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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **COUNTY OF RIVERSIDE**

15 Noelia Leyva, an individual, on behalf of  
16 herself and on behalf of all persons similarly  
situated,

17 Plaintiff,

18  
19 v.  
20

21 Waldorf Astoria Management LLC, a Delaware  
Corporation, *dba* La Quinta Resort & Club; and  
22 DOES 1 through 50, inclusive,

23 Defendants.  
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**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

**MAR 02 2020**

**L. VILLANUEVA**

Case No. **RIC 2000943**

**CLASS ACTION**

**COMPLAINT**

1. Failure to Pay Minimum and Overtime Wages
2. Failure to Provide Compliant Meal Breaks
3. Failure to Authorize and Permit Compliant Rest Periods
4. Failure to Pay All Owed Wages Each and Every Pay Period
5. Failure to Provide Accurate Wage Statements
6. Failure to Pay All Wages Owed Upon Separation
7. Violation of the Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*)

**DEMAND FOR JURY TRIAL**

1 Plaintiff Noelia Leyva (hereinafter “Plaintiff” or “Leyva”), an individual, on behalf of  
2 herself and all other similarly situated current and former employees, alleges on information and  
3 belief, except for her own acts and experiences, which are based on personal knowledge, the  
4 following:

### 5 **INTRODUCTION**

6 1. This is a putative class action brought against Defendant Waldorf Astoria  
7 Management LLC *dba* La Quinta Resort & Club (hereinafter “Defendant” or “LQR&C”) for (i)  
8 failing to pay straight-time wages and overtime wages for all work performed; (ii) failing to  
9 provide compliant duty-free meal breaks; (iii) failing to provide compliant duty-free rest periods;  
10 (iv) failing to pay all owed wages each and every pay period; (v) failing to provide accurate,  
11 compliant, itemized wage statements; (vi) failing to pay all wages owed upon separation of  
12 employment, as mandated under the California Labor Code; and (vii) violation of California’s  
13 Unfair Competition Law.

14 2. Plaintiff is a Member of and the named representative for the Class, the Terminated  
15 Employee Subclass, and the Wage Statement Subclass, as defined in Paragraphs 18-20 below. The  
16 term “Class” includes Plaintiff and all other persons who are members of the “Class,” and/or the  
17 “Terminated Employee Subclass,” and/or the “Wage Statement Subclass,” as herein defined.

18 3. On behalf of herself and other Members of the Class and Subclasses, Plaintiff seeks  
19 1) all straight-time and overtime wages owed, under Labor Code §§ 510, 1194 and 1197; 2) an  
20 additional hour of premium pay owed under Labor Code § 226.7 and I.W.C. Wage Order No. 5-  
21 2001 for each day failing to provide all required, compliant meal breaks; 3) an additional hour of  
22 premium pay owed under Labor Code § 226.7 and I.W.C. Wage Order No. 5-2001 for each day  
23 failing to provide all required, compliant rest periods; 4) unpaid wages, due every pay period, under  
24 Labor Code § 204; 5) unpaid wages due at the time of resignation or termination under Labor Code  
25 § 201 and/or § 202 and penalties based on waiting to receive those wages under Labor Code § 203;  
26 6) continuation wages under Labor Code § 203; 7) penalties for inaccurate/non-compliant itemized  
27 wage statements, under Labor Code § 226(e); and, 8) restitution under California Business &  
28 Professions Code (“Cal. Bus. & Prof. Code”) § 17203.

## **JURISDICTION AND VENUE**

4. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure (“Cal. Code of Civ. Proc.”) § 410.10 and Cal. Bus. & Prof. Code § 17203. This action is brought as a Class Action on behalf of Plaintiff and similarly situated employees of Defendant, pursuant to Cal. Code of Civ. Proc. § 382.

5. Venue is proper in this Court, pursuant to Cal. Code of Civ. Proc. §§ 395 and § 395.5, because Plaintiff performed work in the County of Riverside, and Defendant maintains a business location in the County of Riverside, and Defendant committed the wrongful conduct herein alleged in the County of Riverside against Plaintiff and Members of the Class.

## THE PARTIES

### A. Plaintiff and the Class

6. Plaintiff Noelia Leyva was employed by Defendant Waldorf Astoria Management LLC in the State of California – County of Riverside at the hotel property known as La Quinta Resort & Club (LQR&C) from approximately October 25, 2019 through December 16, 2019. Plaintiff was assigned the job title of “supervisor, housekeeping” in the department of “housekeeping” and was classified as an hourly, non-exempt employee. Plaintiff earned \$15.00 per regular straight-time hour and \$22.50 per overtime hour during her employment with Defendants.

7. Plaintiff, along with other hourly, non-exempt employees who worked at LQR&C, was required, for a portion of her employment, to park her personal vehicle at an off-site location in order to work for Defendant. Specifically, at the mandatory new-hire group orientation program, Plaintiff and other new hires were told they were not permitted to park at the LQR&C when working, but instead were required to park at an off-site parking area where a company provided shuttle-van would transport them to/from the hotel resort property on a daily basis for work. The company shuttle-van typically had a pick-up/drop-off schedule leaving from the off-site parking area once every 20 to 30 minutes, which therefore required Plaintiff to arrive ready for work (at the off-site parking location), approximately 15-20 minutes before her *scheduled* 'shift start' time, in order to have sufficient time to park, wait in line for the company shuttle-van, make sure that she had a seat, be driven to the hotel, and then make her way to the time-clock at the hotel so she could

1 “clock-in” for her scheduled shift. After several weeks of working at the LQR&C Plaintiff was  
2 informed that as a “supervisor,” she was permitted to receive a parking permit sticker to park on the  
3 hotel property without taking the company shuttle-van. However, Plaintiff was informed that if a  
4 special event were taking place at the property, all supervisors, including Plaintiff, would not be  
5 allowed to park on the hotel property and would then revert to utilizing the off-site parking area and  
6 company shuttle-van. Plaintiff was not paid wages for any time spent waiting for and taking the  
7 mandatory company shuttle-van from the off-site parking area to the LQR&C, nor for the time  
8 spent walking to/from the shuttle-van to the time-clock location at the hotel, for purposes of  
9 clocking-in/out.

10 8. Plaintiff was required to complete specific paperwork at the conclusion of her shift.  
11 However, due to the work demands that existed at the LQR&C, on various occasions, Plaintiff was  
12 unable to complete all of her required duties, including the paperwork, before the scheduled end of  
13 her shift. Plaintiff was instructed by her supervisors to “clock-out” at her *scheduled* ‘shift end  
14 time’ and to remain on the property to complete her paperwork, without being paid wages (much  
15 less at the overtime rate) for this time.

16 9. Plaintiff was required to carry on her person a Nextel cellular telephone at all times  
17 (including when away from the hotel on days off from work) that was provided by Defendant.  
18 Plaintiff was instructed by management to keep her Nextel cellular telephone “on” at all times “just  
19 in case” there was an issue at the property that needed her attention. On certain occasions, Plaintiff  
20 was contacted by Defendant via the Nextel on her day off from work and on these occasions,  
21 Plaintiff failed to receive wages for this time worked on behalf of Defendant.

22 10. Plaintiff was not consistently able to take all required duty-free 30-minute meal  
23 breaks, or paid duty-free 10-minute rest periods, as mandated under California law. Defendant did  
24 not schedule meal breaks for Plaintiff. Defendant advised Plaintiff at the mandatory new hire  
25 group orientation (attended by other non-exempt hourly employees, including but not limited to,  
26 restaurant workers, front-desk employees, etc.) that employees were not allowed to leave the  
27 property on breaks. Further, due to the off-site parking policy and shuttle-van frequency to/from  
28 the property, it would have been virtually impossible to leave the property to take a meal break and

1 be back within 30-minutes. Additionally, due to Defendants policy of requiring Plaintiff to keep  
2 her Nextel telephone/walkie-talkie on her person at all times (*i.e.* she was always “on call”), she  
3 was always unable to take a compliant duty-free meal break and 10-minute rest period.

4 11. On at least one occasion, Plaintiff did not clock-out for her meal break due to the  
5 work demands that shift. She advised management of this fact the following day. Plaintiff was  
6 advised by management that it was her fault that she did not take her meal break and therefore  
7 Defendant would be deducting 30-minutes of time worked from the prior day as punishment. In  
8 this instance, Defendant not only failed to provide Plaintiff with a compliant 30-minute meal break,  
9 but Defendant also unlawfully deducted compensation for 30-minutes of time worked (*i.e.* earned  
10 wages) from Plaintiff’s time worked, for purposes of showing false compliance with California’s  
11 meal break laws.

12 12. The Members of the Class are similarly situated persons who are presently  
13 employed or were formerly employed by Defendants as hourly, non-exempt employees working at  
14 the LQR&C who: 1) were not paid straight-time and overtime wages for all work time; 2) were not  
15 provided with uninterrupted duty-free 30-minute meal breaks; 3) were not paid all wages due each  
16 and every pay period; 4) were not provided with paid duty-free 10-minute rest periods; 5) were not  
17 provided with all earned wages upon their separation of employment; and/or, 6) were not provided  
18 accurate itemized wage statements.

19 13. The true names and capacities, whether individual, corporate, associate or otherwise  
20 of the Defendants sued here as DOES 1 through 50, inclusive, are presently unknown to Plaintiff,  
21 who therefore sues these Defendants by such fictitious names, pursuant to Cal. Civ. Proc. Code  
22 § 474. Plaintiff is informed and believes, and based thereon, alleges that each of the Defendants  
23 designated herein is legally responsible in some manner for the unlawful acts referred to herein. To  
24 the extent required, Plaintiff will seek leave of Court to amend this Complaint to reflect the true  
25 names and capacities of these Defendants, when they have been ascertained and become known.

26 14. The agents, servants and/or employees of Defendants and each of them, acting on  
27 behalf of the Defendants, acted within the course and scope of his, her or its authority as the agent,  
28 servant and/or employee of the Defendants, and personally participated in the conduct alleged

1 herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the  
2 acts of each Defendant are legally attributable to the other Defendants and all Defendants are  
3 jointly and severally liable to Plaintiff and the other non-exempt hourly employees, for the loss  
4 sustained as a proximate result of the conduct of the Defendants' agents, servants and/or  
5 employees.

6 **B. Defendants**

7 15. Defendant Waldorf Astoria Management LLC *dba* La Quinta Resort & Club  
8 ("LQR&C") is an entity created under the laws of the State of Delaware. At all relevant times  
9 mentioned herein, Defendant Waldorf Astoria Management LLC conducted substantial business in  
10 the State of California, County of Riverside. Defendant is a company that operates hotels and  
11 resorts worldwide. Defendant operates the property known as the LQR&C in Riverside County as  
12 a "Waldorf Astoria Resort" located at 49499 Eisenhower Drive, La Quinta, California 92253  
13 (website: [www.laquintaresort.com](http://www.laquintaresort.com)). Defendant was the employer of Plaintiff during her  
14 employment.

15 16. Plaintiff is ignorant of the true names, capacities, relationships and extent of  
16 participation in the conduct herein alleged, of the Defendants sued herein as DOES 1 through 50,  
17 but is informed and believes and thereon alleges that said Defendants are legally responsible for the  
18 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.  
19 Plaintiff will amend this Complaint to allege the true names and capacities of the DOE Defendants  
20 when ascertained.

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

25 **CLASS ACTION ALLEGATIONS**

26 18. Plaintiff brings this action on behalf of herself and all other similarly situated  
27 persons as a class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a  
28 Class composed of defined as follows:

1       **All of Defendants’ non-exempt hourly employees working at the La Quinta**  
2       **Resort & Club (“LQR&C”) at any time since March 2, 2016 through the date**  
3       **as determined by the Court (“Class Period”) (“Class Members”).**

4       19.     Plaintiff also seeks to bring this action on behalf of herself and all other similarly  
5       situated persons in a Subclass of the Plaintiff Class, which is composed of and defined as follows:

6       **All Class Members whose employment ended at any time since March 2, 2017**  
7       **(“Separated Subclass Members”).**

8       20.     Plaintiff also seeks to bring this action on behalf of herself and all other similarly  
9       situated persons in a Subclass of the Plaintiff Class, which is composed of and defined as follows:

10       **All Class Members employed at any time since March 2, 2019 (“Wage**  
11       **Statement Subclass Members”).**

12       21.     This action has been brought and may be maintained as a class action pursuant to  
13       Code of Civil Procedure § 382, because there is a well-defined community of interest among many  
14       persons who comprise a readily ascertainable class.

- 15       a.     The Class Members are so numerous that individual joinder of all of them as  
16       plaintiffs is impractical. Although the exact number of Class members is unknown  
17       to Plaintiff at this time, Plaintiff is informed and believes and thereon alleges that  
18       there are not less than 100 Class Members.
- 19       b.     The identity of Class Members can readily be determined from Defendants’ records.  
20       Defendants’ records include the name and address of every person who performed  
21       work for them at the LQR&C during the Class Period.
- 22       c.     Common questions of law and fact exist as to Class Members and predominate over  
23       any questions that may affect only individual Class Members. These common  
24       questions include, but are not limited to:

- 25             (1)     Did Defendants, in violation of Labor Code §§ 510, 1194, and 1197, fail to  
26                     pay Plaintiff and Class Members for all straight-time and overtime wages  
27                     owed to them?

28       ///

- (2) Did Defendants violate Labor Code §§ 226.7 and 512, and I.W.C. Wage Order 5-2001 by failing to provide compliant duty-free meal breaks as alleged herein?
- (3) Did Defendants violate Labor Code §§ 226.7 and 512, and I.W.C. Wage Order 5-2001 by failing to authorize and permit compliant duty-free paid rest periods as alleged herein?
- (4) Did Defendants fail to provide Wage Statement Subclass Members with accurate, compliant, itemized wage statements?
- (5) Are Defendants liable for civil penalties under Labor Code § 226?
- (6) Did Defendants, in violation of Labor Code § 201 or § 202, fail to pay timely all wages owed to Separated Subclass Members upon separation?
- (7) Did Defendants act willfully when they failed to pay timely all wages owed to Separated Subclass Members upon separation?
- (8) Are Defendants liable for penalty wages under Labor Code § 203?
- (9) Did Defendants violate the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*, by their unlawful practices, as alleged herein?
- (10) Did Defendants violate the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*, by failing to pay Plaintiff and Class Members all wages earned each pay period, in violation of Labor Code § 204, as alleged herein?
- (11) Are Defendants liable for restitution under Cal. Bus. & Prof. Code § 17203?
- (12) Are Defendants liable for pre-judgment interest?
- (13) Are Defendants liable for attorney's fees and costs?

d. Plaintiff is a Member of the Class and the Subclasses, and her claims are typical of the claims of the other Class Members and Subclass Members. Plaintiff is informed and believes and thereon alleges that Defendants maintain policies or practices of: 1) failing to pay straight-time and overtime wages for all hours actually worked; 2) failing to provide compliant meal breaks; 3) failing to authorize and permit compliant properly paid rest periods; 4) failing to pay employees for all wages

1 earned during each pay period; 5) failing to pay employees all earned wages due  
2 upon separation of employment; and/or 6) failing to provide employees with  
3 accurate, compliant itemized wage statements.

4 e. Plaintiff will adequately and fairly protect the interests of the Class Members and  
5 Subclass Members. Plaintiff has no interest adverse to the interests of absent Class  
6 Members and Subclass Members. Plaintiff is represented by legal counsel who has  
7 substantial class action experience in civil litigation and employment law.

8 22. A class action is superior to other available means for fair and efficient adjudication  
9 of the claims of the Class and would be beneficial for the parties and the court. Class action  
10 treatment will allow a large number of similarly situated persons to prosecute their common claims  
11 in a single forum, simultaneously, efficiently, and without the unnecessary duplication of effort and  
12 expense that numerous individual actions would require. The monetary amounts due to many  
13 individual Class Members are likely to be relatively small, and the burden and expense of  
14 individual litigation would make it difficult or impossible for individual members of the Class to  
15 seek and obtain relief. A class action will serve an important public interest by permitting such  
16 individuals to effectively pursue recovery of the sums owed to them. Further, class litigation  
17 prevents the potential for inconsistent or contradictory judgments raised by individual litigation.

18 **FIRST CAUSE OF ACTION**

19 **Failure to Pay Straight-Time and Overtime Wages**  
(By Plaintiff and the Class Members against all Defendants)

20 23. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

21 24. At all relevant times, Plaintiff and the Class Members were employees of  
22 Defendants covered by Labor Code §§ 510, 1194, and 1197 and I.W.C. Wage Order 5-2001.

23 25. By their failure to pay straight-time wages and overtime wages for all time worked,  
24 Defendants willfully breached their agreement to pay wages, in violation of Labor Code §§ 510,  
25 1194 and 1197 and I.W.C. Wage Order 5-2001.

26 26. Plaintiff is informed and believe and thereon allege that at all relevant times within  
27 the applicable limitations period, Defendants maintained and continue to maintain a policy or  
28 practice of requiring non-exempt hourly employees to park at an off-site location and to be

transported to/from the hotel via a company shuttle-van without paying these employees for this time or counting this time as hours worked, thereby failing to compensate employees properly for all the time they actually worked and were under the employer's control. Defendants maintained and continue to maintain a policy or practice of requiring employees to keep a Nextel cellular telephone/walkie-talkie on their person when off-duty, away from the hotel, without receiving compensation for time they were "on-call" and answering calls from Defendant. Additionally, due to the policies of requiring employees to remain at the property during meal breaks and requiring them to maintain a Nextel/walkie-talkie on their person at all times while at the hotel, Plaintiff and the Class Members were still working for Defendants on clocked-out meal breaks even though Defendants considered them to be "clocked-out" for a meal break.

27. As a result of Defendants' unlawful and willful conduct, employees have suffered damages in an amount, subject to proof, to the extent they were not paid all straight-time and overtime wages for all hours actually worked and owed to them under Labor Code §§ 510, 1194 and 1197, and I.W.C. Wage Order 5-2001.

28. Pursuant to Labor Code §§ 1194, 1194.2 and 1194.3, Plaintiff and the Class Members are entitled to recover the full amount of unpaid wages, liquidated damages, pre-judgment interest, reasonable attorney's fees and costs of suit.

## SECOND CAUSE OF ACTION

### Failure to Provide Required Meal Breaks

(By Plaintiff and the Class Members against all Defendants)

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

30. At all relevant times, Plaintiff and the Class Members were employees of Defendants, covered by Labor Code §§ 226.7 and 512, and I.W.C. Wage Order 5-2001.

31. Pursuant to Labor Code §§ 226.7 and 512, and I.W.C. Wage Order 5-2001, Plaintiff and the Class Members were entitled to a meal break of at least thirty (30) minutes for each workday that they worked more than five (5) hours, and a second meal period of at least thirty (30) minutes for each workday they worked more than ten (10) hours, and one additional hour of pay for every day that all required, compliant meal breaks were not provided.

1           32. Defendants failed to provide Plaintiff and the Class Members with compliant meal  
2 breaks in accordance with Labor Code §§ 226.7 and 512, and I.W.C. Wage Order 5-2001. As a  
3 result of Defendants' mandatory off-site parking requirement resulting in an inability to take a meal  
4 break away from Defendants' business location, as well as Defendants' requirement for Nextel  
5 cellular telephones/walkie-talkies to be maintained "on" during clocked-out meal breaks and  
6 Defendant's policy of forbidding employees from leaving the property during a meal break,  
7 Plaintiff and the Class Members were not provided with compliant duty-free meal breaks by  
8 Defendants, as mandated under the Labor Code. As a result, in accordance with Defendants' strict  
9 corporate policy and practice, Plaintiff and the Class Members therefore forfeited meal breaks  
10 without receiving premium pay under California law.

11           33. Defendants failed to provide Plaintiff and the Class Members the additional hour of  
12 pay required by Labor Code § 226.7 and I.W.C. Wage Order 5-2001. Plaintiff is informed and  
13 believes and thereon alleges that at all relevant times within the applicable limitations period,  
14 Defendants maintained and continue to maintain a policy or practice of not paying additional pay at  
15 the lawful rate of pay to employees for the failure to provide compliant meal breaks.

16           34. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have  
17 suffered damages in an amount, subject to proof, to the extent they were not paid additional wages  
18 at the lawful rate of pay owed for the failure to provide meal breaks.

19           35. Pursuant to Labor Code § 218, Plaintiff and the Class Members are entitled to  
20 recover the full amount of their unpaid additional wages for unprovided meal breaks. Pursuant to  
21 Labor Code § 218.5, Plaintiff and the Class Members are entitled to recover their reasonable  
22 attorney's fees and costs of suit. Pursuant to Labor Code § 218.6 or Civil Code §3287(a), Plaintiff  
23 and the Class Members are entitled to recover prejudgment interest on the additional wages owed  
24 for missed meal breaks at the lawful rate of pay.

25                                   **THIRD CAUSE OF ACTION**  
26                                   **Failure to Authorize and Permit Required Paid Rest Periods**  
                                          **(By Plaintiff and the Class Members against all Defendants)**

27           36. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

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1           37.     At all relevant times, Plaintiff and the Class Members were employees of  
2 Defendants covered by Labor Code §§ 226.7 and 512, and I.W.C. Wage Order 5-2001.

3           38.     Pursuant to Labor Code §§ 226.7 and 512 and I.W.C. Wage Order 5-2001, Plaintiff  
4 and the Class Members were entitled to properly paid rest periods of at least ten (10) minutes for  
5 each four (4) hour period of work or major fraction thereof and one (1) hour of additional pay for  
6 every day that each and every required paid rest period was not authorized and permitted. Further,  
7 Plaintiff and the Class Members were denied their first rest period of at least ten (10) minutes for  
8 some shifts worked of at least two and a half (2.5) to four (4) hours, a first and second rest period of  
9 at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first,  
10 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or  
11 more.

12           39.     Defendants failed to provide Plaintiff and the Class Members the additional hour of  
13 pay required under Labor Code §§ 226.7 and 512 and I.W.C. Wage Order 5-2001. Plaintiff is  
14 informed and believes and thereon alleges that at times during the applicable limitations period,  
15 Defendants maintained and continue to maintain a policy or practice of requiring Plaintiff and  
16 Class Members to remain “on-duty” during their rest periods due to the requirement of maintaining  
17 their Nextel cellular telephones/walkie-talkies in the “on” position during the duration of their shift  
18 and not paying additional pay to employees for missed rest periods at the lawful rate of pay.  
19 Defendants failed to provide and continue to fail to properly pay Plaintiff and Class Members at the  
20 regular rate of pay for all rest periods, as required by law.

21           40.     As a result of Defendants’ unlawful conduct, Plaintiff and the Class Members have  
22 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay  
23 owed for missed rest periods at the lawful rate of pay.

24           41.     Pursuant to Labor Code § 218, Plaintiff and the Class Members are entitled to  
25 recover the full amount of their unpaid additional wages for missed rest periods. Pursuant to Labor  
26 Code § 218.5, Plaintiff and the Class Members are entitled to recover their reasonable attorney’s  
27 fees and costs of suit. Pursuant to Labor Code § 218.6 or Civil Code § 3287(a), Plaintiff and the

28     ///

1 Class Members are entitled to recover prejudgment interest on the additional pay owed for missed  
2 rest periods.

3 **FOURTH CAUSE OF ACTION**

4 **Failure to Provide Accurate Itemized Wage Statements**

(By Plaintiff and the Wage Statement Subclass Members against all Defendants)

5 42. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

6 43. At all relevant times, Plaintiff and the Wage Statement Subclass Members were  
7 employees of Defendants covered by Labor Code § 226.

8 44. Pursuant to Labor Code § 226(a), Plaintiff and the Wage Statement Subclass  
9 Members were entitled to receive, semi-monthly or at the time of each payment of wages, an  
10 accurate, compliant itemized statement showing gross wages earned; net wages earned; all  
11 applicable hourly rates in effect during the pay period; and the corresponding number of hours  
12 worked at each hourly rate by the employee.

13 45. Defendants failed to provide Plaintiff and the Wage Statement Subclass Members  
14 accurate, compliant itemized wage statements in accordance with Labor Code §§ 226(a) and 226.2.  
15 Plaintiff is informed and believes and thereon alleges that at all relevant times since one (1) year  
16 preceding the filing of the Complaint in this action (the “Penalty Period”), Defendants maintained a  
17 policy or practice of failing to pay wages for all time actually worked, failing to accurately record  
18 all hours actually worked, failing to pay meal break premium payments, failing to pay rest period  
19 premium payments, and failing to itemize the applicable rates of compensation. Defendants’  
20 practice resulted and continues to result in the issuance of non-compliant ‘wage statements’ to  
21 Class Members that do not show the correct amount of gross wages earned, the correct amount of  
22 net wages earned, the correct number of hours worked, the correct hourly rates of pay in effect for  
23 each hour worked, and the correct deductions made thereto for taxing authority purposes.

24 46. Defendants’ failure to provide Plaintiff and the Wage Statement Subclass Members  
25 with accurate itemized wage statements was knowing and intentional. Defendants had the ability to  
26 provide Plaintiff and Wage Statement Subclass Members with accurate wage statements, but  
27 intentionally provided ‘wage statements’ that Defendants knew were not accurate or compliant.

28 ///

1           47.     As a result of Defendants' conduct, Plaintiff and the Wage Statement Subclass  
2 Members have suffered injury. The absence of accurate and complete information on their wage  
3 statements has prevented timely challenges to Defendants' unlawful pay practices, has and will  
4 require discovery and mathematical computations to determine the amount of wages owed and  
5 number of hours actually worked, caused difficulty and expense in attempting to reconstruct time  
6 and pay records, and led to the submission of inaccurate information about wages and deductions to  
7 state and federal government agencies.

8           48.     Pursuant to Labor Code § 226(e), Plaintiff and the Wage Statement Subclass  
9 Members are entitled to recover fifty dollars (\$50) for the initial pay period during the Penalty  
10 Period in which a violation of Labor Code § 226 occurred and one hundred dollars (\$100) for each  
11 violation of Labor Code § 226 in a subsequent pay period, not to exceed an aggregate penalty of  
12 four thousand dollars (\$4,000) per employee.

13           49.     Pursuant to Labor Code § 226(h), Plaintiff and the Wage Statement Subclass  
14 Members are entitled to bring an action for injunctive relief to ensure Defendants' compliance with  
15 Labor Code § 226(a). Injunctive relief is warranted because Defendants continue to provide  
16 currently employed Wage Statement Subclass Members with inaccurate, deficient, non-compliant  
17 'wage statements' in violation of Labor Code § 226(a) and currently employed Wage Statement  
18 Subclass Members have no adequate legal remedy for the continuing injuries that will be suffered  
19 as a result of Defendants' ongoing unlawful conduct. Injunctive relief is the only remedy available  
20 for ensuring Defendants' compliance with Labor Code § 226(a).

21           50.     Pursuant to Labor Code §§ 226(e) and 226(h), Plaintiff and the Wage Statement  
22 Subclass Members are entitled to recover the full amount of penalties due under Labor Code  
23 §226(e), reasonable attorney's fees and costs of suit.

24                                   **FIFTH CAUSE OF ACTION**  
25                                   **Failure to Pay All Wages Owed Upon Termination**  
                                  (By Plaintiff and the Separated Subclass Members against all Defendants)

26           51.     Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

27           52.     At all relevant times, Plaintiff and the Separated Subclass Members, were  
28 employees of Defendants covered by Labor Code §§ 201 and/or 202.

1           53. Pursuant to Labor Code §§ 201 and 202, Plaintiff and the Separated Subclass  
2 Members were entitled upon termination to timely payment of all wages earned and unpaid prior to  
3 termination. Discharged employees were entitled to payment of all wages earned and unpaid prior  
4 to discharge immediately upon termination. Employees who resigned were entitled to payment of  
5 all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation  
6 or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and  
7 unpaid prior to resignation at the time of resignation.

8           54. Defendants failed to pay Plaintiff and the Separated Subclass Members all wages  
9 earned and unpaid prior to termination in accordance with Labor Code §§ 201 and/or 202. Plaintiff  
10 is informed and believes and thereon alleges that during the three (3) year limitations period  
11 applicable to this cause of action, Defendants maintained and continue to maintain a policy or  
12 practice of failing to pay all straight-time and overtime wages for all time actually worked, all meal  
13 break premium payments, and all rest period premium payments owed at the time of termination of  
14 employment.

15           55. Defendants' failure to pay Plaintiff and the Terminated Subclass Members all wages  
16 earned prior to termination in accordance with Labor Code § 201 and/or § 202 was willful.  
17 Defendants had the ability to pay all wages earned by employees – including but not limited to all  
18 straight-time and overtime wages, but intentionally adopted policies or practices incompatible with  
19 the requirements of Labor Code §§ 510, 1194, and 1197, and I.W.C. Wage Order 5-2001.  
20 Defendants had the ability to pay all meal break and rest period premium payments earned by  
21 employees but intentionally adopted policies or practices incompatible with the requirements of  
22 Labor Code §§ 226.7 and 512, and I.W.C. Wage Order 5-2001. When Defendants failed to pay  
23 upon termination all wages earned prior to termination, Defendants knew what they were doing and  
24 intended to do what they did.

25           56. Pursuant to Labor Code § 201 or § 202, Plaintiff and the Separated Subclass  
26 Members are entitled to all wages earned prior to termination that Defendants did not pay them.

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1           57. Pursuant to Labor Code § 203, Plaintiff and the Separated Subclass Members are  
2 entitled to penalty wages, from the day their earned and unpaid wages were due upon termination  
3 until paid, up to a maximum of 30 days.

4           58. As a result of Defendants' conduct, Plaintiff and the Separated Subclass Members  
5 have suffered damages in an amount, subject to proof, to the extent they were not paid for all wages  
6 earned prior to termination in violation of Labor Code § 201 or § 202.

7           59. As a result of Defendants' conduct, Plaintiff and the Separated Subclass Members  
8 have suffered damages in an amount, subject to proof, to the extent they were not paid all penalty  
9 wages owed to them in violation of Labor Code § 203.

10          60. Pursuant to Labor Code §§ 218 and 218.5, Plaintiff and the Separated Subclass  
11 Members are entitled to recover the full amount of their unpaid wages, unpaid penalty wages, and  
12 reasonable attorney's fees and costs of suit. Plaintiff and the Separated Subclass Members are  
13 entitled to recover pre-judgment interest on all due and unpaid wages and penalty wages under  
14 Labor Code § 218.6 and/or Civil Code § 3287(a).

15  
16                                   **SIXTH CAUSE OF ACTION**  
17                                   **Violation of California's Unfair Competition Law ("UCL")**  
18                                   **[Cal. Bus. & Prof. Code § 17200, *et seq.*]**  
19                                   **(By Plaintiff and the Class Members against all Defendants)**

20          61. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

21          62. Plaintiff brings this claim on behalf of herself and all others similarly situated in his  
22 representative capacity against Defendants and Does 1 through 50, for their unlawful business acts  
23 and/or practices pursuant to Cal. Bus. Code § 17200, *et seq.* (the "UCL"), which prohibits all  
24 unlawful business acts and/or practices.

25          63. Defendants are each a "person," as that term is defined under Cal. Bus. and Prof.  
26 Code § 17021.

27          64. The UCL defines unfair competition as any unlawful, unfair, or fraudulent business  
28 act or practice. Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with  
respect to unfair competition as follows:

///

1 Any person who engages, has engaged, or proposes to engage in  
2 unfair competition may be enjoined in any court of competent  
3 jurisdiction. The court may make such orders or judgments,  
4 including the appointment of a receiver, as may be necessary to  
5 prevent the use or employment by any person of any practice which  
constitutes unfair competition, as defined in this chapter, or as may  
be necessary to restore to any person in interest any money or  
property, real or personal, which may have been acquired by means  
of such unfair competition.

6 Cal. Bus. & Prof. Code § 17203.

7 65. By the conduct alleged herein, Defendants have engaged and continue to engage in  
8 business practices that violate California law, including but not limited to, the applicable I.W.C.  
9 Wage Order(s), the California Code of Regulations and the California Labor Code including  
10 Sections 201-204, 226, 226.7, 510, 512, 558, 1194, 1197, and 1198, for which this Court should  
11 issue declaratory and other equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, as may be  
12 necessary to prevent and remedy the conduct held to constitute unfair competition, including  
13 restitution of wages and premium pay wrongfully withheld.

14 66. By the conduct alleged herein, Defendants' practices were unlawful and unfair in  
15 that these practices violated public policy, were immoral, unethical, oppressive, unscrupulous or  
16 substantially injurious to employees, and were without valid justification or utility for which this  
17 Court should issue equitable and injunctive relief pursuant to Cal. Bus. & Prof. Code Section  
18 § 17203, including restitution of wages and premium pay wrongfully withheld.

19 67. By the conduct alleged herein, Defendants' practices were deceptive and fraudulent  
20 in that Defendants' uniform policy and practice failed to pay Plaintiff and the Class Members  
21 straight-time and overtime wages for all time actually worked, failed to provide lawful meal breaks  
22 and rest periods, failed to pay wages earned each and every pay period, failed to provide accurate  
23 itemized wage statements, and failed to pay all wages owed upon separation of employment as  
24 alleged herein, pursuant to the applicable Cal. Lab. Code, and I.W.C. requirements in violation of  
25 Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable  
26 relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages and premium pay  
27 wrongfully withheld.

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1           68. By the conduct alleged herein, Defendants' practices were also unlawful, unfair and  
2 deceptive in that Defendants' employment practices caused Plaintiff and the Class Members to be  
3 underpaid during their employment with Defendants.

4           69. By the conduct alleged herein, Defendants' practices were also unfair and deceptive  
5 in that Defendants' uniform policies, practices and procedures failed to provide mandatory meal  
6 breaks and/or rest periods to Plaintiff and the Class Members.

7           70. By and through the unlawful and unfair business practices described herein,  
8 Defendants have obtained valuable property, money and services from Plaintiff and the Class  
9 Members, including earned wages for all straight-time and overtime worked and meal and rest  
10 period premium wages, and has deprived them of valuable rights and benefits guaranteed by law  
11 and contract, all to the detriment of these employees and to the benefit of Defendants, so as to  
12 allow Defendants to unfairly compete against competitors who comply with the law.

13           71. All of the acts described herein as violations of, among other things, the I.W.C.  
14 Wage Orders, the California Code of Regulations, and the California Labor Code, were unlawful  
15 and in violation of public policy, were immoral, unethical, oppressive and unscrupulous, were  
16 deceptive, and thereby constitute unlawful, unfair, and/or deceptive business practices, in violation  
17 of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

18           72. Plaintiff and the Class Members are entitled to, and do, seek such relief as may be  
19 necessary to restore to them the money and property which Defendants have acquired, or of which  
20 Plaintiff and the Class Members have been deprived, by means of the above described unlawful  
21 and unfair business practices, including earned but unpaid wages for all time worked.

22           73. Plaintiff and the Class Members are further entitled to, and do, seek a declaration  
23 that the described business practices are unlawful, unfair and deceptive, and that injunctive relief  
24 should be issued restraining Defendants from engaging in any unlawful and unfair business  
25 practices in the future.

26           74. Plaintiff and the Class Members have no plain, speedy and/or adequate remedy at  
27 law that will end the unlawful and unfair business practices of Defendants. Further, the practices  
28 herein alleged presently continue to occur unabated. As a result of the unlawful and unfair business

practices described herein, Plaintiff and the Class Members have suffered and will continue to suffer irreparable legal and economic harm unless Defendants are restrained from continuing to engage in these unlawful and unfair business practices.

75. Wherefore, Plaintiff and the other Class Members are entitled to equitable relief, including restitution, attorney's fees and costs, declaratory relief, and a permanent injunction enjoining Defendants from their unlawful and/or unfair activity.

## PRAYER FOR RELIEF

WHEREFORE, on behalf of herself and all others similarly situated, Plaintiff prays for judgment against Defendants as follows:

- A. An order certifying this case as a class action;
- B. An order appointing Plaintiff as representative for the Class;
- C. An order appointing Plaintiff's counsel as counsel for the Class;
- D. Damages for unpaid minimum and overtime wages;
- E. Civil Penalties under Labor Code § 226(e);
- F. Damages for unpaid premium pay owed for missed meal breaks pursuant to Labor Code § 226.7;
- G. Damages for unpaid premium pay owed for missed rest periods pursuant to Labor Code § 226.7;
- H. Damages for unpaid final wages under Labor Code § 201 or § 202;
- I. Damages for penalty wages under Labor Code § 203;
- J. Restitution for unpaid wages under Business and Professions Code § 17203;
- K. Injunctive relief under Labor Code § 226(h) and Business and Professions Code § 17200, *et seq*, requiring that Defendants provide compliant, itemized wage statements and cease and desist from their other unlawful and/or unfair employment practices;
- L. Prejudgment interest at the maximum legal rate;
- M. Reasonable attorneys' fees;
- N. Costs of suit; and,

1 O. Such other relief as the Court may deem just and proper.

2  
3 Dated: March 2, 2020

DYCHTER LAW OFFICES, APC  
United Employees Law Group, PC

4  
5 By:   
6 Alexander I. Dychter  
7 Attorneys for Plaintiff Leyva

8  
9 **DEMAND FOR JURY TRIAL**

10 Plaintiff demands a trial by jury for herself and the Class on all claims so triable.

11  
12 Dated: March 2, 2020

DYCHTER LAW OFFICES, APC  
United Employees Law Group, PC

13  
14 By:   
15 Alexander I. Dychter  
16 Attorneys for Plaintiff Leyva