store, convenience store or gas stations shall wear a cloth face covering¹⁴.
21 The Order was amended to require that all persons wear face coverings in public effective May
22 1, 2020.

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24 ¹¹ [https://www.calrest.org/sites/main/files/file-
25 attachments/santa_barbara_county_guidelines_face_coverings.pdf](https://www.calrest.org/sites/main/files/file-attachments/santa_barbara_county_guidelines_face_coverings.pdf)

26 ¹² [http://wp.sbcounty.gov/dph/wp-
26 content/uploads/sites/7/2020/04/SKM_C45820040714190.pdf](http://wp.sbcounty.gov/dph/wp-content/uploads/sites/7/2020/04/SKM_C45820040714190.pdf)

27 ¹³ [https://www.cityofinglewood.org/DocumentCenter/View/14254/Executive-Order-20-04---
27 Mandate-to-Wear-Facial-Coverings](https://www.cityofinglewood.org/DocumentCenter/View/14254/Executive-Order-20-04---Mandate-to-Wear-Facial-Coverings)

28 ¹⁴ [https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/Epidemiology/
28 HealthOfficerOrderCOVID19.pdf](https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/Epidemiology/HealthOfficerOrderCOVID19.pdf)

1 45. On April 9, 2020, The City of Burbank has issued an Order to require face
2 coverings for workers along with customers patronizing essential businesses. The Order began at
3 12:01 a.m. on Friday, April 10 and remains in place until the termination of the Los Angeles
4 County Public Health Safer at Home Order dated March 21, 2020, unless this order is explicitly
5 terminated or extended¹⁵.

6 46. Effective April 10, 2020, the City of Calabasas passed an order requiring any
7 person shopping or working at a grocery store, restaurant, or other essential business or service
8 within the City of Calabasas shall wear a face covering while they are at the location¹⁶.
9 Additionally, the Order provided that, “A grocery store, restaurant, or other essential business
10 may refuse admission or service to any individual who fails to wear a face covering as required
11 by this order. All grocery stores, restaurants, or other essential businesses are further required to
12 develop and implement a written, comprehensive COVID-19 exposure control plan, to be
13 approved by the City within 3 days from the date of this Order, which includes control measures
14 such as social distancing; face coverings and personal protective equipment, hygiene;
15 decontamination procedures, and training.”

16 47. Effective April 10, 2020, all employees and customers conducting essential
17 business were required by the city of Ojai to wear a face covering for their nose and mouth.¹⁷

18 48. On April 10, 2020, the Irvine City Council held a special meeting to ratify an
19 executive Order requiring all essential businesses within the City that provide sales of retail goods
20 and/or food and/or banking services, and remain in operation during this time, to require their
21 employees to wear face coverings such as scarves, bandanas, neck gaiters, or other fabric face
22 coverings¹⁸.

23 49. On April 11, 2020, the City of Pasadena issued an order requiring All workers who
24 work at essential businesses or perform essential services, to wear face coverings over their noses
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27 ¹⁵ <https://www.burbankca.gov/Home/Components/News/News/4203/25>

28 ¹⁶ <http://www.cityofcalabasas.com/covid/executiveorder-expandedfacecoverings.pdf>

¹⁷ https://drive.google.com/file/d/1_KZVFhOByug1KZ1dPMSQx0fagK10dm31/view

¹⁸ <http://legacy.cityofirvine.org/civica/filebank/blobload.asp?BlobID=32417>

1 and mouths while performing their work. These face coverings must be provided by the employer
2 at the employer's expense. Essential businesses have until 11:59 p.m. on April 15 to implement
3 this new requirement and provide evidence of implementation to the Pasadena Public Health
4 Department. Additionally, all customers and visitors of essential businesses must wear face
5 coverings over their noses and mouths.¹⁹

6 50. On April 13, 2020, effective immediately, the Mono County Health Officer issued
7 an order requiring face coverings for essential workers²⁰.

8 51. On April 13, 2020, the City of Costa Mesa issued emergency regulations effective
9 midnight of April 13th which expressly mandate the use of face masks or coverings by residents
10 and those who visit within the jurisdiction of the City, and to make the same enforceable within
11 the boundaries of the City's jurisdiction.²¹

12 52. On April 13, 2020, Sonoma County Health Officer issued an order requiring all
13 members of the public to wear facial coverings effective April 17, 2020. The Order requires that,
14 "[a]ll persons shall wear facial coverings before they enter any indoor facility besides their
15 residence, any enclosed open space, or while outdoors when the person is unable to maintain a
16 six-foot distance from another person at all times."²² Violation of or failure to comply with this
17 Order is a misdemeanor punishable by fine, imprisonment, or both.

18 53. On April 14, 2020, the City of Buena Park voted to require masks in public spaces.

19 54. As of April 16, 2020, until the local emergency is declared over, or unless
20 otherwise stated, in Fremont all employees and customers/consumers are required to wear a face
21 covering at certain essential places of business, including restaurants, gas stations, businesses that
22 have the primary function of shipping or delivering goods directly to residences or businesses,
23 and establishments engaged in the retail sale of unprepared food, canned food, dry goods, non-

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26 ¹⁹ <https://www.cityofpasadena.net/city-manager/wp-content/uploads/sites/2/Social-Distancing-Protocol-Health-Order.pdf?v=1588101903678>

27 ²⁰ <https://coronavirus.monocounty.ca.gov/datasets/pr-face-coverings-required-for-essential-workers-4-13-2020-1>

28 ²¹ <https://www.costamesaca.gov/home/showdocument?id=42037>

²² <https://socoemergency.org/order-of-the-health-officer-facial-coverings/>

1 alcoholic beverages, fresh fruits and vegetables, pet supplies, fresh meats, fish, and poultry, as
2 well as hygienic products and household consumer products necessary for personal hygiene or
3 the habitability, sanitation, or operation of residences²³.

4 55. On April 17, the San Mateo County Health Officer in conjunction with other Bay
5 Area counties issued an order requiring individuals to wear a face covering when they need to
6 leave their home to work or obtain essential goods and services. The Order is effective as of 11:59
7 p.m. April 17, 2020 and enforceable as of 8 a.m. April 22, 2020. Violations of the health order
8 are punishable as a misdemeanor under California Health and Safety Code section 120195.
9 Violations can carry a fine up to \$1,000, imprisonment up to 90 days, or both²⁴.

10 56. On April 17, 2020, the County of Alameda issued an Order requiring all residents
11 and workers to wear face coverings when conducting essential business and when around others
12 outside of their immediate household. The Order provided for a grace period until April 22, 2020
13 for full compliance. Violation of or failure to comply with this Order is a misdemeanor punishable
14 by fine, imprisonment, or both.

15 57. On April 17, 2020, the City and County of San Francisco announced that everyone
16 in San Francisco would be required to wear face coverings when they are outside of their homes
17 for essential needs, including waiting in line for or inside of a grocery store or on public
18 transportation. Additionally, all workers and volunteers at essential businesses, operating public
19 transportation, or operating other types of shared transportation must wear a face covering when
20 at work in most settings, when interacting with the public or co-workers²⁵.

21 58. Also, on April 17, 2020, the County of Contra Costa issued an Order, which
22 became enforceable on April 22, 2020, requiring anyone working at or visiting an essential
23 business, such as a grocery store or gas station, to wear face coverings to help reduce the spread
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26 ²³ <https://fremont.gov/FaceCoveringsFAQ>

27 ²⁴ [http://www.acphd.org/media/569455/health-officer-order-20-08-face-coverings-
2020.04.17.pdf](http://www.acphd.org/media/569455/health-officer-order-20-08-face-coverings-2020.04.17.pdf)

28 ²⁵ [https://cmo.smcgov.org/sites/cmo.smcgov.org/files/documents/files/HO%20Order%20c19-
8%20Face%20Covering%2020200417.pdf](https://cmo.smcgov.org/sites/cmo.smcgov.org/files/documents/files/HO%20Order%20c19-8%20Face%20Covering%2020200417.pdf)

1 of COVID-19.²⁶ The order also provided that employers may to the extent already authorized by
2 law refuse admission or service to any customer or visitor who refuses to comply with this order
3 and are encouraged to post signs at business entrances to remind customers of the requirement to
4 wear face covering.

5 59. On April 17, 2020, the County of Marin issued an order requiring that members of
6 the public must wear Face Coverings while inside of or waiting in line to enter Essential
7 Businesses and other businesses or facilities engaged in Minimum Basic Operations, providing
8 Essential Infrastructure, and providing Essential Government Functions.²⁷

9 60. On April 21, 2020, Humboldt County Health Officer issued a Health Order
10 requiring the use of facial coverings to further manage the spread of COVID-19, effective April
11 24, 2020.²⁸ The order will be in effect starting at 12:01 a.m. Friday, April 24, and until it is
12 modified or rescinded by the Health Officer. The Order states people must wear a facial covering
13 before they enter:[a]ny indoor facility except for their own residence; [a]ny enclosed space; [a]ny
14 outdoor space where individuals are unable to maintain at all times a distance of six feet from
15 others.

16 61. Also, effective April 24, was an order requiring face coverings in Santa Cruz
17 County and the unincorporated areas of Capitola, Scotts Valley, Santa Cruz and Watsonville. The
18 Order requires members of the public to wear a face covering in a number of circumstances
19 including when conducting business with an essential business (such as convenience store,
20 grocery store or restaurant).²⁹

21 62. On April 24, 2020, San Benito County issued an Order requiring members of the
22 public to wear face coverings while inside or waiting in line to enter essential businesses and
23 requires employees, contractors, owners and volunteers of all essential businesses to wear a face
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25 ²⁶ https://813dcad3-2b07-4f3f-a25e-23c48c566922.filesusr.com/ugd/84606e_7aedf6a44a884872ad17824ef2855107.pdf

26 ²⁷ <https://coronavirus.marinhhs.org/marin-public-health-order-face-coverings-41720>

27 ²⁸ <https://humboldt.gov/DocumentCenter/View/85482/Health-Officer-Order---Wear-Facial-Coverings---signed-04212020?bidId=>

28 ²⁹ <https://htv-prod-media.s3.amazonaws.com/files/santa-cruz-pho-face-covering-order-1587683126.pdf>

1 covering when at work³⁰. The Order was effective April 27, 2020.

2 63. Yolo County issued a similar order which became enforceable on April 27, 2020,
3 requiring face coverings to be worn in public settings such as picking up food at a restaurant,
4 going into facilities allowed to stay open, and working an essential job that interacts with the
5 public.

6 64. The County of Mendocino issued an order on April 24, 2020, which becomes
7 effective May 1, 2020, which requires facial coverings in public³¹.

8 65. Numerous other cities and counties throughout the state continue to promulgate
9 and update their rules and regulations regarding the requirement of PPE.

10 **OSHA Guidelines**

11 66. OSHA has outlined basic steps that every employer can take to reduce the risk of
12 worker exposure to SARS-CoV-2, the virus that causes COVID-19, in their workplace.

13 67. Such steps include developing an infectious disease preparedness and response
14 plan, developing policies and procedures for prompt identification and isolation of sick people, if
15 appropriate, and develop, implement and communicating about workplace flexibilities and
16 protections³².

17 68. A further step involves implementing basic infection prevention measures which
18 include:

- 19 • exploring whether the employer can establish policies and practices, such as
20 flexible worksites (e.g., telecommuting) and flexible work hours (e.g., staggered
21 shifts), to increase the physical distance among employees and between
22 employees and others if state and local health authorities recommend the use of
23 social distancing strategies;

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26 ³⁰ <https://s3.us-east-1.amazonaws.com/kion546.com/2020/04/San-Benito-Facial-Covering-Order-4-24-20.pdf>

27 ³¹ <https://mendovoice.com/wp-content/uploads/2020/04/4.24.20-ORDER-OF-THE-HEALTH-OFFICER-Shelter-in-Place-Final-redline.pdf>

28 ³² <https://www.osha.gov/Publications/OSHA3990.pdf>

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- Discouraging workers from using other workers’ phones, desks, offices, or other work tools and equipment, when possible;
- Maintaining regular housekeeping practices, including routine cleaning and disinfecting of surfaces, equipment, and other elements of the work environment. When choosing cleaning chemicals, employers should consult information on Environmental Protection Agency (EPA)-approved disinfectant labels with claims against emerging viral pathogens. Products with EPA-approved emerging viral pathogens claims are expected to be effective against SARS-CoV-2 based on data for harder to kill viruses. Follow the manufacturer’s instructions for use of all cleaning and disinfection products (e.g., concentration, application method and contact time, PPE).

69. Finally, the OSHA guidelines provide that an employer implement workplace control. Occupational safety and health professionals use a framework called the “hierarchy of controls” to select ways of controlling workplace hazards. In other words, the best way to control a hazard is to systematically remove it from the workplace, rather than relying on workers to reduce their exposure. During a COVID-19 outbreak, when it may not be possible to eliminate the hazard, the most effective protection measures are (listed from most effective to least effective): engineering controls, administrative controls, safe work practices (a type of administrative control), and PPE.

70. Engineering controls involve isolating employees from work- related hazards. In workplaces where they are appropriate, these types of controls reduce exposure to hazards without relying on worker behavior and can be the most cost-effective solution to implement. Engineering controls for SARS-CoV-2 include³³:

- Installing high-efficiency air filters.
- Increasing ventilation rates in the work environment.
- Installing physical barriers, such as clear plastic sneeze guards.

³³ <https://www.osha.gov/Publications/OSHA3990.pdf>

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- Installing a drive-through window for customer service.
- Specialized negative pressure ventilation in some settings, such as for aerosol generating procedures (e.g., airborne infection isolation rooms in healthcare settings and specialized autopsy suites in mortuary settings).

71. Administrative controls require action by the workers or employers. Typically, administrative controls are changes in work policy or procedures to reduce or minimize exposure to hazards. Examples of administrative controls for COVID-19 include:

- 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).
- Training workers who need to use protective clothing and equipment how to put it on, use/wear it, and take it off correctly, including in the context of their current and potential duties. Training material should be easy to understand and available in the appropriate language and literacy level for all workers. Encouraging sick workers to stay at home.
- Establishing alternative 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 workweek.
- Developing emergency communications plans, including a forum for answering worker’s concerns and internet -based communications, if feasible.

72. Safe work practices are types of administrative controls that include procedures for safe and proper work used to reduce the duration, frequency, or intensity of exposure to a hazard. Examples of safe work practices for SARS-CoV-2 include:

- Providing resources and a work environment that promotes personal hygiene. For example, provide tissues, no-touch trash cans, hand soap, alcohol-based hand rubs containing at least 60 percent alcohol, disinfectants, and disposable towels for workers to clean their work surfaces.

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- Requiring regular hand washing or using of alcohol-based hand rubs. Workers should always wash hands when they are visibly soiled and after removing any PPE.

73. As the OSHA Manual makes clear, “[w]hile engineering and administrative controls are considered more effective in minimizing exposure to SARS-CoV-2, PPE may also be needed to prevent certain exposures. While correctly using PPE can help prevent some exposures, it should not take the place of other prevention strategies³⁴.

74. Per the Manual, examples of PPE include: gloves, goggles, face shields, face masks, and respiratory protection, when appropriate. During an outbreak of an infectious disease, such as COVID-19, recommendations for PPE specific to occupations or job tasks may change depending on geographic location, updated risk assessments for workers, and information on PPE effectiveness in preventing the spread of COVID-19³⁵.

75. All types of PPE must be:

- Selected based upon the hazard to the worker.
- Properly fitted and periodically refitted, as applicable (e.g., respirators).
- Consistently and properly worn when required.
- Regularly inspected, maintained, and replaced as necessary
- Properly removed, cleaned, and stored or disposed of, as applicable, to avoid contamination of self, others, or the environment.

The CDC

76. The Centers for Disease Control and Prevention is the leading national public health institute of the United States. It is a United States federal agency, under the Department of Health and Human Services.

77. The CDC’s strategies and guidelines for businesses and employers are built on the core premise that the COVID-19 virus is easily spread when people congregate together in large groups. The fundamental message conveyed by the CDC focuses on “social distancing”, or

³⁴ <https://www.osha.gov/Publications/OSHA3990.pdf>
³⁵ Id.

1 deliberately increasing the physical space between people, and avoiding physical interactions with
2 groups of individuals.

3 78. According to the CDC, “[b]usinesses and employers can prevent and slow the
4 spread of COVID-19. Employers should plan to respond in a flexible way to varying levels of
5 disease transmission in the community and be prepared to refine their business response plans as
6 needed. The CDC has also issued generalized guidance and recommendations for individuals with
7 actual or potential COVID-19 exposure, broken down by type of exposure.³⁶”

8 79. Workplace safety and health regulations in California require employers to take
9 steps to protect workers exposed to infectious diseases like the Novel Coronavirus (COVID-19),
10 which is widespread in the community.

11 80. CDC guidance identifies three broad steps employers can take to decrease the
12 spread of COVID-19: (a) reduce transmission amongst employees; (b) maintain healthy business
13 operations; and (c) maintain a healthy work environment³⁷.

14 81. The CDC provides guidance as to each of these enumerated steps.

15 82. In terms of reducing transmission, the CDC provides the following
16 recommendations: (a) actively encourage sick employees to remain home and not return to work
17 until the requirements for home isolation have been satisfied; and (b) educating employees about
18 reducing the spread of infection.

19 83. To maintain healthy business operations, the CDC interim guidelines provide that
20 an employer: (a) implement flexible sick leave and supportive policies and practices; (b) assess
21 its essential functions and the reliance that others and the community have on its services or
22 products; (c) plan and monitor absenteeism; and (d) establish policies and practices for social
23 distancing. Suggested policies for social distancing include:

- 24 • Implementing flexible worksites (e.g., telework)
- 25 • Implementing flexible work hours (e.g., staggered shifts)
- 26 • Increasing physical space between employees at the worksite

27 _____
28 ³⁶ <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>

³⁷ Id.

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- Increasing physical space between employees and customers (e.g., drive through, partitions)
- Implementing flexible meeting and travel options (e.g., postpone non-essential meetings or events)
- Downsizing operations
- Delivering services remotely (e.g. phone, video, or web)
- Delivering products through curbside pick-up or delivery

84. Finally, the CDC guidelines identify the following measures to maintain a healthy work environment:

- Improving the engineering controls using the building ventilation system.
- Support respiratory etiquette and hand hygiene for employees, customers, and worksite visitors (e.g. providing tissues and no-touch disposal receptacles, and soap and water in the workplace. If soap and water are not readily available, then alcohol-based hand sanitizer can be substituted provided that is at least 60% alcohol.)
- Performing routine environmental cleaning and disinfection (e.g. provide disposable wipes for commonly used surfaces, discourage workers from using other workers' phones, desks, offices, or other work tools and equipment, when possible, and routinely clean surfaces.

85. their health each day³⁸.”

Defendants’ Failure to Implement and Maintain An Effective Illness and Injury Prevention Program and to Provide PPE

86. Throughout this pandemic Defendants have failed to implement and maintain an effective illness and injury prevention program and provide proper protective equipment and materials, policies, trainings and communications to Plaintiff, and the members of the Class. Such failing included the failure to provide sufficient sanitary face coverings, failure to protect

³⁸ <https://www.npr.org/2020/04/07/829264795/coronavirus-and-the-gig-economy>

1 employees by requiring that all customers, vendors and other individuals entering the facilities
2 wear face coverings; failure to enforce social distancing; failure to provide sufficient breaks to
3 permit hand washing stations and/or failure to provide sufficient hand sanitizers, failures to train
4 employees on use of protective gear such as proper removal of masks and gloves, failure to
5 implement an effective illness prevention program, failure to install sufficient barriers, and failure
6 to provide sufficient disinfectants and cleaning agents.

7 **Facts Regarding Plaintiff**

8 87. Plaintiff began working for DollarTree as a cashier in September of 2019. She is
9 a single mother of six children and, although she was worried about the health and welfare of her
10 children, she continued to perform work for DollarTree during the COVID-19 outbreak.

11 88. In February 2020, she was offered a manager training position at a Dollar Tree
12 Location that was a half an hour further away from her home but chose to take that job due to the
13 higher pay.

14 **Plaintiff's Exhaustion of Administrative Remedies**

15 89. Plaintiff is currently complying with the procedures for bringing suit specified in
16 California *Labor Code* § 2699.3.

17 90. By letter dated June 2, 2020, required notice was sent to Labor and Workforce
18 Development Agency ("LWDA"), the Division of Occupational Safety and Health ("Cal-OSHA")
19 and Defendant of the specific provisions of the California *Labor Code* alleged to have been
20 violated, including the facts and theories to support the alleged violations.

21 **CLASS ACTION ALLEGATIONS**

22 91. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

23 92. Plaintiff brings this action on behalf of herself and all others similarly situated as
24 a class action, pursuant to California Code of Civil Procedure §382. The classes which Plaintiff
25 seeks to represent are composed of, and defined as follows:

26 **Plaintiff Class:**

27 All individuals who worked as non-exempt employees for Defendant in California
28 during the Class Period. ("Putative Class" or "Class Members")

1 93. The Class Period is the period from June 3, 2019, through and including the date
2 judgment is rendered in this matter.

3 94. The class is so numerous that the individual joinder of all members is
4 impracticable. While the exact number and identification of class members are unknown to
5 Plaintiff at this time and can only be ascertained through appropriate discovery directed to
6 Defendant, Plaintiff is informed and believes that the class includes potentially hundreds of
7 members.

8 95. Common questions of law and fact exist as to all members of the class which
9 predominate over any questions affecting only individual members of the class. These common
10 legal and factual questions, which do not vary from class member to class member, and which
11 may be determined without reference to the individual circumstances of any class member,
12 include, but are not limited to, the following:

- 13 a. Whether Defendant's conduct as alleged herein violates the Unfair Business
14 Practices Act of California, Bus. & Prof. Code § 17200, *et seq.*
15 b. Whether Defendant's conduct constitutes a public nuisance.

16 96. The claims of the named Plaintiff are typical of the claims of the members of the
17 putative class. Plaintiff and other class members sustained losses, injuries and damages arising
18 from Defendant's common policies, practices, procedures, protocols, routines, and rules which
19 were applied to other class members as well as Plaintiff. Plaintiff seeks recovery for the same
20 type of losses, injuries, and damages as were suffered by other members of the proposed class.

21 97. Plaintiff is an adequate representative of the proposed classes because she is a
22 member of the class, and her interests do not conflict with the interests of the members she seeks
23 to represent. Plaintiff has retained competent counsel, experienced in the prosecution of complex
24 class actions, and together Plaintiff and her counsel intends to prosecute this action vigorously for
25 the benefit of the classes. The interests of the Class Members will fairly and adequately be
26 protected by Plaintiff and her attorneys.

27 98. A class action is superior to other available methods for the fair and efficient
28 adjudication of this litigation since individual litigation of the claims of all Class Members is

1 impracticable. It would be unduly burdensome to the courts if these matters were to proceed on
2 an individual basis, because this would potentially result in hundreds of individuals, repetitive
3 lawsuits. Further, individual litigation presents the potential for inconsistent or contradictory
4 judgments, and the prospect of a “race to the courthouse,” and an inequitable allocation of
5 recovery among those with equally meritorious claims. By contrast, the class action device
6 presents far fewer management difficulties, and provides the benefit of a single adjudication,
7 economics of scale, and comprehensive supervision by a single court.

8 99. The various claims asserted in this action are additionally or alternatively
9 certifiable under the provisions of the California Code of Civil Procedure § 382 because:

- 10 a. The prosecution of separate actions by hundreds of individual class
11 members would create a risk of varying adjudications with respect to
12 individual class members, thus establishing incompatible standards of
13 conduct for Defendant, and
- 14 b. The prosecution of separate actions by individual class members would
15 also create the risk of adjudications with respect to them that, as a practical
16 matter, would be dispositive of the interest of the other class members who
17 are not a party to such adjudications and would substantially impair or
18 impede the ability of such non-party class members to protect their
19 interests.

20 **FIRST CAUSE OF ACTION**

21 **Public Nuisance**

22 **(By Plaintiff the Class and the General Public Against All Defendants)**

23 100. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
24 fully set forth herein.

25 101. Defendants' wrongful actions and inactions set forth hereinabove constitutes a
26 public nuisance under Civil Code Sections 3479 and 3480.

27 102. Defendants' failure to comply with State, municipal and county ordinances, and/or
28 minimum basic health and safety standards in its workplace, including the CDC guidelines and

1 other minimum public health standards necessary to stop the spread of COVID-19, is causing, or
2 is reasonably certain to cause, community spread of the disease.

3 103. This community spread is not or will not be limited to the Defendants employees.
4 Infected workers will go home to interact with their families and with other members of the public.

5 104. Thus, increased community spread at throughout the Defendants employees will
6 cause increased community spread in the cities Defendants services in California and across the
7 United States.

8 105. This community spread will result in disease and possibly death. It will also stress
9 healthcare resources and cause financial harm.

10 106. As a result, Defendants' current operations constitute a public nuisance because
11 they are "injurious to health."

12 107. Defendants' actions threaten to create and create a public nuisance insofar as they
13 created nuisance as to Plaintiff as well as they "affect[] at the same time an entire community or
14 neighborhood" and they "affect[] ... a considerable number of persons although the extent of the
15 annoyance or damage inflicted upon individuals may be unequal. Cal. Civil Code §§ 3479-3480.
16 Pursuant to Civil Code § 3493.

17 108. Plaintiff has standing to maintain an action for public nuisance because the
18 nuisance is especially injurious to Plaintiff because she is directly exposed to the dangerous
19 working conditions maintained by Defendants.

20 109. This public nuisance causes special harm to Plaintiff because of the risks she will
21 be exposed to at work or in the community, requiring her to quarantine, losing income, and putting
22 anyone she may come into close contact with at risk.

23 110. Plaintiff therefore requests a declaration that the Defendants as presently
24 operating, constitutes a public nuisance and injunctive relief to abate the nuisance.

25 **SECOND CAUSE OF ACTION**

26 **Unfair Business Practices (Business and Professions Code § 17200)**

27 **(By Plaintiff, the Class and the General Public against all Defendants)**

28 111. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though

1 fully set forth herein.

2 112. Defendants have engaged and continue to engage in unfair and/or unlawful
3 business practices in California in violation of California Business and Professions Code § 17200
4 et seq., by failing to comply with State, municipal and county ordinances, failing to provide a safe
5 workplace, failing to implement an effective illness prevention plan, failing to provide necessary
6 protective equipment.

7 113. Defendants' conduct constitutes unlawful business acts or practices, in that
8 Defendants has violated California Labor Code §§6400, 6401, 6401.7, 6402, 6403, 6404 and 6406.
9 Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff
10 for herself and on behalf of the members of the Class, seeks injunctive relief.

11 114. There were reasonably available alternatives to further Defendants' legitimate
12 business interests, other than the conduct described herein.

13 115. All of the conduct alleged herein occurs and continues to occur in Defendants'
14 business. Defendants' wrongful conduct is part of a pattern or generalized course of conduct repeated
15 on hundreds of occasions daily.

16 116. The acts complained of herein occurred within the last year immediately preceding
17 the filing of the Complaint in this action.

18 117. Plaintiff was compelled to retain the services of counsel to file this court action to
19 protect her interests and those of the Class to secure injunctive relief on behalf of Defendants' current
20 employees, and to enforce important rights affecting the public interest. Plaintiff thereby incurred the
21 financial burden of attorneys' fees and costs, which she is entitled to recover under Code of Civil
22 Procedure § 1021.5.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff, on behalf of herself, and on behalf of the members of the
25 Plaintiff, Terminated Sub Class, FCRA, ICRAA and CCRAA Classes, prays for judgment against
26 Defendants as follows:


- 27 1. For declaratory relief;
- 28 2. For injunctive relief;
3. For damages;

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- 4. Prejudgment and post judgment interest on all sums awarded;
- 5. Attorneys' fees and litigation expenses in an amount the Court determines to be reasonable, pursuant to 29 U.S.C. §216 (b), California *Labor Code* § 1194 (a), 2699 (g) (1) and Cal. *Code of Civil Procedure* §1021.5, and any other such provision as may be applicable;
- 6. An award of attorneys' fees and costs, as allowed by law, including an award of attorneys' fees and costs pursuant to 15 U.S.C. § 1681n, 15 U.S.C. 1681o, California *Civil Code* §§ 1785.31(a) and 1786.50, and California *Code of Civil Procedure* § 1021.5;
- 7. Costs of suit; and,
- 8. Such other and further relief as is equitable, just, and proper.

DATED: June 10, 2020

BRADLEY/GROMBACHER, LLP

By: 

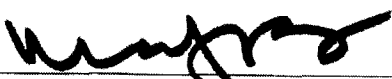
 Marcus J. Bradley, Esq.
 Kiley L. Grombacher, Esq.
 Lirit A. King, Esq.
 Attorneys for Plaintiff

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable as a matter of right.

DATED: June 10, 2020

BRADLEY/GROMBACHER, LLP

By: 

 Marcus J. Bradley, Esq.
 Kiley L. Grombacher, Esq.
 Lirit A. King, Esq.
 Attorneys for Plaintiff