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Superior Court of California
County of Riverside
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

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

Plaintiff,

v.

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

Defendants.

Case No. RIC2000943

CLASS ACTION

FIRST AMENDED COMPLAINT

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

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 authorize and permit compliant duty-free
10 rest periods; (iv) failing to pay all owed wages each and every pay period; (v) failing to provide
11 accurate, compliant, itemized wage statements; (vi) failing to pay all wages owed upon separation
12 of employment, as mandated under the California Labor Code; (vii) violation of California’s Unfair
13 Competition Law; and (viii) violating the California Private Attorneys General Act (hereinafter the
14 “PAGA”).

15 2. Plaintiff is a Member of and the named representative for the Class, the Terminated
16 Employee Subclass, and the Wage Statement Subclass, as defined in Paragraphs 19-21 below. The
17 term “Class” includes Plaintiff and all other persons who are members of the “Class,” and/or the
18 “Terminated Employee Subclass,” and/or the “Wage Statement Subclass,” as herein defined.

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

1 Professions Code (“Cal. Bus. & Prof. Code”) § 17203.

2 4. The State of California Private Attorneys General Act of 2004 allows for a tolling of
3 the limitations period during the period during which the California Labor and Workforce
4 Development Agency (hereinafter the “LWDA”) is assessing, or the employer may be curing, the
5 alleged violations. Cal. Labor Code § 2699.3(d). On March 2, 2020, pursuant to Cal. Labor Code §
6 2699.3(a)(1), counsel for Plaintiff, on behalf of Leyva, provided written notice via online filing
7 with the LWDA and via certified mail, with return-receipt, to the employer / Defendant, alleging
8 violations of the California Labor Code and the facts and theories that support the alleged
9 violations. (*see Exhibit 1*, attached hereto and incorporated by this reference herein). Additionally,
10 on March 2, 2020, pursuant to Cal. Labor Code §2699.3(a)(1)(B), counsel for Plaintiff, on behalf of
11 Leyva, mailed the required filing fee of \$75.00 to the LWDA. (*see Ex. 1*).

12 **JURISDICTION AND VENUE**

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

17 6. Venue is proper in this Court, pursuant to Cal. Code of Civ. Proc. §§ 395 and
18 § 395.5, because Plaintiff performed work in the County of Riverside, and Defendant maintains a
19 business location in the County of Riverside, and Defendant committed the wrongful conduct
20 herein alleged in the County of Riverside against Plaintiff and Members of the Class.

21 **THE PARTIES**

22 **A. Plaintiff and the Class**

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

1 8. Plaintiff, along with other hourly, non-exempt employees who worked at LQR&C,
2 was required, for a portion of her employment, to park her personal vehicle at an off-site location in
3 order to work for Defendant. Specifically, at the mandatory new-hire group orientation program,
4 Plaintiff and other new hires were told they were not permitted to park at the LQR&C when
5 working, but instead were required to park at an off-site parking area where a company provided
6 shuttle-van would transport them to/from the hotel resort property on a daily basis for work. The
7 company shuttle-van typically had a pick-up/drop-off schedule leaving from the off-site parking
8 area once every 20 to 30 minutes, which therefore required Plaintiff to arrive ready for work (at the
9 off-site parking location), approximately 15-20 minutes before her *scheduled* ‘shift start’ time, in
10 order to have sufficient time to park, wait in line for the company shuttle-van, make sure that she
11 had a seat, be driven to the hotel, and then make her way to the time-clock at the hotel so she could
12 “clock-in” for her scheduled shift. After several weeks of working at the LQR&C Plaintiff was
13 informed that as a “supervisor,” she was permitted to receive a parking permit sticker to park on the
14 hotel property without taking the company shuttle-van. However, Plaintiff was informed that if a
15 special event were taking place at the property, all supervisors, including Plaintiff, would not be
16 allowed to park on the hotel property and would then revert to utilizing the off-site parking area and
17 company shuttle-van. Plaintiff was not paid wages for any time spent waiting for and taking the
18 mandatory company shuttle-van from the off-site parking area to the LQR&C, nor for the time
19 spent walking to/from the shuttle-van to the time-clock location at the hotel, for purposes of
20 clocking-in/out.

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

27 10. Plaintiff was required to carry on her person a Nextel cellular telephone at all times
28 (including when away from the hotel on days off from work) that was provided by Defendant.

1 Plaintiff was instructed by management to keep her Nextel cellular telephone “on” at all times “just
2 in case” there was an issue at the property that needed her attention. On certain occasions, Plaintiff
3 was contacted by Defendant via the Nextel on her day off from work and on these occasions,
4 Plaintiff failed to receive wages for this time worked on behalf of Defendant.

5 11. Plaintiff was not consistently able to take all required duty-free 30-minute meal
6 breaks, or paid duty-free 10-minute rest periods, as mandated under California law. Defendant did
7 not schedule meal breaks for Plaintiff. Defendant advised Plaintiff at the mandatory new hire
8 group orientation (attended by other non-exempt hourly employees, including but not limited to,
9 restaurant workers, front-desk employees, etc.) that employees were not allowed to leave the
10 property on breaks. Further, due to the off-site parking policy and shuttle-van frequency to/from
11 the property, it would have been virtually impossible to leave the property to take a meal break and
12 be back within 30-minutes. Additionally, due to Defendants policy of requiring Plaintiff to keep
13 her Nextel telephone/walkie-talkie on her person at all times (*i.e.* she was always “on call”), she
14 was always unable to take a compliant duty-free meal break and 10-minute rest period.

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

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

1 accurate itemized wage statements.

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

9 15. The agents, servants and/or employees of Defendants and each of them, acting on
10 behalf of the Defendants, acted within the course and scope of his, her or its authority as the agent,
11 servant and/or employee of the Defendants, and personally participated in the conduct alleged
12 herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the
13 acts of each Defendant are legally attributable to the other Defendants and all Defendants are
14 jointly and severally liable to Plaintiff and the other non-exempt hourly employees, for the loss
15 sustained as a proximate result of the conduct of the Defendants' agents, servants and/or
16 employees.

17 **B. Defendants**

18 16. Defendant Waldorf Astoria Management LLC *dba* La Quinta Resort & Club
19 ("LQR&C") is an entity created under the laws of the State of Delaware. At all relevant times
20 mentioned herein, Defendant Waldorf Astoria Management LLC conducted substantial business in
21 the State of California, County of Riverside. Defendant is a company that operates hotels and
22 resorts worldwide. Defendant operates the property known as the LQR&C in Riverside County as
23 a "Waldorf Astoria Resort" located at 49499 Eisenhower Drive, La Quinta, California 92253
24 (website: www.laquintaresort.com). Defendant was the employer of Plaintiff during her
25 employment.

26 17. Plaintiff is ignorant of the true names, capacities, relationships and extent of
27 participation in the conduct herein alleged, of the Defendants sued herein as DOES 1 through 50,
28 but is informed and believes and thereon alleges that said Defendants are legally responsible for the

1 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
2 Plaintiff will amend this Complaint to allege the true names and capacities of the DOE Defendants
3 when ascertained.

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

8 **CLASS ACTION ALLEGATIONS**

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

12 **All of Defendants' non-exempt hourly employees working at the La Quinta**
13 **Resort & Club ("LQR&C") at any time since March 2, 2016 through the date**
14 **as determined by the Court ("Class Period") ("Class Members").**

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

17 **All Class Members whose employment ended at any time since March 2, 2017**
18 **("Separated Subclass Members").**

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

21 **All Class Members employed at any time since March 2, 2019 ("Wage**
22 **Statement Subclass Members").**

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

26 a. The Class Members are so numerous that individual joinder of all of them as
27 plaintiffs is impractical. Although the exact number of Class members is unknown
28 to Plaintiff at this time, Plaintiff is informed and believes and thereon alleges that

1 there are not less than 100 Class Members.

2 b. The identity of Class Members can readily be determined from Defendants' records.
3 Defendants' records include the name and address of every person who performed
4 work for them at the LQR&C during the Class Period.

5 c. Common questions of law and fact exist as to Class Members and predominate over
6 any questions that may affect only individual Class Members. These common
7 questions include, but are not limited to:

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

11 (2) Did Defendants violate Labor Code §§ 226.7 and 512, and I.W.C. Wage
12 Order 5-2001 by failing to provide compliant duty-free meal breaks as
13 alleged herein?

14 (3) Did Defendants violate Labor Code §§ 226.7 and 512, and I.W.C. Wage
15 Order 5-2001 by failing to authorize and permit compliant duty-free paid rest
16 periods as alleged herein?

17 (4) Did Defendants fail to provide Wage Statement Subclass Members with
18 accurate, compliant, itemized wage statements?

19 (5) Are Defendants liable for civil penalties under Labor Code § 226?

20 (6) Did Defendants, in violation of Labor Code § 201 or § 202, fail to pay timely
21 all wages owed to Separated Subclass Members upon separation?

22 (7) Did Defendants act willfully when they failed to pay timely all wages owed
23 to Separated Subclass Members upon separation?

24 (8) Are Defendants liable for penalty wages under Labor Code § 203?

25 (9) Did Defendants violate the Unfair Competition Law, Cal. Bus. & Prof. Code
26 § 17200, *et seq.*, by their unlawful practices, as alleged herein?

27 (10) Did Defendants violate the Unfair Competition Law, Cal. Bus. & Prof. Code
28 § 17200, *et seq.*, by failing to pay Plaintiff and Class Members all wages

1 earned each pay period, in violation of Labor Code § 204, as alleged herein?

2 (11) Are Defendants liable for restitution under Cal. Bus. & Prof. Code § 17203?

3 (12) Are Defendants liable for pre-judgment interest?

4 (13) Are Defendants liable for attorney's fees and costs?

5 d. Plaintiff is a Member of the Class and the Subclasses, and her claims are typical of

6 the claims of the other Class Members and Subclass Members. Plaintiff is informed

7 and believes and thereon alleges that Defendants maintain policies or practices of: 1)

8 failing to pay straight-time and overtime wages for all hours actually worked; 2)

9 failing to provide compliant meal breaks; 3) failing to authorize and permit

10 compliant properly paid rest periods; 4) failing to pay employees for all wages

11 earned during each pay period; 5) failing to pay employees all earned wages due

12 upon separation of employment; and/or 6) failing to provide employees with

13 accurate, compliant itemized wage statements.

14 e. Plaintiff will adequately and fairly protect the interests of the Class Members and

15 Subclass Members. Plaintiff has no interest adverse to the interests of absent Class

16 Members and Subclass Members. Plaintiff is represented by legal counsel who has

17 substantial class action experience in civil litigation and employment law.

18 23. A class action is superior to other available means for fair and efficient adjudication

19 of the claims of the Class and would be beneficial for the parties and the court. Class action

20 treatment will allow a large number of similarly situated persons to prosecute their common claims

21 in a single forum, simultaneously, efficiently, and without the unnecessary duplication of effort and

22 expense that numerous individual actions would require. The monetary amounts due to many

23 individual Class Members are likely to be relatively small, and the burden and expense of

24 individual litigation would make it difficult or impossible for individual members of the Class to

25 seek and obtain relief. A class action will serve an important public interest by permitting such

26 individuals to effectively pursue recovery of the sums owed to them. Further, class litigation

27 prevents the potential for inconsistent or contradictory judgments raised by individual litigation.

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FIRST CAUSE OF ACTION
Failure to Pay Straight-Time and Overtime Wages
(By Plaintiff and the Class Members against all Defendants)

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

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

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

27. Plaintiff is informed and believe and thereon allege that at all relevant times within the applicable limitations period, Defendants maintained and continue to maintain a policy or 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.

28. 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.

29. 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.

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(By Plaintiff and the Class Members against all Defendants)

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

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

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

38. 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.

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

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

1 regular rate of pay for all rest periods, as required by law.

2 41. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
3 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay
4 owed for missed rest periods at the lawful rate of pay.

5 42. Pursuant to Labor Code § 218, Plaintiff and the Class Members are entitled to
6 recover the full amount of their unpaid additional wages for missed rest periods. Pursuant to Labor
7 Code § 218.5, Plaintiff and the Class Members are entitled to recover their reasonable attorney's
8 fees and costs of suit. Pursuant to Labor Code § 218.6 or Civil Code § 3287(a), Plaintiff and the
9 Class Members are entitled to recover prejudgment interest on the additional pay owed for missed
10 rest periods.

11 **FOURTH CAUSE OF ACTION**
12 **Failure to Provide Accurate Wage Statements**

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

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

14 44. At all relevant times, Plaintiff and the Wage Statement Subclass Members were
15 employees of Defendants covered by Labor Code § 226.

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

21 46. Defendants failed to provide Plaintiff and the Wage Statement Subclass Members
22 accurate, compliant itemized wage statements in accordance with Labor Code §§ 226(a) and 226.2.
23 Plaintiff is informed and believes and thereon alleges that at all relevant times since one (1) year
24 preceding the filing of the Complaint in this action (the "Penalty Period"), Defendants maintained a
25 policy or practice of failing to pay wages for all time actually worked, failing to accurately record
26 all hours actually worked, failing to pay meal break premium payments, failing to pay rest period
27 premium payments, and failing to itemize the applicable rates of compensation. Defendants'
28 practice resulted and continues to result in the issuance of non-compliant 'wage statements' to

1 Class Members that do not show the correct amount of gross wages earned, the correct amount of
2 net wages earned, the correct number of hours worked, the correct hourly rates of pay in effect for
3 each hour worked, and the correct deductions made thereto for taxing authority purposes.

4 47. Defendants' failure to provide Plaintiff and the Wage Statement Subclass Members
5 with accurate itemized wage statements was knowing and intentional. Defendants had the ability to
6 provide Plaintiff and Wage Statement Subclass Members with accurate wage statements, but
7 intentionally provided 'wage statements' that Defendants knew were not accurate or compliant.

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

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

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

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

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

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

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

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

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

56. Defendants' failure to pay Plaintiff and the Terminated Subclass Members all wages earned prior to termination in accordance with Labor Code § 201 and/or § 202 was willful. Defendants had the ability to pay all wages earned by employees – including but not limited to all straight-time and overtime wages, but intentionally adopted policies or practices incompatible with the requirements of Labor Code §§ 510, 1194, and 1197, and I.W.C. Wage Order 5-2001. Defendants had the ability to pay all meal break and rest period premium payments earned by

1 employees but intentionally adopted policies or practices incompatible with the requirements of
2 Labor Code §§ 226.7 and 512, and I.W.C. Wage Order 5-2001. When Defendants failed to pay
3 upon termination all wages earned prior to termination, Defendants knew what they were doing and
4 intended to do what they did.

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

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

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

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

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

21
22 **SIXTH CAUSE OF ACTION**
23 **Violation of California's Unfair Competition Law ("UCL")**
24 **[Cal. Bus. & Prof. Code § 17200, *et seq.*]**
25 **(By Plaintiff and the Class Members against all Defendants)**

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

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

1 64. Defendants are each a “person,” as that term is defined under Cal. Bus. and Prof.
2 Code § 17021.

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

Any person who engages, has engaged, or proposes to engage in
unfair competition may be enjoined in any court of competent
jurisdiction. The court may make such orders or judgments,
including the appointment of a receiver, as may be necessary to
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 66. 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 67. 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 68. 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
26
27
28

1 Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable
2 relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages and premium pay
3 wrongfully withheld.

4 69. By the conduct alleged herein, Defendants' practices were also unlawful, unfair and
5 deceptive in that Defendants' employment practices caused Plaintiff and the Class Members to be
6 underpaid during their employment with Defendants.

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

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

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

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

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

1 75. Plaintiff and the Class Members have no plain, speedy and/or adequate remedy at
2 law that will end the unlawful and unfair business practices of Defendants. Further, the practices
3 herein alleged presently continue to occur unabated. As a result of the unlawful and unfair business
4 practices described herein, Plaintiff and the Class Members have suffered and will continue to
5 suffer irreparable legal and economic harm unless Defendants are restrained from continuing to
6 engage in these unlawful and unfair business practices.

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

10 **SEVENTH CAUSE OF ACTION**
 Violation of the Private Attorneys General Act
 [Cal. Bus. & Prof. Code §§ 2698 *et seq.*]

11 (By Plaintiff on behalf of all aggrieved employees against all Defendants)

12 77. Plaintiff and all aggrieved employees of all Defendants incorporate all the preceding
13 paragraphs as though fully set forth herein.

14 78. PAGA is a mechanism by which the State of California itself can enforce state labor
15 laws through the employee suing under the PAGA who do so as the proxy or agent of the state's
16 labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally
17 a law enforcement action designed to protect the public and not to benefit private parties. The
18 purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing"
19 citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California
20 Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as
21 private attorneys general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch.
22 906, § 1. Accordingly, PAGA claims cannot be subject to arbitration.

23 79. Plaintiff brings this Representative Action on behalf of the State of California with
24 respect to herself and all other hourly, non-exempt employees working at the LQR&C located in La
25 Quinta, California since March 2, 2019, and who are Class Members (the "Aggrieved Employees").

26 80. On March 2, 2020, Counsel for Plaintiff on behalf of Leyva gave written notice by
27 online filing to the LWDA and the employer via U.S. Certified Mail, Return-Receipt of the specific
28 code provisions alleged to have been violated as required by Labor Code § 2699.3. (*See Exhibit 1*).

1 The statutory waiting period to commence this action has expired. As a result, pursuant to §
2 2699.3, Plaintiff may now commence a representative civil action under PAGA pursuant to § 2699
3 as the proxy of the State of California with respect to all Aggrieved Employees as herein defined.

4 81. The policies, acts, and practices heretofore described were and are an unlawful
5 business act or practice because of Defendants failure to pay all owed wages at the lawful rate of
6 pay for all work actually performed, failure to provide lawful meal breaks, failure to provide lawful
7 duty-free rest periods, failure to pay all wages owed every pay period, failure to provide accurate
8 itemized wage statements, and failure to provide all wages owed upon separation of employment
9 and thereby gives rise to statutory penalties as a result of such conduct. Plaintiff hereby seeks
10 recovery of civil penalties as prescribed by PAGA as the representatives of the State of California
11 for the illegal conduct perpetrated on Plaintiff and the other Aggrieved Employees, against whom
12 one or more of the violations of the California Labor Code was committed.

13 **PRAYER FOR RELIEF**

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

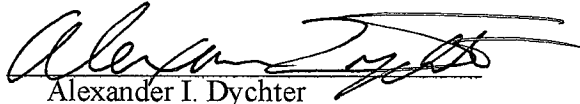
- 16 A. An order certifying this case as a class action;
17 B. An order appointing Plaintiff as representative for the Class;
18 C. An order appointing Plaintiff's counsel as counsel for the Class;
19 D. Damages for unpaid straight-time and overtime wages;
20 E. Civil Penalties under Labor Code § 226(e);
21 F. Damages for unpaid premium pay owed for missed meal breaks pursuant to Labor
22 Code § 226.7;
23 G. Damages for unpaid premium pay owed for missed rest periods pursuant to Labor
24 Code § 226.7;
25 H. Damages for unpaid final wages under Labor Code § 201 or § 202;
26 I. Damages for penalty wages under Labor Code § 203;
27 J. Restitution for unpaid wages under Business and Professions Code § 17203;

28 ///

- 1 K. Injunctive relief under Labor Code § 226(h) and Business and Professions Code
2 § 17200, *et seq*, requiring that Defendants provide compliant, itemized wage
3 statements and cease and desist from their other unlawful and/or unfair
4 employment practices;
- 5 L. Recovery of civil penalties as prescribed by PAGA;
- 6 M. An award of penalties, attorneys' fees, and costs of suit pursuant to Labor Code §
7 2699(g);
- 8 N. Prejudgment interest at the maximum legal rate;
- 9 O. Reasonable attorneys' fees;
- 10 P. Costs of suit; and,
- 11 Q. Such other relief as the Court may deem just and proper.

12
13 Dated: July 2, 2020

DYCHTER LAW OFFICES, APC
United Employees Law Group, PC

14
15
16 By: 

Alexander I. Dychter
Attorneys for Plaintiff Leyva

17
18
19 **DEMAND FOR JURY TRIAL**

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

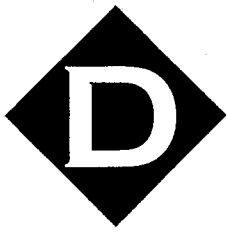
21
22 Dated: July 2, 2020

DYCHTER LAW OFFICES, APC
United Employees Law Group, PC

23
24
25 By: 

Alexander I. Dychter
Attorneys for Plaintiff Leyva

EXHIBIT 1



**DYCHTER
LAW OFFICES**
A PROFESSIONAL CORPORATION

1010 SECOND AVENUE, SUITE 1835, SAN DIEGO, CALIFORNIA 92101
TEL 619.487.0777 | FAX 619.330.1827

March 2, 2020

**VIA U.S. CERTIFIED MAIL
RETURN RECEIPT REQUESTED**
[7012 2920 0001 1935 8552]

Waldorf Astoria Management LLC
c/o CSC Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

VIA ONLINE FILING ONLY
California Labor & Workforce Development Agency ("LWDA")

Re: Notice of Violation of California Labor Code Sections 201-204, 226, 226.7, 510, 512, 1194, and 1197; Industrial Welfare Commission Wage Order(s), And Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam,

Our office represents Plaintiff Noelia Leyva (the "Plaintiff" or "Leyva"), and other aggrieved employees in a class action lawsuit against Waldorf Astoria Management LLC *dba* La Quinta Resort & Club ("Defendant" or "LQR&C"), a Delaware Corporation. Plaintiff and other employees were employed as hourly, non-exempt employees at the La Quinta Resort & Club located in La Quinta, California. Defendant has failed to pay all owed straight-time and overtime wages for all work performed, failed to provide lawful duty-free meal breaks, failed to provide lawful duty-free rest periods, failed to pay all wages owed every pay period, failed to provide accurate itemized wage statements, and failed to pay all wages owed upon separation of employment in violation of the California Labor Code, and are therefore actionable under California Labor Code Section 2699.3.

A true and correct copy of the Complaint filed by Plaintiff on March 2, 2020 is attached hereto as **Exhibit 1**, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (v) sets forth the illegal practices used by Defendant. This information provides notice to the Labor and Workforce Development Agency ("LWDA") of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint (**Exhibit 1**) into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask. Attachment of **Exhibit 1** herein is **NOT** meant to act as "service" of the Complaint on Defendant Waldorf Astoria Management LLC. Service of the attached **Exhibit 1** will be conducted by Plaintiff on Defendant in the near future.

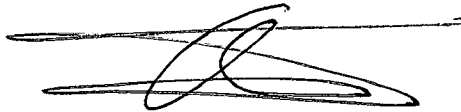
NOTE: The attached Complaint as **Exhibit 1** is **NOT** meant to act as "service" on Defendant.

This notice is provided to enable the Plaintiff to proceed with the Complaint filed in the Superior Court of California – County of Riverside on March 2, 2020, against Waldorf Astoria Management LLC *dba* La Quinta Resort & Club as authorized by California Labor Code Section 2699, *et seq.* The pending class action lawsuit consists of a class of other aggrieved hourly, non-exempt employees who worked at the LQR&C hotel/resort property in La Quinta, California. As class counsel, our intention is to vigorously prosecute the class-wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all aggrieved Class Members.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully Submitted,

DYCHTER LAW OFFICES, APC
United Employees Law Group, PC

A handwritten signature in black ink, appearing to be 'Alexander I. Dychter', written over a horizontal line.

Alexander I. Dychter, Esq.
Attorneys for Plaintiff
Noelia Leyva

2552 5561 1001 2920 0001 1935 8552

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

SACRAMENTO, CA 95833

Postage	\$3.55
Certified Fee	\$2.85
Return Receipt Fee (Endorsement Required)	\$0.00
Restricted Delivery Fee (Endorsement Required)	\$0.00
	\$1.80
Total Postage & Fees	\$8.20

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Postmark
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03/02/2020

Sent To **WALDORF ASTORIA MANAGEMENT LLC c/o CSC LAWYERS**
 Street, Apt. No., or PO Box No. **2710 GATEWAY OAKS DRIVE, STE. 150N**
 City, State, ZIP+4 **SACRAMENTO, CA 95833**

PS Form 3800, August 2006

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.



1. Article Addressed to:

Waldorf Astoria Management, LLC
 c/o CSC - Lawyers Incorporating Service
 2710 Gateway Oaks Drive, Suite 150N
 Sacramento, CA 95833

2. Article Number
 (Transfer from service label)

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☐ Agent ☐ Addressee
 B. Received by (Printed Name) **Nicole Stauss** Date of Delivery **03/02/2020**
 D. Is delivery address different from item 1? ☒ No
 If YES, enter delivery address below:

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

7012 2920 0001 1935 8552

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

Sara Trelford

From: Alexander Dychter
Sent: Monday, March 2, 2020 1:20 PM
To: Sara Trelford
Subject: FW: Thank you for submission of your PAGA Case.

-----Original Message-----

From: noreply@salesforce.com <noreply@salesforce.com> On Behalf Of LWDA DO NOT REPLY
Sent: Monday, March 2, 2020 1:19 PM
To: Alexander Dychter <alex@dychterlaw.com>
Subject: Thank you for submission of your PAGA Case.

3/2/2020

LWDA Case No. LWDA-CM-775819-20
Law Firm : Dychter Law Offices
Plaintiff Name : Noelia Leyva
Employer: Waldorf Astoria Management LLC

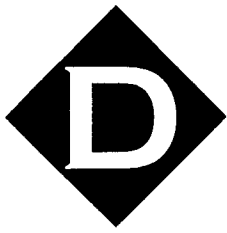
Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm



**DYCHTER
LAW OFFICES**
A PROFESSIONAL CORPORATION

1010 SECOND AVENUE, SUITE 1835, SAN DIEGO, CALIFORNIA 92101
TEL 619.487.0777 | FAX 619.330.1827

March 2, 2020

VIA REGULAR U.S. MAIL

Department of Industrial Relations
Attn: Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

**Re: INITIAL PAGA NOTICE FILING FEE
LWDA Case No. LWDA-CM-775819-20**

Dear Sir/Madam,

Our office represents Plaintiff Noelia Leyva (the "Plaintiff"), and other aggrieved hourly non-exempt employees in a class action lawsuit against Defendant Waldorf Astoria Management LLC *dba* La Quinta Resort & Club, a Delaware Corporation that was filed on March 2, 2020, in the Superior Court of California – County of Riverside.

Pursuant to California Labor Code Section 2699.3, enclosed please find check #1836 in the amount of **\$75.00** for the new PAGA claim notice.

If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully Submitted,

**DYCHTER LAW OFFICES, APC
United Employees Law Group, PC**

Alexander I. Dychter, Esq.

Attorneys for Plaintiff
Noelia Leyva

encl: Check #1836 for \$75.00 to LWDA