

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Rafael Ongkeko

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

KELLY NELSON,

Plaintiff,

vs.

V R V COMPANY INC. dba OUR PLACE;
ROGELIO MENDOZA; and DOES 1 to 25,
inclusive,

Defendants.

) CASE NO.: **20STCV42959**

)

) **COMPLAINT FOR DAMAGES FOR:**

)

) **1) FAILURE TO COMPENSATE FOR**
) **ALL HOURS WORKED;**

) **2) FAILURE TO PAY MINIMUM**
) **WAGES;**

) **3) FAILURE TO PAY OVERTIME;**

) **4) FAILURE TO PROVIDE ACCURATE**
) **ITEMIZED WAGE STATEMENTS;**

) **5) FAILURE TO PAY WAGES OWED**
) **EVERY PAY PERIOD;**

) **6) VIOLATION OF LABOR CODE**
) **SECTION 558;**

) **7) FAILURE TO MAINTAIN**
) **ACCURATE RECORDS;**

) **8) FAILURE TO GIVE REST BREAKS;**

) **9) FAILURE TO GIVE MEAL BREAKS;**

) **10) PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA");**

) **11) VIOLATION OF CALIFORNIA**
) **BUSINESS AND PROFESSIONS**
) **CODE SECTION 17200.**

) **12) FAILURE TO PAY WAGES WHEN**
) **EMPLOYMENT ENDS**

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) **DEMAND FOR JURY TRIAL**

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COMES NOW Plaintiff, KELLY NELSON (hereinafter “Plaintiff”), and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Los Angeles in this judicial district because Defendants V R V COMPANY INC. dba OUR PLACE; ROGELIO MENDOZA; and DOES 1 to 25, inclusive, do business in the County of Los Angeles, and because Defendants’ obligations and liabilities arise therein. Moreover, Plaintiff’s damages sought herein exceed \$25,000.

2. Plaintiff is a female resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant V R V COMPANY INC. doing business as OUR PLACE (hereinafter “OUR PLACE”) was and is a domestic California corporation organized and operating in the County of Los Angeles, State of California. V R V COMPANY INC. owns and operates and does business as Our Place, which is a bar, located at 240 E. Route 66, Glendora, CA 91740. Plaintiff is further informed and believes that at all times herein mentioned, Defendant ROGELIO MENDOZA is and was a male resident of the State of California and the owner/managing agent for V R V COMPANY INC. dba OUR PLACE and who personally managed and operated the business “Our Place”. Defendant ROGELIO MENDOZA is being sued herein individually under Labor Code Section 558.1 because he was personally involved in the day-to-day operations of “Our Place” and controlled the employees’ (including Plaintiff’s) wages, hours, and working conditions. V R V COMPANY INC. dba OUR PLACE and ROGELIO MENDOZA are collectively referred to as “OUR PLACE”.

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1 4. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
2 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
3 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
4 defendants, numbers 1 to 25, reside in the State of California and are in some manner
5 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
6 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names
7 and capacities of these fictitiously named defendants.
8

9 5. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
10 that information and belief, alleges that at all times herein mentioned, each of the remaining
11 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
12 under the authority of their agency, employment, or representative capacity, with the consent
13 of his/her codefendants.
14

15 **GENERAL ALLEGATIONS**

16 6. Plaintiff started working for OUR PLACE on or around January 20, 2019 as a bartender.
17 Plaintiff worked several days per week and was supposed to be classified as an hourly, non-
18 exempt employee. Plaintiff's last day worked at OUR PLACE was on March 17, 2020.

19 7. It is Plaintiff's position that OUR PLACE has violated numerous Labor Code Sections
20 against Plaintiff and other similarly situated aggrieved employees.

21 8. OUR PLACE did not provide Plaintiff and other similarly situated aggrieved employees
22 with the minimum wages to which they were entitled for all work performed and did not
23 compensate her and others for all hours worked pursuant to California Labor Code sections 1194,
24 1197 and 1197.1. This is so because Plaintiff and others were not paid for all hours worked and
25 are owed for several previous pay periods. OUR PLACE was customarily late on providing
26 paychecks to its employees, including Plaintiff, and rarely paid employees all the wages that
27 were owed to them each pay period based on the number of hours worked. Moreover, starting
28 on January 1, 2020, Plaintiff and others were paid less than \$12 per hour, which was the

1 California state minimum wage at the time.

2 9. OUR PLACE also violated Labor Code section 226.8. Pursuant to Labor Code section
3 226.8(a)(1), it is unlawful for any person or employer to willfully misclassify an individual as
4 an independent contractor. “Willful misclassification means avoiding employee status for an
5 individual by voluntarily and knowingly misclassifying that individual as an independent
6 contractor.” Cal. Lab. Code Section 226.8(i)(4). If a person or employer has willfully
7 misclassified an individual as an independent contractor, the person or employer shall be subject
8 to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen
9 thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted
10 by law. Cal. Lab. Code Section 226.8(b). If the person or employer has engaged in or is engaging
11 in a pattern or practice of willfully misclassifying individuals as independent contractors, the
12 person or employer shall be subject to a civil penalty of not less than ten thousand dollars
13 (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in
14 addition to any other penalties or fines permitted by law. Cal. Lab. Code Section 226.8(c).

15 10. In a very important decision, *Dynamex Operations v. Superior Court* (2018) 4 Cal. 5th
16 903, the Supreme Court developed the “ABC Test” to determine whether an independent
17 contractor is an employee. Under the ABC test, a worker will be deemed to have been “suffered
18 or permitted to work,” and thus, an employee for wage order purposes, unless the putative
19 employer proves:

20 (A) that the worker is free from the control and direction of the hiring entity in connection
21 with the performance of the work, both under the contract for the performance of the
work and in fact;

22 (B) that the worker performs work that is outside the usual course of the hiring entity’s
business; and

23 (C) that the worker is customarily engaged in an independently established trade,
24 occupation, or business of the same nature as the work performed.

25 Note that each of these requirements need to be met in order for the presumption that a worker
26 is an employee to be rebutted, and for a court to recognize that a worker has been properly
27 classified as an independent contractor.

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1 11. Here, it is unequivocally clear that OUR PLACE would not be able to get past the second
2 part of the test since Plaintiff and others were unequivocally bartenders and other individuals
3 with direct responsibility for the business activities of the bar itself, which is OUR PLACE's
4 core business. As such, OUR PLACE willfully misclassified aggrieved employees as
5 independent contractors and did not properly deduct taxes.

6 12. OUR PLACE also violated Labor Code §510 because it failed to pay Plaintiff and other
7 similarly situated aggrieved employees overtime, even though they worked more than 8 hours
8 per day and/or 40 hours per week throughout their employment. As alluded to above, the latter
9 is a function of Plaintiff and other aggrieved employees not being compensated for all hours
10 worked and not getting credit for all hours worked, which would translate into daily overtime
11 not being paid.

12 13. OUR PLACE also violated Labor Code § 226.7 and the appropriate Industrial Welfare
13 Commission Wage Order (Wage Order no. 5) because it failed to provide Plaintiff and others
14 with 10-minute rest periods for every four hours of work, or majority portion thereof, throughout
15 their employment. OUR PLACE did not completely relieve Plaintiff and others of all duty
16 during said rest periods. OUR PLACE did not pay to Plaintiff and others one additional hour
17 of pay at Plaintiff's regular rate of compensation for each workday that one or more statutory
18 rest periods was not provided. It was not company policy and not part of the culture for
19 employees such as Plaintiff and others to take rest breaks. As such, the culture at OUR PLACE
20 did not lend itself to the employees receiving statutory breaks wherein they were relieved of all
21 work duties. It was the normal practice and custom of OUR PLACE not to authorize, permit,
22 and enforce statutory rest periods. Since Plaintiff was generally the only bartender on her shifts
23 and did not have anyone to relieve her of her duties, she was not able to take two uninterrupted
24 ten-minute rest breaks per shift throughout her employment wherein she was relieved of all
25 duties. It simply was not possible due to being the only bartender on duty serving customers and
26 maintaining the bar. Furthermore, Plaintiff could not exactly leave the bar area unattended for
27 any extended period of time for safety and liability reasons.
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1 14. OUR PLACE violated Labor Code §§ 512 and 226.7 along with the appropriate Industrial
2 Welfare Commission Wage Order (Wage Order no. 5) because it failed to provide Plaintiff and
3 others the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work
4 throughout their employment. OUR PLACE did not completely relieve Plaintiff and others of
5 all duty during said meal periods. OUR PLACE did not pay to Plaintiff and others one additional
6 hour of pay at Plaintiff's regular rate of compensation for each workday that one or more
7 statutory meal periods was not provided. Like the rest breaks, receiving a thirty-minute
8 uninterrupted meal break was not part of the culture and was not strictly enforced by OUR
9 PLACE. It was the normal practice and custom of OUR PLACE not to authorize, permit, and
10 enforce statutory meal periods. Plaintiff generally ate while working behind the bar (if time
11 permitted) and was not getting an uninterrupted meal period. She would often bring food for
12 herself and would eat and work simultaneously. Plaintiff is not aware of signing any "On Duty
13 Meal Period Agreement" and even if she did, it would not be valid and enforceable since the
14 nature of Plaintiff's job did not prevent her from relieved of all duty and taking an uninterrupted
15 meal period.

16 15. Furthermore, during the relevant time period and due to allegations above, OUR PLACE
17 failed to pay Plaintiff and others all wages due to them within any time period specified by
18 California Labor Code section 204. OUR PLACE was also in violation of California Labor Code
19 section 226(a), by failing to provide accurate, itemized wage statements and include pertinent
20 information on the wage statements, including but not limited to, all hours worked (minimum
21 wage and overtime), the applicable hourly rates, the legal name and address of the employer,
22 gross wages earned, net wages earned, premium pay for the missed meal and rest breaks, and the
23 correct start and end of each pay period, among others. In fact, OUR PLACE did not provide
24 wage statements whatsoever, especially since Plaintiff and others were misclassified as
25 independent contractors. As such, OUR PLACE did not provide Plaintiff and other similarly
26 situated aggrieved employees with complete, accurate itemized wage statements.

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1 16. During the relevant time period, OUR PLACE also failed to keep accurate and complete
2 payroll records showing the actual hours worked per day and the wages paid to Plaintiff and
3 others pursuant to California Labor Code sections 1174(d).

4 17. OUR PLACE also violated Labor Code § 203 because it willfully failed to pay Plaintiff
5 and other similarly situated aggrieved employees earned and due wages upon separation of
6 employment, either immediately upon involuntary termination, or within 72 hours of resignation.
7 These earned but unpaid wages include minimum wages and compensation for all hours worked,
8 overtime compensation, premium pay for missed meal and rest breaks, and business expense
9 reimbursement, among others.

10 18. Moreover, OUR PLACE failed to provide sick pay pursuant to Labor Code section 246
11 and failed to secure Worker's Compensation insurance for all employees, including Plaintiff
12 pursuant to California Labor Code Section 3700.5.

13 **FIRST CAUSE OF ACTION**

14 **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

15 **(California Industrial Welfare Commission Order 5-2001, California Code of**
16 **Regulations Title 8 Section 11050, and California Labor Code Section 1198)**

17 **(Plaintiff against all named defendants and all DOE defendants)**

18 19. Plaintiff re-alleges and incorporates by reference each and every allegation in
19 paragraphs 1 through 18, inclusive, of this Complaint as though fully set forth herein.

20 20. At all times relevant herein, Defendants were required to compensate its employees for
21 all hours worked upon reporting for work at the appointed time stated by the employer
22 pursuant to Industrial Welfare Commission Order 5-2001, California Code of Regulations,
23 Title 8, Section 11050.

24 21. For the three (3) years preceding filing of this action, Defendants failed to compensate
25 Plaintiff for all hours worked.

26 22. Under the aforementioned wage order and regulations, Plaintiff is to recover
27 compensation for all hours worked but not paid by Defendants for the three (3) years
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preceding the filing of this Complaint.

23. As a proximate result of the aforementioned violations, Plaintiff has been damaged in an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this Court.

24. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus reasonable attorney's fees and costs of suit.

25. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs which will equal an amount known to Plaintiff once she has obtained all of her payroll records from Defendants.

SECOND CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(California Labor Code Sections 1194, 1194.2, 1197)

(Plaintiff against all named defendants and all DOE defendants)

26. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 25, inclusive, of this Complaint as though fully set forth herein.

27. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the minimum wage rate for all hours worked as required by the applicable Industrial Welfare Commission (hereinafter "IWC") Wage Order No. 5-2001, codified at California Code of Regulations, Title 8, Section 11050, subdivision 4.

28. Pursuant to IWC Wage Order no. 5-2001, subdivision 2(K), at all relevant times, "hours worked" included "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so..."

1 29. During her employment, Plaintiff was regularly required as a matter of uniform
2 policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff
3 was paid less than the minimum wage rate by Defendants for hours worked in violation of
4 California Labor Code Section 1197 and the applicable California Industrial Wage
5 Commission wage order(s).

6 30. Plaintiff was, at all relevant times, under the control of Defendants and suffered or
7 permitted to work by Defendants. Defendants' acts or omissions in failing to adequately
8 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants
9 to believe that their acts or omissions were not contrary to California law.

10 31. For all hours worked by Plaintiff for which she was paid less than the minimum wage
11 rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum
12 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount
13 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,
14 Plaintiff is also entitled to attorney's fees, costs and interests according to proof.

15 32. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
16 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
17 trial.

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19 **THIRD CAUSE OF ACTION**

20 **FAILURE TO PAY OVERTIME**

21 **(California Industrial Welfare Commission Order 5-2001, California Code of**
22 **Regulations Title 8 Section 11050)**

23 **(Plaintiff against all named defendants and all DOE defendants)**

24 33. Plaintiff re-alleges and incorporates by reference each and every allegation in
25 paragraphs 1 through 32, inclusive, of this Complaint as though fully set forth herein.

26 34. Pursuant to Industrial Welfare Commission Order No. 5-2001, California Code of
27 Regulations, Title 8, Section 11050, for the period of Plaintiff's employment, Defendants were
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1 required to compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5)
2 times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours
3 in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12)
4 hours in a day or hours worked in excess of eight (8) on the seventh consecutive work day in a
5 week.

6 35. Plaintiff was a non-exempt employee entitled to the protections of the California
7 Industrial Welfare Commission Order No. 5-2001, California Code of Regulations, Title 8,
8 Section 11050.

9 36. Plaintiff worked more than eight (8) hours in a single workday or forty (40) hours in a
10 single workweek on numerous occasions.

11 37. Plaintiff was entitled to the above overtime premiums.

12 38. Defendants did not pay Plaintiff premium wages of at least one and one-half times
13 Plaintiff's regular rate of pay for hours worked past eight (8) in a day.

14 39. Defendants did not pay Plaintiff premium wages of at least one and one-half times
15 Plaintiff's regular rate of pay for hours worked past forty (40) in a week.

16 40. Plaintiff worked at least one pay period in which she was not properly paid overtime
17 within the three (3) years prior to the initiation of this lawsuit.

18 41. Defendants know or should know the actual dates of overtime worked, the amount of
19 overtime worked, and the amount of unpaid overtime due.

20 42. As a proximate result of Defendants' violations, Plaintiff has been damaged in an
21 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
22 Court.

23 43. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
24 Regulations, Title 8, Sections 11050, Plaintiff is entitled to recover damages for the
25 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
26 reasonable attorney's fees and costs of suit.

27 44. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
28 along with any allowable interest, penalties, attorney's fees, and costs according to proof at

1 trial.

2 **FOURTH CAUSE OF ACTION**

3 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

4 **(California Labor Code Section 226)**

5 **(Plaintiff against all named and all DOE defendants)**

6 45. Plaintiff re-alleges and incorporates by reference each and every allegation in
7 paragraphs 1 through 44, inclusive, of this Complaint as though fully set forth herein.

8 46. Pursuant to California Labor Code Section 226, every employer must furnish each
9 employee an itemized statement of wages and deductions at the time of payment of wages.

10 47. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that
11 accurately reflected all information required by Labor Code Section 226, including but not
12 limited to, gross wages earned, including overtime, net wages earned, total hours worked by
13 the employee, all deductions, and premium pay for missed meal breaks and rest breaks.
14 Therefore, Defendants failed to maintain and provide accurate itemized wage statements to
15 Plaintiff in accordance with California Labor Code Section 226(a).

16 48. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
17 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
18 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
19 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
20 reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to
21 the 3-year period immediately preceding the date this lawsuit was filed.

22 49. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
23 sustained damages, including loss of earnings, in an amount to be established at trial. As a
24 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
25 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
26 and attorney's fees pursuant to statute.

27 50. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
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1 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
2 trial.

3 **FIFTH CAUSE OF ACTION**

4 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

5 **(California Labor Code Section 204)**

6 **(Plaintiff against all named defendants and all DOE defendants)**

7 51. Plaintiff re-alleges and incorporates by reference each and every allegation in
8 paragraphs 1 through 50, inclusive, of this Complaint as though fully set forth herein.

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10 52. California Labor Code Section 204 establishes the fundamental right of all employees
11 in the State of California to be paid wages in a timely fashion for their work.

12 53. At all times relevant during the liability period, Defendants failed to pay Plaintiff the
13 full amount of all owed wages when due as required by California Labor Code Section 204.

14 54. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
15 informed, believes, and thereon alleges, that all times relevant during the liability period,
16 Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,
17 including overtime hours and the minimum wage along with premiums for missed meal breaks
18 and rest breaks.

19 55. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
20 amount, subject to proof, to the extent she was not paid all wages each pay period. The precise
21 amount of unpaid wages is not presently known to Plaintiff but can be determined directly
22 from Defendants' records or indirectly based on information from Defendants' records.

23 56. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
24 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
25 trial.

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SIXTH CAUSE OF ACTION
VIOLATION OF LABOR CODE SECTION 558
(California Labor Code Section 558)

(Plaintiff against all named defendants and all DOE defendants)

57. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 56, inclusive, of this Complaint as though fully set forth herein.

58. California Labor Code Section 558 states that any 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 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. The civil penalty for each subsequent violation is 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. Plaintiff claims penalties for five (5) years immediately preceding the date this lawsuit was filed.

59. Plaintiff hereby alleges that named Defendants violated Labor Code Section 558. Thus, Defendants are subject to civil penalties under the following laws:

- a. California Labor Code Section 558. Defendants failed to pay Plaintiff regular wages, including minimum wages for all hours worked and overtime wages for overtime hours worked. As such, Defendants violated Section 558 under which penalties are due. Plaintiff therefore prays for penalties of \$50.00 for the first pay period and \$100.00 for each subsequent violation for each pay period for which Plaintiff was underpaid in addition to an amount sufficient to recover underpaid wages.
- b. California Labor Code Section 218.5 for recovery of costs and attorney's fees for

1 relief associated with Plaintiff's prosecution of this cause of action under California
2 Labor Code Sections 200, et seq. Defendants knowingly violated labor laws by not
3 paying Plaintiff for her overtime hours worked and minimum wages for all hours
4 worked.

- 5 c. California Labor Code Section 211 and 218.5 for recovery of costs and attorney's
6 fees for relief associated with Plaintiff's prosecution of this cause of action under
7 California Labor Code Sections 200, et seq.
8

9 60. Under this cause of action, Plaintiff prays for all penalties and pay otherwise due under
10 the statutes, regulations, and wage orders alleged in this cause of action along with any
11 allowable interest, penalties, attorney's fees, and costs according to proof at trial.

12 61. Plaintiff also prays for Labor Code Section 211 and 218.5 recovery of costs an
13 attorney's fees for the time Plaintiff's attorney spent prosecuting this cause of action.

14 **SEVENTH CAUSE OF ACTION**

15 **FAILURE TO MAINTAIN ACCURATE RECORDS**

16 **(California Labor Code Section 1174(d))**

17 **(Plaintiff against all named defendants and all DOE defendants)**

18 62. Plaintiff re-alleges and incorporates by reference each and every allegation in
19 paragraphs 1 through 61, inclusive, of this Complaint as though fully set forth herein.

20 63. Labor Code section 1174(d) requires that employers, including Defendants, maintain
21 accurate records showing the hours worked daily by its employees and to whom wages were
22 paid.

23 64. Additionally, the "Records" section of the applicable IWC Wage Order obligates the
24 employer, including Defendants, to keep accurate information with respect to each one of their
25 employees including, but not limited to, the total wages paid each payroll period, and time
26 records showing when the employee begins and ends each work period, meal periods, split
27 shift intervals; the total daily hours worked; the total hours worked in the payroll period, and
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the applicable rates of pay.

65. Pursuant to Labor Code section 1174.5, any person employing labor who willfully fails to maintain accurate and complete records required by Labor Code section 1174(d) is subject to a penalty. On information and belief, Defendants intentionally failed to maintain accurate records of Plaintiff's total daily hours, the total hours worked in the payroll period, the applicable rates of pay, and total wages earned for the payroll period.

66. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered and continues to suffer substantial losses related to Defendants' failure to record and maintain records of meal and rest periods as well as time records.

67. Plaintiff seeks all available remedies for Defendants' violations including, but not limited penalties, and costs to the extent permitted by law and according to proof at trial.

EIGHTH CAUSE OF ACTION

FAILURE TO GIVE REST BREAKS

(Plaintiff against all named defendants and all DOE defendants)

68. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 67, inclusive, of this Complaint as though fully set forth herein.

69. Plaintiff brings this cause of action under the following laws, for the following reasons:

- a. Title 8 of the California Code of Regulations Sections 11050(12)(A), which provides that every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period.

The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;

- b. Title 8 of the California Code of Regulations Sections 11050(12)(B), which provides that if an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at employee's regular rate of compensation for each

workday that the rest period is not provided;

c. Title 8 of the California Code of Regulations sections 11050(20)(A), which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and

d. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any rest period mandated by an applicable order of the Industrial Welfare Commission, and (b) if an employer fails to provide an employee a rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at employee's regular rate of compensation for each work day that the rest period is not provided.

70. Plaintiff alleges that she was not authorized and permitted to take a ten (10) minute rest break after every four (4) hours of work or major fraction thereof, as required by California law.

71. Under this cause of action, Plaintiff prays for wages due to her under the statutes, regulations, and wage orders alleged in this cause of action along with any allowable interest, penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

72. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's fees as well as interest under Labor Code section 218.6.

73. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

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1 **NINTH CAUSE OF ACTION**

2 **FAILURE TO GIVE MEAL BREAKS**

3 **(Plaintiff against all named defendants and all DOE defendants)**

4 74. Plaintiff re-alleges and incorporates by reference each and every allegation in
5 paragraphs 1 through 73, inclusive, of this Complaint as though fully set forth herein.
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7 75. Plaintiff brings this cause of action under the following laws, for the following
8 reasons:

- 9 a. California Labor Code section 512(a), which requires that employees be given a 30-
10 minute uninterrupted meal break after five (5) hours of work, and a second
11 uninterrupted meal break after ten (10) hours of work;
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- 13 b. California Labor Code section 226.7, which states that (a) no employer shall require
14 any employee to work during any meal period mandated by an applicable order of
15 the Industrial Welfare Commission, and (b) if any employer fails to provide an
16 employee a meal period in accordance with an applicable order of the Industrial
17 Welfare Commission, the employer shall pay the employee one (1) additional hour
18 of pay at the employee's regular rate of compensation for each workday that the
19 meal period is not provided;
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- 21 c. California Industrial Welfare Commission Order No. 5 section 11(B), as codified
22 under Title 8 of the California Code of Regulations Section 11050, which states that
23 if an employer fails to provide an employee a meal period in accordance with the
24 applicable provisions of the Wage Order, the employer shall pay the employee one
25 (1) hour of pay at the employee's regular rate of compensation for each workday
26 that the meal period is not provided;
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- 28 d. California Industrial Welfare Commission Wage Order No. 5 Section 7(A)(3), as

- 1 codified under Title 8 of the California Code of Regulations Section 11050, which
2 requires an employer to maintain records documenting its employees' meal periods;
- 3 e. California Industrial Welfare Commission wage order No. 5 Section 20(A), as
4 codified under California Code of Regulations Section 11050, which penalizes the
5 employer \$50.00 for each initial violation, per employee, of any provision of the
6 Wage Order, and \$100.00 for each additional violation thereafter per employee; and
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- 8 f. California Labor Code section 1171 and 1173, which have given the California
9 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 5)
10 as enforceable law.

11 76. Plaintiff alleges that she was not authorized and permitted to take relieved meal breaks
12 after five (5) hours of work. Plaintiff further alleges that she was not authorized and permitted
13 to take a second relieved meal break after ten (10) hours of work, as required by California
14 law. California Labor Code section 512(a) and California Industrial Welfare Commission
15 Order No. 5, as codified under California Code of Regulations Sections 11050 et. seq. requires
16 that employees receive uninterrupted meal periods every five (5) hours of consecutive work,
17 and that the meal period be at least 30 minutes in length, wherein employee is relieved of all
18 work duty. California Labor Code section 226.7 provides that employers may not require their
19 employees to work through their meal periods. California Labor Code section 226.7 and
20 California Code of Regulations section 11050 requires that if the employer fails to provide the
21 employee with an uninterrupted meal period, the employer must pay the employee one (1) hour
22 of pay for each work day that the meal period is not given.
23

24 77. Under this cause of action, Plaintiff prays for wages due to her under the statutes,
25 regulations, and wage orders alleged in this cause of action along with any allowable interest,
26 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
27 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.
28

1 78. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
2 fees as well as interest under Labor Code section 218.6.

3 79. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
4 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
5 trial.

6 **TENTH CAUSE OF ACTION**

7 **PRIVATE ATTORNEYS GENERAL ACT**

8 **Individual and Representative Claim for PAGA penalties under California Labor Code**
9 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 226.8, 232, 246, 510, 512,**
10 **558, 1174, 1174.5, 1194, 1197, 1198, 2802, 3700.5)**

11 **(Plaintiff Against all Named Defendants and all DOE Defendants)**

12 80. Plaintiff re-alleges and incorporates by reference each and every allegation in
13 paragraphs 1 through 79, inclusive, of this Complaint as though fully set forth herein.

14 81. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
15 Defendants of the specific violations of the California Labor Code that Defendants
16 and DOE defendants have violated and continue to violate.

17 82. Pursuant to California Labor code section 2699.3, no response was received from the
18 LWDA within 65 days of the postmark date of the above-alleged letter.

19 83. Plaintiff therefore has exhausted all administrative remedies required of her under
20 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
21 cause of action and pursue penalties in a representative action for Defendants' violations of the
22 Labor Code.

23 84. Pursuant to California Labor Code section 2699, any provisions of the Labor Code
24 that provides for a civil penalty to be assessed and collected by the LWDA or any of its
25 departments, divisions, commissions, boards, agencies, or employees for violation of the code
26 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
27
28

1 on behalf of himself or herself and other current or former employees pursuant to the
2 procedures specified in California Labor Code section 2699.3.

3 85. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
4 violator and had one or more of the alleged violations committed against her, and therefore is
5 properly suited to represent the interests of other current and former hourly, non-exempt
6 employees who worked for OUR PLACE during the relevant PAGA Period.

7 86. Based on the acts alleged above, Plaintiff, on behalf of herself and others, seeks
8 penalties under California Labor Code sections 2698 and 2699 because of Defendants’
9 violations of numerous provisions of the California Labor Code as alleged in this Complaint.

10 87. Plaintiff therefore has exhausted all administrative remedies required of her under
11 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
12 cause of action and pursue penalties in a representative action for Defendants’ violations of the
13 Labor Code.

14 88. California Labor Code section 2699 et seq. imposes penalties upon culpable
15 Defendants for violating the Labor Code.

16 89. California Labor Code section 558 establishes a civil penalty as follows: Any
17 employer or other person action on behalf of an employer who violates, or causes to be
18 violated, a section of this chapter or any provision regulating hours and days of work in any
19 order of the Industrial Welfare Commission (including the “Hours and Days of Work” section
20 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
21 dollars (\$50) for each underpaid employee for each pay period for which the employee was
22 underpaid... (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
23 employee for each pay period for which the employee was underpaid...

24 90. Plaintiff seeks penalties for Defendants’ misconduct as alleged herein as permitted by
25 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
26 seeking individual/victim specific relief or underpaid wages for Plaintiff or other aggrieved
27 employees in this specific cause of action under the Private Attorneys General Act.
28

1 91. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
2 the following:

3 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
4 226.3, 226.7, 226.8, 232, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802, 3700.5
5 via 2698 and 2699 and any other Labor Codes and Industrial Welfare Commission Wage
6 Order Provisions (no. 5) violated based on the facts alleged in this Complaint.

7 92. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
8 costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved
9 employees as alleged herein in an amount to be shown according to proof at trial and within the
10 jurisdictional limits of this Court.

11 **ELEVENTH CAUSE OF ACTION**

12 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

13 **(California Business and Professions Code Section 17200)**

14 **(Plaintiff against corporate Defendant V R V Company Inc. dba Our Place and all DOE**
15 **defendants)**

16 93. Plaintiff re-alleges and incorporates by reference each and every allegation in
17 paragraphs 1 through 92, inclusive, of this Complaint as though fully set forth herein.

18 94. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendant
19 constitutes unfair and unlawful business practices under California Business
20 and Professions Code Section 17200, et seq.

21 95. Defendant's violations of California labor laws constitutes a business practice because
22 it was done repeatedly over a significant period of time in a systematic manner that was
23 detrimental to Plaintiff and other similarly situated aggrieved employees.

24 96. For the four years preceding the filing of this action, Plaintiff has suffered damages
25 and request damages and/or restitution of all monies and profits to be disgorged from
26 Defendant in an amount according to proof at time of trial, but in excess of the
27 jurisdiction of this Court.
28

1 **TWELFTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

3 **(California Labor Code Sections 201, 202, 203)**

4 **(Plaintiff against all named defendants and all DOE defendants)**

5 97. Plaintiff re-alleges and incorporates by reference each and every allegation in
6 paragraphs 1 through 96, inclusive, of this Complaint as though fully set forth herein.
7

8 98. Pursuant to California Labor Code Section 201(a), an employer who discharges an
9 employee must immediately pay for all compensation due and owing.

10 99. Pursuant to California Labor Code Section 202, when an employee resigns, the
11 employer must pay all compensation due and owing within 72 hours of resignation, or on the
12 employee's last day of work, if the employee gives more than 72 hours notice of resignation.

13 100. Pursuant to California Labor Code Section 203, if an employer willfully fails to
14 pay, without abatement or reduction, any wages of an employee whose employment ends, the
15 wages of the employee shall continue as a penalty from the due date at the same rate until paid
16 or until an action is commenced; however, the wages shall not continue for more than 30 days
17 for failure to pay an employee owed wages.

18 101. After Plaintiff's employment with Defendants ended, Defendants willfully
19 refused and continue to refuse to pay her unpaid wages as required by Labor Code Section 203.

20 102. Under this cause of action, Plaintiff prays for penalties due under the statutes
21 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
22 proof at trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years
23 immediately preceding the filing of this lawsuit.

24 103. Under this cause of action, Plaintiff also prays for attorney's fees and costs
25 under California Labor Code Section 218.5 for time spent pursuing the non-payment of wages
26 as set forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

27 104. Under this cause of action, Plaintiff prays for penalties due under the statutes
28

1 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
2 proof at trial.

3 **PRAYER FOR RELIEF**

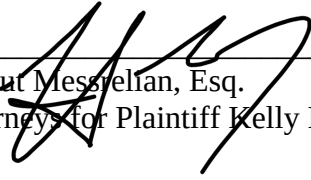
4 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
5 follows:

- 6 1. For special and consequential damages to the extent allowed by law;
- 7 2. For damages for minimum wages/regular wages and overtime not paid to Plaintiff in an
8 amount subject to proof at trial;
- 9 3. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
10 subject to proof at trial;
- 11 4. For restitution and disgorgement for all unfair business practices by corporate
12 Defendant V R V Company Inc. dba Our Place against Plaintiff in an amount subject to
13 proof at trial;
- 14 5. For an order enjoining corporate Defendant V R V Company Inc. dba Our Place from
15 further unfair and unlawful business practices in violation of Business and Professions
16 Code Sections 17200, et seq.;
- 17 6. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
18 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
- 19 7. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
20 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
- 21 8. For maximum civil penalties available under the Labor Code and applicable Wage
22 Order against Defendants described more particularly in the Complaint, representative
23 PAGA claims;
- 24 9. For all remedies available to Plaintiff under the applicable Wage Order and the
25 Labor Code including an award of unpaid wages, attorney's fees, costs, interest,
26 liquidated damages, damages, penalties, and waiting time penalties according to proof;
27
28

- 1 10. For the imposition of civil penalties and/or statutory penalties;
2 11. For all interest as allowed by law;
3 12. For all costs and disbursements incurred in this suit;
4 13. Reasonable attorney's fees where available by law, including but not limited to,
5 pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5,
6 and/or other applicable laws; and
7 14. For such other and further relief as the Court deems just and proper.
8

9
10 **DATED:** November 9, 2020

MESSRELIAN LAW INC.

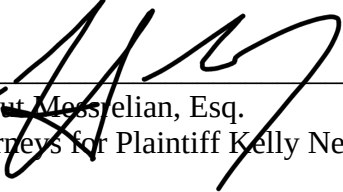
11
12 By 
13 Harout Messrelian, Esq.
14 Attorneys for Plaintiff Kelly Nelson
15

16 **DEMAND FOR JURY TRIAL**

17 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.
18

19 **DATED:** November 9, 2020

MESSRELIAN LAW INC.

20
21 By 
22 Harout Messrelian, Esq.
23 Attorneys for Plaintiff Kelly Nelson
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27
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