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NUGGET MARKET, INC.
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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF MARIN**
12

13 MARTIN COLETTI, individually and on behalf
of all others similarly situated,
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Plaintiffs,
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vs.
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NUGGET MARKET, INC., a California
17 corporation, and DOE 1 through and including
DOE 100,
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Defendants.
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Case No. CIV1600425
Assigned for all purposes to
Hon. Paul E. Haakenson
Courtroom E
**ANSWER TO FIRST AMENDED
COMPLAINT**
Action Filed: February 3, 2016

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1 Defendant Nugget Market, Inc., a California corporation ("Defendant"), hereby answers the
2 unverified First Amended Complaint ("Complaint") filed by Plaintiff Martin Coletti ("Plaintiff") as
3 follows:

4 **GENERAL DENIAL**

5 Pursuant to California Code of Civil Procedure section 431.30(d), Defendant denies
6 generally and specifically each and every allegation contained in Plaintiff's Complaint.

7 As used throughout this Answer and Affirmative Defenses, the term "Plaintiff" refers to
8 plaintiff Martin Coletti, and all persons whom Plaintiff seeks to represent on a class, collective, or
9 other representative basis with regard to the claims in the Complaint.

10 **AFFIRMATIVE DEFENSES**

11 **FIRST AFFIRMATIVE DEFENSE**

12 **(Failure to State a Claim Upon Which Relief Can Be Granted)**

13 1. As a separate and affirmative defense to the Complaint and to each purported claim
14 for relief alleged therein, Defendant alleges that the Complaint fails to state facts sufficient to
15 constitute valid claims against Defendant upon which relief can be granted.

16 **SECOND AFFIRMATIVE DEFENSE**

17 **(Failure to Mitigate Damages)**

18 2. As a separate and affirmative defense to the Complaint and to each purported claim
19 for relief alleged therein, Defendant alleges that if Plaintiff sustained damages by reason of the
20 allegations in the Complaint, which allegations are denied, then Plaintiff may not recover for such
21 damages because by Plaintiff's own acts and omissions, Plaintiff has failed to properly mitigate
22 those damages. To the extent Plaintiff purports to pursue a class action, individual issues
23 predominate as to each putative class member's failure to take reasonable efforts to mitigate
24 damages.

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THIRD AFFIRMATIVE DEFENSE

(Laches)

3. As a separate and affirmative defense, Defendant alleges that the Complaint and each purported cause of action alleged therein are barred, in whole or in part, by the equitable doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

4. The Complaint and each purported cause of action alleged therein are barred, in whole or in part, by one or more statutes of limitations including, but not limited to, the following: as to Plaintiff's First Cause of Action, Second Cause of Action, Third Cause of Action, Fourth Cause of Action, Fifth Cause of Action, Sixth Cause of Action and Eighth Cause of Action, Defendant asserts that those claims are barred pursuant to California Code of Civil Procedure §§ 337(1), 338(a), 339(1), 340(a) and 343, and/or California Labor Code § 203. As to Plaintiff's Seventh Cause of Action, Defendant asserts that the claims therein are barred pursuant to California Business and Professions Code § 17208.

FIFTH AFFIRMATIVE DEFENSE

(Estoppel)

5. As a separate and affirmative defense to the Complaint and to each purported claim for relief alleged therein, Defendant alleges that Plaintiff's claims, in whole or in part, are barred by the doctrine of estoppel and that Plaintiff, by his own conduct and actions, is estopped, as a matter of law, from pursuing the claims alleged in the Complaint. To the extent Plaintiff purports to pursue a class action, individual issues predominate as to whether each putative class member is estopped from asserting the claims alleged in the Complaint.

SIXTH AFFIRMATIVE DEFENSE

(Unclean Hands)

6. As a separate and affirmative defense to the Complaint and to each purported claim for relief alleged therein, Defendant alleges that Plaintiff's claims, in whole or in part, are barred by the doctrine of unclean hands. To the extent that Plaintiff purports to pursue a class action,

1 individual issues predominate as to each putative class member's conduct showing unclean hands
2 or right to equitable relief.

3 **SEVENTH AFFIRMATIVE DEFENSE**

4 **(Offset)**

5 7. As a separate and affirmative defense to the Complaint and to each purported claim
6 for relief alleged therein, Defendant alleges that to the extent that Plaintiff or members of the
7 putative class are entitled to damages or penalties (which is expressly denied), Defendant is
8 entitled, under the equitable doctrines of setoff and recoupment, to an offset for any overpayment
9 of wages or other consideration previously provided to those parties.

10 **EIGHTH AFFIRMATIVE DEFENSE**

11 **(No Standing)**

12 8. As a separate and affirmative defense to the Complaint and to each purported claim
13 for relief alleged therein, Defendant alleges that Plaintiff lacks standing to seek civil penalties or
14 damages under relevant portions of the California Labor Code and California Business and
15 Professions Code § 17200, *et seq.*, because Plaintiff has not suffered any injury in fact or lost
16 money or property as a result of any alleged unfair competition, and/or penalties are unavailable
17 under the statutes Plaintiff sues upon.

18 **NINTH AFFIRMATIVE DEFENSE**

19 **(Failure to Exhaust)**

20 9. As a separate and affirmative defense to the Complaint and to each purported claim
21 for relief alleged therein, Defendant alleges that Plaintiff's claims are barred to the extent Plaintiff
22 has failed to satisfy the jurisdictional and/or statutory prerequisites for the causes of action, and/or
23 has failed to exhaust all administrative remedies and/or failed to timely exhaust those remedies as
24 required by law, including but not limited to those provided by Cal. Labor Code § 2699.3.

25 **TENTH AFFIRMATIVE DEFENSE**

26 **(Inadequate Class Representatives)**

27 10. As a separate and affirmative defense to the Complaint and to each purported claim
28 for relief alleged therein, Defendant alleges that Plaintiff's Complaint, and each purported cause of

1 action alleged therein, fails because Plaintiff and Plaintiff's counsel are not adequate
2 representatives of, or counsel to, the alleged class that Plaintiff purports to represent. Defendant
3 alleges that Plaintiff does not have claims typical of the alleged class, if any, and that Plaintiff's
4 interests are antagonistic to the alleged class he purports to represent. Defendant further alleges
5 that Plaintiff is not "similarly situated" to any other employees whom he claims to purportedly
6 represent. As such, the class action claims and allegations fail, as a matter of law.

7 **ELEVENTH AFFIRMATIVE DEFENSE**

8 **(Plaintiff Not an Aggrieved Party)**

9 11. As a separate and affirmative defense to the Complaint and to each purported claim
10 for relief alleged therein, Defendant alleges that Plaintiff's claims for civil penalties pursuant to the
11 Labor Code Private Attorneys General Act, Labor Code § 2699 *et seq.*, fails because Plaintiff is not
12 an aggrieved party pursuant to the terms of the Labor Code.

13 **TWELFTH AFFIRMATIVE DEFENSE**

14 **(No Injury by Wage Statements)**

15 12. As a separate and affirmative defense to the Complaint and to each purported claim
16 for relief alleged therein, Defendant alleges that Plaintiff's claims pursuant to California Labor
17 Code § 226 *et seq.* are barred to the extent that Plaintiff suffered no injury.

18 **THIRTEENTH AFFIRMATIVE DEFENSE**

19 **(Avoidable Consequences)**

20 13. As a separate and affirmative defense to the Complaint and to each purported claim
21 for relief alleged therein, Defendant alleges that Plaintiff's and the putative class members' claims,
22 if any, are barred by the doctrine of avoidable consequences because they unreasonably failed to
23 take action to avoid the alleged damages, and some or all of the alleged damages would have been
24 avoided by such action.

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1 **FOURTEENTH AFFIRMATIVE DEFENSE**

2 **(Accord and Satisfaction)**

3 14. As a separate and affirmative defense to the Complaint and to each purported claim
4 for relief alleged therein, Defendant alleges that Plaintiff's and the putative class members' claims,
5 if any, are barred by the doctrines of accord and satisfaction.

6 **FIFTEENTH AFFIRMATIVE DEFENSE**

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

8 15. As a separate and affirmative defense to the Complaint and to each purported claim
9 for relief alleged therein, Defendant alleges that Plaintiff cannot recover waiting time penalties
10 because any alleged failure to pay wages was based on a good faith dispute regarding the
11 applicable law or facts.

12 **SIXTEENTH AFFIRMATIVE DEFENSE**

13 **(Res Judicata)**

14 16. As to Plaintiff's First Cause of Action, Second Cause of Action, Third Cause of
15 Action, Fourth Cause of Action, Fifth Cause of Action, Sixth Cause of Action and Seventh Cause
16 of Action, Defendant alleges as follows: Pending further discovery, Plaintiff's claims, and the
17 claims of the putative members of the purported class, subclass(es) and aggrieved employees, as
18 defined in the Complaint, or some of them, are barred in whole or in part by the doctrines of *res*
19 *judicata* and/or collateral estoppel. Plaintiff and members of Plaintiff's putative class are bound by
20 any prior determination made by any person or authority with competent jurisdiction.

21 **SEVENTEENTH AFFIRMATIVE DEFENSE**

22 **(Release)**

23 17. As a separate and affirmative defense, Defendant alleges that the Complaint and
24 each purported cause of action alleged therein are barred, in whole or in part, to the extent any or
25 all claims were released and/or previously settled by Plaintiff and/or any of the putative class
26 members Plaintiff seeks to represent.

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WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiff takes nothing by way of his Complaint;
2. That class certification be denied;
3. That the Court enter judgment for Defendant and against Plaintiff on all his alleged claims;
4. That the Court award Defendant its costs of suit; and
5. That the Court grant Defendant such other and further relief that the Court deems just and proper.

DATED: April 18, 2016

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

By: Carolyn B. Hall
Thomas M. McInerney
Carolyn B. Hall
Michael D. Wilson

Attorneys for Defendant
NUGGET MARKET, INC.

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PROOF OF SERVICE

Martin Coletti, et al. v. Nugget Market, Inc., et al.
Marin County Superior Court Case No.: CIV1600425

I am and was at all times herein mentioned over the age of 18 years and not a party to the action in which this service is made. At all times herein mentioned I have been employed in the County of San Francisco, State of California. My business address is Steuart Tower, Suite 1300, One Market Plaza, San Francisco, CA 94105.

On April 18, 2016, I served the following document(s):

ANSWER TO FIRST AMENDED COMPLAINT

on the following person(s) by the method(s) indicated below:

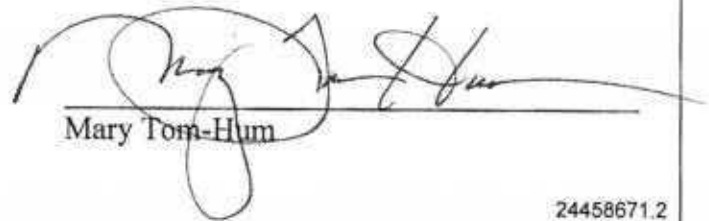
David S. Harris, Esq.
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Facsimile: (415) 388-8770
Email: dsh@northbaylawgroup.com

Attorneys for Plaintiffs

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 18, 2016, at San Francisco, California.


Mary Tom-Hum

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