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STK-CV-UOE-2020-0008242

Attorneys for Plaintiff CARA DIOSDADO,
on behalf of herself and similarly situated employees

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN JOAQUIN

CARA DIOSDADO, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

NOR-CAL VENTURE GROUP, INC., a
California Corporation; VARRIS
MANAGEMENT, INC., a California
Corporation; YADAV ENTERPRISES,
INC., a California Corporation; ANIL
YADAV, an individual; and DOES 1 to 100,
inclusive,

Defendants.

Case No.

CLASS ACTION

COMPLAINT FOR DAMAGES

- 1. Failure to Pay Minimum Wages (Labor Code § 1194)**
- 2. Failure to Provide Meal Periods (Labor Code §§ 512, 226.7)**
- 3. Failure to Provide Rest Periods (Labor Code §§ 226.7)**
- 4. Failure to Provide Accurate Itemized Statements (Labor Code § 226)**
- 5. Waiting Time Penalties (Labor Code §§ 201-203)**
- 6. Violation of Labor Code § 558**
- 7. Failure to Keep Accurate Time Records (Labor Code § 1174)**
- 8. Unfair Competition Law (Business & Professions Code § 17200 *et seq.*)**
- 9. Private Attorney General Act**

JURY TRIAL DEMANDED

1 Plaintiff CARA DIOSDADO (“Plaintiff”) on behalf of herself and all other similarly
2 situated employees, hereby files this Class Action Complaint against Defendants NOR-CAL
3 VENTURE GROUP, INC., a California Corporation, VARRIS MANAGEMENT, INC., a California
4 Corporation, YADAV ENTERPRISES, INC., a California Corporation; ANIL YADAV, an
5 individual; and DOES 1 to 100 (collectively referred to as “Defendants”). Plaintiff is informed and
6 believes, and on that basis of information and belief, alleges as follows:

7 **INTRODUCTION**

8 1. This is a class action brought by Plaintiff seeking unpaid minimum wages, unpaid
9 meal and rest period premiums, and derivative penalties for inaccurate wage statements. Plaintiff
10 seeks these unpaid wages and penalties, plus interest and attorney’s fees, on behalf of herself and
11 similarly situated employees.

12 2. During all relevant times, Plaintiff and similarly situated employees worked for
13 Defendants as hourly, non-exempt employees. Defendants had a uniform practice of failing to pay
14 Plaintiff and similarly situated employees minimum wages for hours worked. Defendants did not
15 provide all meal and rest periods to Plaintiff and similarly situated employees and further, failed to
16 pay all applicable meal and rest period premiums to Plaintiff and similarly situated employees for
17 missed or late meal and rest periods. As a result of these uniform practices, Defendants did not
18 properly itemize and identify Plaintiff and similarly situated employees’ total hours worked,
19 applicable hourly rates, or the corresponding hours worked at each hourly rate on their wage
20 statements, and did not pay Plaintiff and similarly situated employees all wages due to them at the
21 time of their separation or termination.

22 **JURISDICTION AND VENUE**

23 3. The San Joaquin County Superior Court has jurisdiction in this matter due to alleged
24 violations of California Labor Code sections 201, 202, 203, 226, 226.3, 226.7, 246, 246.5, 248.5,
25 248.5, 256, 512, 558, 558.1, 1174, 1194, and 1197.1, Business and Professions Code sections 17200,
26 *et seq.*, and Industrial Welfare Commission Wage Order (“Wage Order”) No. 5-2001.

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4. Venue is proper pursuant to Civil Procedure Code section 395.5, because Defendants do business in San Joaquin County and, at least, one Defendant's principal place of business is located in San Joaquin County.

PARTIES

5. Plaintiff is an individual over the age of eighteen (18) and is now and/or at all relevant times mentioned in this Complaint was a resident of the State of California.

6. Plaintiff is informed and believes, and thereupon alleges, that Defendant NOR-CAL VENTURE GROUP, INC., is now and/or at all times mentioned in this Complaint a California Corporation and the owner and operator of an industry, business and/or facility licensed to do business and actually doing business in the State of California.

7. Plaintiff is informed and believes, and thereupon alleges, that Defendant VARRIS MANAGEMENT, INC., is now and/or at all times mentioned in this Complaint a California Corporation and the owner and operator of an industry, business and/or facility licensed to do business and actually doing business in the State of California.

8. Plaintiff is informed and believes, and thereupon alleges, that Defendant YADAV ENTERPRISES, INC., is now and/or at all times mentioned in this Complaint a California Corporation and the owner and operator of an industry, business and/or facility licensed to do business and actually doing business in the State of California.

9. Plaintiff is informed and believes, and thereupon alleges, that Defendant ANIL YADAV is over the age of eighteen (18) and is a resident of the State of California.

10. DOES 1 through 100 are affiliates, subsidiaries and related entities and the alter egos of NOR-CAL VENTURE GROUP, INC., VARRIS MANAGEMENT, INC., YADAV ENTERPRISES, INC., corporate or otherwise, who participated in and are liable for the actions herein alleged. Plaintiff herself will seek to amend this Complaint to allege the true names and capacities of these DOE Defendants when they are ascertained. At all times mentioned herein, each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment. Defendants, and each of them, are, therefore, jointly and severally liable between and among themselves.

1 11. Defendants, and each of them, are now and/or at all times mentioned in this Class
2 Action Complaint, were members of and/or engaged in a joint employment, joint venture,
3 partnership and common enterprise, and were acting within the course and scope of, and in
4 pursuance of said joint employment, joint venture, partnership, and common enterprise.

5 12. Defendants, and each of them, are now and/or at all times mentioned in this Class
6 Action Complaint approved, ratified, acquiesced, and/or aided or abetted the acts and omissions
7 alleged in this Class Action Complaint.

8 13. Defendants proximately caused Plaintiff to be subjected to the unlawful practices,
9 wrongs, complaints, injuries, and/or damages alleged in this Class Action Complaint.

10 14. In addition, California Labor Code section 558.1, subsection (a), provides that “Any
11 employer or other person acting on behalf of an employer, who violates, or cause to be violated, any
12 provision regulating minimum wages or hours and days of work in any order of the Industrial
13 Welfare Commission, or violates or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or
14 2802, may be held liable as the employer for such violation.”

15 15. California Labor Code section 558.1, subsection (b), further provides that the term
16 “other person acting on behalf of any employer” means “a natural person who is an owner, director,
17 officer, or managing agent of the employer.”

18 16. Provisions regulating minimum wages or hours and days of work in any order of the
19 Industrial Welfare Commission, such as IWC Wage Order 5, and/or California Labor Code sections
20 203, 226, 226.7, 1193.6, 1194, or 2802 have been violated by, or were caused to be violated by,
21 Defendants, and Defendant YADAV. Plaintiff is informed and thereon believes that Defendant
22 YADAV is a person acting on behalf of Defendants, including as owner and/or managing agent of
23 Defendants, within the meaning of California Labor Code section 558.1. Therefore, Defendant
24 YADAV may be held liable as the employer for the violations of provisions regulating minimum
25 wages or hours and days of work in any order of the Industrial Welfare Commission, including IWC
26 Wage Order No. 5-2001, and/or California Labor Code sections 203, 226, 226.7, 1193.6, 1194, or
27 2802.

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1 **CLASS ALLEGATIONS**

2 17. Plaintiff brings this action, on behalf of herself and all others similarly situated, as a
3 class action pursuant to California Code of Civil Procedure section 382. The class Plaintiff seeks to
4 represent is composed of and defined as follows:

5 All of Defendants' hourly, non-exempt employees who have or continue
6 to work for Defendants in California from (4) years prior to filing this
7 complaint to the present.

8 18. This action has been brought and may be properly maintained as a class action,
9 pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-
10 defined community of interests in the litigation and the proposed class is easily ascertainable.

11 (a) Numerosity: The Plaintiff' Class is so numerous that the individual joinder of all
12 members are impracticable under the circumstances of this case. While the exact number of class
13 members is unknown to Plaintiff at this time, Plaintiff is informed and believes that Defendants have
14 employed as many as three thousand (3,000) individuals falling within the above stated class
15 definition throughout the State of California during the applicable statute of limitations, who were
16 subjected to the practices outlined in this Complaint. As such, joinder of all members of the
17 Plaintiff' Class is not practicable.

18 (b) Common Questions Predominate: Common questions of law and fact exist as to all
19 members of the Plaintiff's Class and predominate over questions that affect only individual members
20 of the class. These common questions of law and fact include, without limitation, the following:

- 21 1. Whether Defendants kept an accurate record of all hours worked by Plaintiff
22 and members of the Plaintiff's Class;
- 23 2. Whether Defendants paid Plaintiff and members of the Plaintiff's Class for all
24 hours worked;
- 25 3. Whether Defendant paid Plaintiff and members of the Plaintiff's Class at least
26 minimum wage for all hours worked;
- 27 4. Whether Defendants had a policy and/or practice of failing to pay Plaintiff and
28 members of the Plaintiff's Class for all hours worked;

5. Whether Defendants had a policy and/or practice allowing for, or providing, Plaintiff and members of the Plaintiff's Class meal periods as required by law;
6. Whether Defendants had a policy and/or practice allowing for, or providing, Plaintiff and members of the Plaintiff's Class rest periods as required by law;
7. Whether Defendants accurately stated all required information on paystubs issued to Plaintiff and members of the Plaintiff's Class;
8. Whether Defendants provided Plaintiff and members of the Plaintiff's Class their final wages in compliance with Labor Code sections 201 to 203.

(c) Typicality: Plaintiff's claims are typical of the claims of the members of the Plaintiff's Class. They also sustained damages arising out of Defendants' common course of conduct in violation of the law as complained of herein. Plaintiff and all members of the putative class were non-exempt employees and thus who were not paid for all hours worked and were not provided all legally mandated meal and rest periods, were not paid reimbursement expenses, because of Defendants' policies and practices resulting in a failure to pay all overtime wages, minimum wages, reimbursement expenses, and meal and rest period premiums. As a result, each putative class member will have the same basis for unpaid wage claims as do Plaintiff.

(d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the putative class. For all relevant times, Plaintiff resided in California, worked for Defendants in California, and is adequate representative of the putative class as she has no interests that are adverse to those of absent class members. Additionally, Plaintiff has retained counsel who has substantial experience in complex civil litigation and wage and hour matters.

(e) Superiority: A class action is superior to other available means for the fair and efficient adjudication of the controversy since individual joinder of all members of the class is impracticable. Class action treatment will permit a larger number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Further, as damages suffered by each individual member of the class may be relatively small, the expenses and burden of the individual litigation would make it difficult or impossible for individual

1 members of the class to redress the wrongs done to them, and an important public interest will be
2 served by addressing the matter as a class action. The cost to the court system of adjudication of
3 such individualized litigation would be substantial. Individualized litigation would also present the
4 potential for inconsistent or contradictory judgments.

5 19. Plaintiff is unaware of any difficulties that are likely to be encountered in the
6 management of this action that would preclude its maintenance as a class action.

7 **GENERAL ALLEGATIONS**

8 20. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 19 as though
9 fully set forth herein.

10 21. Plaintiff worked for Defendants from approximately September 2019 to October
11 2019. Defendants own and operate restaurants throughout California doing business as Jack In The
12 Box. Plaintiff worked at the Jack In The Box located in Elk Grove, California. Plaintiff and
13 similarly situated employees typically worked over six (6) and up to eight (8) hours per day.

14 22. Defendants failed to pay Plaintiff and similarly situated employees for all hours
15 worked. Defendants' managers and agents routinely and systematically failed to accurately record
16 Plaintiff's actual work time and failed to input her actual hours worked into Defendants' time
17 keeping computer system. These practices negatively impacted Plaintiff and similarly situated
18 employees.

19 23. In Plaintiff's case, Defendants were able to do this by not providing Plaintiff with an
20 employee ID, so she could clock in and out of the Defendants' time keeping computer system
21 herself. This gave Defendants' managers control over recording Plaintiff's hours and inputting these
22 hours into the computer system. Consequently, Defendants caused Plaintiff to work off the clock
23 because her actual hours worked were neither accurately recorded nor accurately inputted into
24 Defendants' time keeping computer system. As a result of these practices, Plaintiff was only paid
25 for a total of 1.83 hours even though she actually worked for a total of two weeks, averaging four (4)
26 working days per week and about six (6) to eight (8) hours of work per day.

27 24. As a result of the aforementioned time recording practices, Defendants did not pay
28 Plaintiff and similarly situated employees minimum wages for all the time that they worked. These

1 policies resulted in minimum wages being forfeited by Plaintiff and similarly situated employees.
2 Such policies also led to Defendants not keeping accurate time records.

3 25. Plaintiff and other similarly situated employees were also forced to take meal breaks
4 beyond their fifth (5) hour of work due to staff shortages and Defendants' workplace policies.
5 Similarly, Plaintiff is informed and believes that when similarly situated employees worked beyond
6 ten (10) hours, Defendants failed to provide a second meal period.

7 26. Defendants also failed to provide rest breaks of at least ten (10) minutes to Plaintiff
8 and similarly situated employees when they worked in excess of four (4) hours or major fraction
9 thereof. Again, this was due to Defendants' routine practice and policy of not scheduling enough
10 employees. As a result of Defendants' practices and policies, Plaintiff and similarly situated
11 employees often missed their rest breaks, at least, once daily, if not, multiple times per day.

12 27. Finally, Defendants failed to provide Plaintiff with her earned sick days based on the
13 hours Plaintiff worked because Plaintiff's paystub did not accurately reflect the total amount of
14 hours actually worked and the total amount of sick days earned. As a result of such policies,
15 Defendants prevented Plaintiff and similarly situated employees from taking their earned sick days.

16 28. As a result of Defendants' time keeping errors, omissions, and alterations, failing to
17 enter employees' hours in the system, failure to pay minimum wages and failure to pay meal and rest
18 period premiums, Defendants failed to provide all final wages owed to Plaintiff and similarly
19 situated employees within twenty-four (24) hours of their termination or seventy-two (72) hours of
20 their resignation. In addition, Defendants failed to keep accurate time records and failed to provide
21 Plaintiff and similarly situated employees with accurate wage statements. The wage statements
22 Defendants provided to Plaintiff and similarly situated employees did not accurately state her total
23 regular hours worked, gross wages and net wages, and all deductions made. Consequently, the wage
24 statements were defective.

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1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**
3 **FAILURE TO PAY MINIMUM WAGES**
4 **(As to Defendants and Defendant YADAV)**

5 29. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 28 as though
6 fully set forth herein.

7 30. For the period preceding the filing of this Complaint, Defendants were required to
8 compensate California's minimum wage of \$8.00 per hour (beginning January 1, 2008), \$9.00 per
9 hour (beginning July 1, 2014), \$10.00 per hour (beginning January 1, 2016), \$10.50 per hour
10 (beginning January 1, 2017, for employers with twenty-six (26) or more employees) or \$10.00 per
11 hour (beginning January 1, 2017, for employers with twenty-five (25) or less employees), \$11.00 per
12 hour (beginning January 1, 2018, for employers with twenty-six (26) or more employees) or \$10.50
13 per hour (beginning January 1, 2018, for employers with twenty-five (25) or less employees).
14 \$12.00 per hour (beginning January 1, 2019, for employers with twenty-six (26) or more employees)
15 or \$11.00 per hour (beginning January 1, 2019, for employers with twenty-five (25) or less
16 employees) and \$13.00 per hour (beginning January 1, 2020, for employers with twenty-six (26) or
17 more employees) or \$12.00 per hour (beginning January 1, 2020, for employers with twenty-five
(25) or less employees). *See, e.g.,* IWC Wage Order, No. 5, section 4(A); Labor Code § 1194.

18 31. Plaintiff worked for Defendants from about September 2019 to October 2019.
19 Plaintiff was not exempt to the State's Minimum Wage Orders. Defendants were aware of their
20 obligation to pay the minimum wage for each hour worked but failed to do so.

21 32. As a proximate result of Defendants' and Defendant YADAV's conduct, Plaintiff has
22 been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
23 the extent pertinent as if set forth here in full.

24 **SECOND CAUSE OF ACTION**
25 **FAILURE TO PROVIDE MEAL PERIODS**
26 **(As to Defendants and Defendant YADAV)**

27 33. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 32 as though
28 fully set forth herein.

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1 34. An employer must provide an employee a meal period in accordance with the
2 applicable Wage Order, and Labor Code sections 226.7 and 512.

3 35. Labor Code sections 226.7 and 512 and IWC Wage Order No. 5, section 11(A)
4 require an employer to provide an uninterrupted meal period of not less than thirty (30) minutes for
5 each work period of more than five (5) hours.

6 36. Labor Code section 512 and Wage Order No. 5 section 11(B) further provide that
7 employers may not employ employees for a work period for more than ten (10) hours per day
8 without providing the employee with a second meal period of at least thirty (30) minutes. However,
9 if the total hours worked is no more than twelve (12) hours, the second meal period may be waived
10 so long as there was no waiver as to the first meal period.

11 37. Plaintiff alleges that Defendants employed Plaintiff and similarly situated
12 employees for periods of more than five (5) hours and provided meal breaks after the fifth hour
13 of work. Plaintiff believes that Defendants failed to provide a second meal period of at least
14 thirty (30) minutes when Plaintiff and similarly situated employees worked more than ten (10)
15 hours in a day. Plaintiff and similarly situated employees did not waive their rights to all meal
16 periods throughout their employment.

17 38. Defendants further failed to pay Plaintiff and similarly situated employees the
18 applicable meal period premiums for any such missed or late meal breaks.

19 39. As a proximate cause of Defendants' and Defendant YADAV's failure to permit meal
20 periods as legally required, Plaintiff is entitled to one (1) hour of pay at the employee's regular rate
21 of compensation for each meal period not provided, as a wage, from three (3) years of the filing of
22 this action. Labor Code § 226.7 and IWC Wage Order No. 5, § 11(B).

23 **THIRD CAUSE OF ACTION**
24 **FAILURE TO PROVIDE REST PERIODS**
 (As to Defendants and Defendant YADAV)

25 40. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 39 as though
26 fully set forth herein.

27 41. An employer must provide an employee a rest period in accordance with the
28 applicable Wage Order and Labor Code section 226.7.

42. Labor Code section 226.7 and Wage Order No. 5, section 12(A) require an employer to provide a rest period of not less than ten (10) minutes for each work period of more than four (4) hours or a major fraction thereof.

43. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly situated employees to take rest periods of at least ten (10) minutes for each work period that she worked more than four (4) hours or a major fraction thereof.

44. As a proximate cause of Defendants’ and Defendant YADAV’s failure to “authorize and permit” rest periods, Plaintiff is entitled to one (1) hour of pay at the employee’s regular rate of compensation for each rest period not provided, as a wage, from three (3) years of the filing of this action. Labor Code § 226.7 and IWC Wage Order No. 5, § 12(B).

FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS
(As to Defendants and Defendant YADAV)

45. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 44 as though fully set forth herein.

46. Pursuant to Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

1 47. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an
2 itemized statement or failed to provide an accurate and complete itemized statement showing the
3 requirements set forth in Labor Code section 226(a). Due to Defendants' compensation policies
4 during Plaintiff's employment, Defendants' (1) failed to pay Plaintiff accurately for all hours worked
5 and (2) failed to properly itemize all hours worked.

6 48. Additionally, Plaintiff alleges she suffered injury as a result of the Defendants' failure
7 to provide any wage statement or by failing to provide accurate and complete information as
8 required by any one or more of items (1) to (9), inclusive, of Labor Code section 226, subdivision
9 (a). Plaintiff and similarly situated employees cannot promptly and easily determine, or, in other
10 words, a reasonable person would not be able to readily ascertain the information without reference
11 to other documents or information from the wage statement alone, one or more of the following:

- 12 (i) *The amount of the gross wages or net wages paid to the employee*
13 *during the pay period or any of the other information required to be*
14 *provided on the itemized wage statement pursuant to items (2) to (4),*
15 *inclusive, (6), and (9) of section 226, subdivision (a); or*
16 (ii) *Which deductions the employer made from gross wages to*
17 *determine the net wages paid to the employee during the pay period;*
18 *or*
19 (iii) *The name and address of the employer and, if the employer is a*
20 *farm labor contractor, as defined in subdivision (b) of Labor Code*
21 *section 1682, the name and address of the legal entity that secured the*
22 *services of the employer during the pay period.*
23 (iv) *The name of the employee and only the last four digits of his or*
24 *her social security number or an employee identification number other*
25 *than a social security number.*

26 49. As a proximate cause of Defendants' and Defendant YADAV's failure to provide
27 accurate statements, Plaintiff was damaged as stated in the section below entitled "DAMAGES,"
28 which is incorporated here to the extent pertinent as if set forth here in full.

FIFTH CAUSE OF ACTION
WAITING TIME PENALTIES
(As to Defendants and Defendant YADAV)

29 50. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 49 as though
30 fully set forth herein.

31 51. An employer must pay an employee who is terminated all unpaid wages immediately
32 upon termination. See Labor Code § 201.

1 52. An employer must pay an employee who resigns all unpaid wages within seventy-two
2 (72) hours of their resignation. *See* Labor Code § 202.

3 53. Plaintiff and similarly situated employees did not receive all wages, including
4 minimum wages, overtime compensation, and meal and rest period premiums, at their termination or
5 within the required time after their separation from employment.

6 54. An employer who willfully fails to pay an employee wages in accordance with Labor
7 Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30)
8 days. *See* Labor Code § 203.

9 55. Defendants knew of their obligation to pay Plaintiff and similarly situated employees
10 for all hours worked because they knew Plaintiff and similarly situated employees were not paid for
11 all hours worked and were not paid for missed meal and rest period premiums when employment
12 terminated. Indeed, Defendants had knowledge that Plaintiff and similarly situated employees
13 worked over six (6) hours and up to eight (8) hours a day, worked through thirty (30) minute meal
14 periods when Plaintiffs worked for periods lasted for more than five (5) hours and more than ten (10)
15 hours, or worked more hours than reflected in their paystubs. Defendants' failure to pay for all
16 hours worked was in complete disregard of their obligations. Such conduct shows the Defendants'
17 knowledge of their obligation to pay upon termination and their willful refusal.

18 56. Defendants also knew that they had violated and were violating many California
19 Labor Codes because Defendants' former employees have made similar claims in the past.
20 Defendants failed to take action to correct such violations and maintained the same policies in
21 violations of said California Labor Codes. Thus, Defendants' failure to pay for all hours worked was
22 in complete disregard of their obligations. Such conduct shows the Defendants' knowledge of their
23 obligation to pay upon termination and their willful refusal.

24 57. As a proximate result of the Defendants' and Defendant YADAV's conduct, Plaintiff
25 has been damaged and deprived of her wages and thereby seeks her daily rate of pay multiplied by
26 thirty (30) days for Defendants', and Defendant YADAV's failure to pay all wages due.

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SIXTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 558
(As to Defendants and Defendant YADAV)

58. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 57 as though fully set forth herein.

59. California Labor Code section 558 provides that “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: . . . For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. . . . For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. . . . Wages recovered pursuant to this section shall be paid to the affected employee.”

60. California Labor Code sections 510 (governing overtime), 512 (governing meal periods), 516, and 517 (providing the Industrial Welfare Commission authority to set additional regulations through the wage orders) are within the same chapter as section 558.

61. As a direct and proximate result of Defendants’ and Defendant YADAV’s conduct, California Labor Code sections 510, 512, 516, and 517 have been violated throughout the applicable duration of Plaintiff’s employment. Plaintiff is, therefore, entitled to, and seeks, penalties and wages pursuant to California Labor Code section 558.

SEVENTH CAUSE OF ACTION
FAILURE TO KEEP ACCURATE TIME RECORDS
(As to Defendants and Defendant YADAV)

62. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 61 as though fully set forth herein.

63. California Labor Code section 1174(d) provides that employers must keep “payroll records showing the hours worked daily by and the wages paid to . . . employees . . . These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years.”

1 64. California Industrial Wage Order No. 5, section (7)(A) further requires employers to
2 “keep accurate information with respect to each employee including the following:

3 (3) Time records showing when the employee begins and ends each
4 work period. Meal periods, split shift intervals . . . shall also be
5 recorded.

6 (5) Total hours worked in the payroll period and applicable rates of
7 pay.

8 65. Throughout Plaintiff’s and similarly situated employees’ employment with
9 Defendants, Defendants did not keep accurate information regarding all hours worked or meal
10 periods taken. As elaborated above, Defendants had a practice of not keeping track of all hours that
11 Plaintiff and similarly situated employees worked.

12 66. As a direct and proximate result of Defendants’ conduct, California Labor Code
13 section 1174 has been violated throughout the duration of Plaintiff’s employment. Plaintiff is,
14 therefore, entitled to, and seeks, penalties pursuant to California Labor Code section 1174.5.

15 **EIGHTH CAUSE OF ACTION**
16 **UNFAIR COMPETITION**
17 **(As to Defendants)**

18 67. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 66 as though
19 fully set forth herein.

20 68. Unfair competition shall mean and include any unlawful, unfair or fraudulent
21 business act or practice and unfair, deceptive, untrue or misleading advertising and any act
22 prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business
23 and Professions Code. *See* California Business and Professions (“B&P”) Code § 17200.

24 69. Plaintiff and similarly situated employees were not provided legally compliant
25 paystubs and were not paid all wages earned, including minimum and meal and rest period
26 premiums, at their termination or separation of employment when applicable.

27 70. Plaintiff is also informed and believes and thereon alleges that such actions and/or
28 conduct constitute a violation of the California Unfair Competition Law (“UCL”) (Business and
Professions Code 17200, *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal.
4th 163 (2000).

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71. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiff is entitled to restitution as a result of the Defendants' unfair business practices, including, but not limited to, interest and penalties pursuant to B&P sections 17203, 17208, violations of Labor Code sections 201, 202, 203, 226, 226.3, 226.7, 246, 246.5, 248.5, 256, 512, 558, 558.1, 1174, 1194, and 1197.1, all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

NINTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to Defendants and Defendant YADAV)

72. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 71 as though fully set forth herein.

73. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with Plaintiff and similarly situated current and former employees:

- Violation of Labor Code sections 1194, 1197.1 and Wage Order No. 5, § 4 (Failure to Pay Minimum Wages)
- Violation of Labor Code sections 510, 1194, and Wage Order No. 5, § 3 (Failure to Pay Overtime Wages)
- Violation of Labor Code sections 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code sections 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code sections 558, 558.1 (Provisions Regulating Hours and Days of Work in any Industrial Welfare Commission Order)
- Violation of Labor Code sections 226.7, 512 and Wage Order No. 5, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code sections 226.7 and Wage Order No. 5, §§ 12(A) and 12(B) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code sections 226.3, 1174 (Failure to Maintain Accurate Records)
- Violation of Labor Code sections 246, 246.5 247, 247.5, 248.5 (Failure to Provide

Paid Sick Leave, Failure to Post Notices of Paid Sick Leave, and Failure to Keep Adequate Records of Paid Sick Leave)

- Plaintiff seeks civil penalties against Defendants as provided in the Labor Code, or, if no civil penalty is provided, default penalties pursuant to Labor Code section 2699(f)(2).

74. Plaintiff seeks these civil penalties from Defendants and Defendant YADAV pursuant to Labor Code sections 2699(a) and 2699.3.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 1194;
3. As to the Second Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Attorney's fees and costs and interest pursuant to Labor Code sections 218.5 and 218.6;
4. As to the Third Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Attorney's fees and costs and interest pursuant to Labor Code sections 218.5 and 218.6;
5. As to the Fourth Cause of Action:
 - a. Penalties as provided for in Labor Code section 226, including the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which the violation occurred and one hundred dollars (\$100.00) per employee for

1 each violation in the subsequent pay periods, but not to exceed four thousand
2 dollars (\$4,000.00);

3 b. For reasonable attorney's fees and costs incurred pursuant to Labor Code
4 section 226(e);

5 6. As to the Sixth Cause of Action:

6 a. Penalties for any initial violation in the amount of fifty dollars (\$50) for each
7 underpaid employee for each pay period for which the employee was
8 underpaid and one hundred dollars (\$100) for each subsequent pay period
9 which each employee was underpaid;

10 7. As to the Seventh Cause of Action:

11 a. Penalties as provided for in Labor Code section 1174.5;

12 8. As to the Ninth Cause of Action:

- 13 a. For civil penalties as provided for in the Labor Code for enumerated violation;
- 14 b. For those Labor Code sections, the violation of which there is no civil penalty
15 provided, the default penalty provided in Labor Code section 2699(f): initial
16 violation, one hundred dollars (\$100) for each aggrieved employee pay
17 period; For any subsequent violation, two hundred dollars (\$200) for each
18 aggrieved employee per pay period;
- 19 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
- 20 d. For any other remedies as allowed by law and/or deemed appropriate by the
21 Court;

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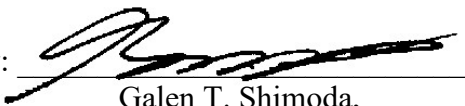
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9. For such other and further relief as this Court may deem just and proper,
including, but not limited to:
- a. Wages as proved at trial;
 - b. Injunctive and Declaratory relief;
 - c. Attorney's fees and costs; and
 - d. Interest.

Dated: October 1, 2020

Shimoda Law Corp.

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