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SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

JOANNA RAMIREZ, an individual,

Plaintiff,

vs.

WESTERN REFINING RETAIL, LLC, a
limited liability company; and DOES 1-100,
inclusive,

Defendants.

Case No.:

CLASS ACTION, COLLECTIVE ACTION,
AND INDIVIDUAL COMPLAINT

1. FAILURE TO PROPERLY CALCULATE
AND PAY OVERTIME
2. FAILURE TO PROPERLY CALCULATE
AND PAY SICK LEAVE
3. FAILURE TO PAY ALL WAGES DUE AT
END OF EMPLOYMENT
4. FAILURE TO FURNISH ACCURATE
ITEMIZED WAGE STATEMENTS
5. UNFAIR BUSINESS PRACTICES
6. FAILURE TO PROVIDE REST PERIODS
OR PAY PREMIUMS

JURY TRIAL DEMANDED

1 Plaintiff Joanna Ramirez brings this class, collective, and individual action against Western
2 Refining Retail, LLC, a limited liability company; and Does 1 through 100, for violations of the Fair
3 Labor Standards Act, the California Labor Code, and the California Business and Professions Code.¹

4 **PARTIES**

5 1. Joanna Ramirez (“Ramirez” or “Plaintiff”) is and at all times relevant herein was
6 employed in San Joaquin County, California, and was an “employee” as defined by the Fair Labor
7 Standards Act, as well as the Labor Code and the applicable California Industrial Wage Commission
8 (“IWC”) Order(s).

9 2. Western Refining Retail, LLC (“WRR” or “Defendant”) is an Ohio limited liability
10 company formed under the laws of Delaware.

11 3. At all times relevant herein, WRR has been an “employer” under the Fair Labor
12 Standards Act, as well as the Labor Code and the applicable California Industrial Wage Commission
13 (“IWC”) Order(s).

14 4. WRR and Does 1-100 are collectively referred to as Defendants.

15 5. Plaintiff is not aware of the true names and capacities of the Defendants sued herein as
16 Does 1 through 100, whether individual, corporate, associate, or otherwise and therefore sues such
17 Defendants by these fictitious names. Plaintiff will amend this Complaint to allege their true names
18 and capacities when ascertained. Plaintiff is informed and believes, and on that basis alleges, that
19 each of the fictitiously named Defendants is responsible in some manner for the occurrences herein
20 alleged and that Plaintiff’s injuries and damages herein alleged were legally caused by such
21 Defendants. Unless otherwise indicated, each Defendant was acting within the course and scope of
22 said agency and/or employment, with the knowledge and/or consent of said co-Defendant.

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26 ¹ All subsequent references to the “Labor Code” and the “Business and Professions Code” shall refer to the California
Labor Code and the California Business and Professions Code, respectively.

6. Plaintiff is informed and believes and thereupon alleges that at all times mentioned herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant, employee, partner and/or joint venturer of and was acting in concert with each of the remaining Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting within the course and scope of such agency, service, employment partnership, joint venture and/or concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and within the course and scope of such agency and/or employment, with the knowledge and/or consent of the remaining Defendants.

VENUE AND JURY TRIAL DEMAND

7. Venue is proper in this court because the unlawful acts alleged herein took place in San Joaquin County, California and Plaintiff's place of employment with Defendants was within San Joaquin County. Plaintiff hereby demands a jury trial.

GENERAL ALLEGATIONS

8. Ramirez was hired by WRR in or around March 2019 as an Assistant Manager/Night Manager at WRR's Speedway gas station and convenience store in Stockton, California. Ramirez's employment with WRR ended on or around April 6, 2020.

9. At all times throughout her employment with WRR, Ramirez was eligible for overtime pay (under both federal and California law) and indeed worked in excess of forty hours per workweek on a regular basis.

10. Ramirez and WRR's other hourly, nonexempt employees were also eligible for and at times received nondiscretionary bonuses, commissions, and other items of compensation. (**Exhibit 1.3**)

² Exhibits 1-2 are incorporated by this reference as though fully set forth herein. Some Exhibits have been reduced and/or redacted due to their size and content.

1 11. However, WRR willfully failed to properly calculate and pay overtime wages owed to
2 Ramirez and its other hourly, nonexempt employees throughout their employment.

3 12. Specifically, WRR failed to include commissions, nondiscretionary bonuses, and other
4 items of compensation when determining Ramirez's and its other hourly, nonexempt employees'
5 regular rate of pay for purposes of calculating and paying overtime wages.

6 13. For example, during the pay period of January 31 – February 6, 2020, Ramirez earned a
7 nondiscretionary bonus in the amount of \$198.12. (**Exhibit 1.**) Yet, and pursuant to its uniform
8 policy and practice, WRR failed to include the value of this nondiscretionary bonus when calculating
9 her regular rate of pay and, accordingly, underpaid her. (*Id.*) Instead, WRR utilized Ramirez's base
10 rate of pay only and multiplied it by 1.5 or 2.0, as otherwise appropriate. (*Id.*)

11 14. Consequently, Ramirez and all of WRR's other hourly, nonexempt employees who
12 received commissions, nondiscretionary bonuses, and/or other items of compensation aside from their
13 base hourly rate, and who worked overtime, were not adequately paid for all of the overtime they
14 worked.

15 15. Ramirez and WRR's other hourly, non-exempt California employees were also entitled
16 to sick pay pursuant to Labor Code section 245, et seq. Any sick pay used appeared on their wage
17 statements as "Sick". (**Exhibit 2.**)

18 16. Although Labor Code section 248.5, subdivision (l)(1) mandates that paid sick leave for
19 non-exempt employees be "calculated in the same manner as the regular rate of pay for the workweek
20 in which the employee uses paid sick time", WRR failed to include commissions, non-discretionary
21 bonuses and other items of compensation when determining Ramirez and WRR's other hourly, non-
22 exempt California employees' regular rate of pay for purposes of sick pay. (*Id.*) Instead, sick pay was
23 only paid at Ramirez and WRR's other hourly, non-exempt California employees' base hourly rate.
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1 17. Because Ramirez and WRR's other former hourly, non-exempt California employees
2 were not properly paid for all their overtime and sick pay at the correct rate of pay, they are not timely
3 paid all wages due and owing to them during each pay period and at the end of their employment.

4 18. Because of the violations set forth above, and as evidenced in the sample of Ramirez's
5 wage statements attached hereto as **Exhibits 1 and 2**, the wage statements furnished by WRR to their
6 hourly, nonexempt employees violated Labor Code section 226(a) insofar as they failed to accurately
7 show:

- 8 a. The gross wages earned, in violation of section 226(a)(1);
- 9 b. The net wages earned, in violation of section 226(a)(5);
- 10 c. All applicable hourly rates in effect during the pay period and the corresponding
11 number of hours worked at each hourly rate in violation of section 226(a)(9).

12 19. WRR was, at all times relevant herein, aware of the requirements of Labor Code section
13 226.

14 20. WRR has, at all times relevant herein, furnished wage statements to each of its hourly,
15 non-exempt California employees pursuant to an established set of policies, procedures and practices.

16 21. Ramirez and WRR's other hourly, nonexempt California employees, both current and
17 former, have suffered injury as a result of WRR's knowing and intentional failure to comply with
18 Labor Code section 226(a).

19 22. Ramirez and WRR's other hourly, nonexempt California employees, both current and
20 former, who worked overtime and earned commissions, nondiscretionary bonuses, and/or other items
21 of compensation in addition to base hourly pay, were unable to promptly and easily determine their
22 gross wages earned from the wage statements furnished by WRR.

23 23. Ramirez and WRR's other hourly, nonexempt California employees, both current and
24 former, who worked overtime and earned commissions, nondiscretionary bonuses, and/or other items
25 of compensation in addition to base hourly pay, have suffered injury as a result of WRR's knowing and
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1 intentional failure to furnish wage statements accurately showing the gross wages earned by them in
2 violation of Labor Code section 226(a)(1).

3 24. Ramirez and WRR's other hourly, nonexempt California employees, both current and
4 former, who worked overtime and earned commissions, nondiscretionary bonuses, and/or other items
5 of compensation in addition to base hourly pay, were unable to promptly and easily determine their net
6 wages earned from the wage statements furnished by WRR

7 25. Ramirez and WRR's other hourly, nonexempt California employees, both current and
8 former, who worked overtime and earned commissions, nondiscretionary bonuses, and/or other items
9 of compensation in addition to base hourly pay, have suffered injury as a result of WRR's knowing and
10 intentional failure to furnish wage statements accurately showing the net wages earned by them in
11 violation of Labor Code section 226(a)(5).

12 26. Ramirez and WRR's other hourly, nonexempt California employees, both current and
13 former, who worked overtime and earned commissions, nondiscretionary bonuses, and/or other items
14 of compensation in addition to base hourly pay, were unable to promptly and easily determine all
15 applicable hourly rates in effect during the pay period and the corresponding number of hours worked
16 at each hourly rate from the wage statements furnished by WRR

17 27. Ramirez and WRR's other hourly, nonexempt California employees, both current and
18 former, who worked overtime and who earned commissions, nondiscretionary bonuses, and/or other
19 items of compensation in addition to base hourly pay, have suffered injury as a result of WRR's
20 knowing and intentional failure to furnish wage statements accurately showing all applicable hourly
21 rates in effect during the pay period and the corresponding number of hours worked at each hourly rate
22 in violation of Labor Code section 226(a)(9).

23 28. From at least four years prior to the filing of this action, WRR has adopted and
24 employed unfair business practices. These unfair business practices include, but are not limited to,
25 failing to properly calculate and pay all overtime and sick wages due at the appropriate regular rate of
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1 pay (accounting for the value of earned commissions, nondiscretionary bonuses, and/or other items of
2 compensation in addition to base hourly pay).

3 29. The foregoing list of misconduct is a partial list only and set forth by way of example.

4 **COLLECTIVE ACTION ALLEGATIONS**

5 30. Plaintiff seek to maintain the First Cause of Action as an “opt-in” collective action
6 pursuant to 29 U.S.C. 216(b) as to claims for overtime, liquidated damages (or, alternatively, interest)
7 and attorneys’ fees under the FLSA. In addition to Plaintiff, numerous current and other former hourly,
8 nonexempt employees of Defendants were not properly paid for all the overtime they are owed.
9 Ramirez seeks to represent those other current and other former employees and is capable and willing
10 to act on behalf of their interests as well as her own in bringing this action. These similarly situated
11 employees are known to Defendants, are readily identifiable, and may be located through Defendants’
12 records. These similarly situated employees may be readily notified of this action, and allowed to opt
13 in pursuant to 29 U.S.C. § 216(b), for purpose of collectively adjudicating their claims for overtime
14 compensation, liquidated damages (or, alternatively, interest), and attorneys’ fees under the FLSA.

15 **CLASS ACTION ALLEGATIONS**

16 31. Plaintiff brings the First through Fifth Causes of Action as a class action, on her behalf
17 and on behalf of all those other persons similarly situated, pursuant to Code of Civil Procedure section
18 382. The class (“Class”) that Plaintiff seeks to represent is defined as follows:

- 19 a. All current and former hourly, nonexempt employees of WRR who received
20 commissions, non-discretionary bonuses, or other items of compensation and
21 worked overtime during one or more pay periods from July 16, 2017 through the
22 date of trial (the “Regular Rate Class”).
- 23 b. All current and former hourly, nonexempt employees of WRR in California who
24 received commissions, non-discretionary bonuses, or other items of compensation
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1 and worked overtime during one or more pay periods from July 16, 2016 through
2 the date of trial (the "California Regular Rate Class").

3 c. All current and former hourly, non-exempt employees of WRR who received
4 commissions, non-discretionary bonuses and/or other items of compensation and
5 used sick leave during at least one pay period from July 16, 2016 through the date
6 of trial (the "California Sick Pay Class").

7 d. All members of the California Regular Rate Class and California Sick Pay Class
8 whose employment ceased at any time from July 16, 2017 through the date of trial
9 (the "California Waiting Time Penalty Class").

10 e. All current and former hourly, nonexempt employees of WRR who earned
11 commissions, non-discretionary bonuses, or other items of compensation and
12 worked overtime during one or more pay periods from July 16, 2019 through the
13 date of trial (the "California Wage Statement Class").

14 The Regular Rate Class, the California Regular Rate Class, the California Sick Pay Class, the
15 California Waiting Time Penalty Class, and the California Wage Statement Class are collectively
16 referred to as the Class.

17 32. The class of persons is so numerous that joinder of all members is impracticable, and
18 the disposition of their claims in a class action is a benefit to the parties and to the Court. Plaintiff is
19 informed and believes, and based thereon alleges, that Defendants employ more than 500 employees
20 who satisfy the class definition. Although the exact number and identity of class members is not
21 presently known, they can be identified in Defendants' records through coordinated discovery
22 pursuant to this class action.

23 33. This action may be maintained as a class pursuant Code of Civil Procedure section 382
24 because the questions of law and fact which are common to Class members clearly predominate over
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1 any questions affecting only individual members and because a class action is superior to other
2 available methods for adjudicating the controversy.

3 34. There are numerous common questions of law and fact arising out of Defendants'
4 conduct. This class action focuses on Defendants' repeated, systematic, and willful failure to : (a)
5 properly calculate and pay overtime; (b) properly calculate and pay sick wages; (c) furnish wage
6 statements that comply with Labor Code section 226(a); and (d) timely pay all wages due at owing at
7 the end of their employees' employment.

8 35. Furthermore, common questions of fact and law predominate over any questions
9 affecting only individual members of the Class. The predominating common or class-wide questions
10 of law and fact include the following:

- 11 a. Whether Defendants failed to include their hourly, non-exempt employees' non-
12 discretionary bonuses, commissions, and other items of compensation when
13 calculating their regular rate of pay for purposes of overtime;
- 14 b. Whether Defendants failed to include their hourly, non-exempt California
15 employees' non-discretionary bonuses, commissions, and other items of
16 compensation when calculating the rate of sick pay provided;
- 17 c. Whether Defendants failed to pay all overtime owed to their hourly, nonexempt
18 employees;
- 19 d. Whether Defendants failed to pay all sick wages owed to their hourly, non-exempt
20 California employees
- 21 e. Whether Defendants, because of their failure to properly calculate and pay overtime
22 and sick wages, failed to timely pay their hourly, nonexempt California employees
23 when their employment ended;

- 1 f. Whether the wage statements Defendants furnished to their California hourly,
2 nonexempt employees comply with Labor Code section 226, subdivisions (a)(1), (5),
3 and (9);
4 g. Whether the alleged violations constitute unfair business practices;
5 h. Whether the Class is entitled to injunctive relief; and
6 i. Whether the Class is entitled to unpaid wages, statutory penalties and/or
7 restitutionary relief, and the amount of the same.

8 36. Plaintiff's claims are typical of the claims of the members of the Class as a whole, all of
9 whom have sustained and/or will sustain damage and injury as a proximate and/or legal result of the
10 alleged violations of Defendants. Plaintiff's claims are typical of those of the Class because
11 Defendants subjected Plaintiff and each member of the Class to the same violations alleged herein.

12 37. The defenses of Defendants, to the extent that such defenses apply, are applicable
13 generally to the whole Class and are not distinguishable as to the proposed class members.

14 38. Plaintiff will fairly and adequately protect the interests of all members of the Class, and
15 has retained attorneys with extensive experience in litigation, including class and representative
16 actions. Plaintiff has no interests that conflict with those of the Class. Plaintiff is able to fairly and
17 adequately protect the interests of all members of the class because it is in his best interest to prosecute
18 the claims alleged herein in order to obtain the full compensation due herself and the other class
19 members.

20 39. A class action is superior to any other method available for fairly and efficiently
21 adjudicating the controversy because 1) joinder of individual class members is not practicable, 2)
22 litigating the claims of individual class members would be unnecessarily costly and burdensome and
23 would deter individual claims, 3) litigating the claims of individual class members would create a risk
24 of inconsistent or varying adjudications that would establish incompatible standards of conduct for
25 Defendants, 4) class members still working for Defendants may be fearful of retaliation if they were to
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1 bring individual claims, 5) class members would be discouraged from pursuing individual claims
2 because the damages available to them are relatively small, and 6) public policy encourages the use of
3 the class actions to enforce employment laws and protect individuals who, by virtue of their
4 subordinate position, are particularly vulnerable.

5 40. Judicial economy will be served by maintenance of this lawsuit as a class action. To
6 process numerous virtually identical individual cases will significantly increase the expense on the
7 Court, the class members, and Defendants, all while unnecessarily delaying the resolution of this
8 matter. There are no obstacles to effective and efficient management of this lawsuit as a class action
9 by this Court and doing so will provide multiple benefits to the litigating parties including, but not
10 limited to, efficiency, economy, and uniform adjudication with consistent results.

11 41. Notice of a certified class action and any result or resolution of the litigation can be
12 provided to class members by mail, email, publication, or such other methods of notice as deemed
13 appropriate by the Court.

14 **INDIVIDUAL ALLEGATIONS**

15 42. Additionally, and separate from the foregoing, Ramirez was frequently denied the
16 opportunity to take a ten-minute rest period for every four hours worked. Due to, *inter alia*, the fact
17 that Ramirez was frequently manning the gas station and store by herself for extended periods, she was
18 not relieved of all duty and permitted to take such rest breaks. WRR did not pay Ramirez an hour of
19 pay at her regular rate of compensation for every rest period that was unlawfully denied her.

20 **FIRST CAUSE OF ACTION** 21 **FAILURE TO PAY OVERTIME WAGES AT REGULAR RATE OF PAY** 22 **(Fair Labor Standards Act; Lab. Code § 510 & 1198)** 23 **By Plaintiff Against Defendants**

24 43. Plaintiff hereby reallege and incorporate by reference each and every allegation set forth
25 above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of
26 this cause of action.

1 44. The Fair Labor Standards Act, 29 USC §§ 201 et seq. and 29 CFR §§ 778 et seq.,
2 requires time-and-a-half pay for the time an employee works over forty hours a week.

3 45. Pursuant to Labor Code section 510, any work in excess of eight hours in one workday
4 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the
5 seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-
6 half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be
7 compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any
8 work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no
9 less than twice the regular rate of pay of an employee.

10 46. Pursuant to Labor Code section 1198, the maximum hours of work and standard
11 conditions of labor fixed by the commission shall be the maximum hours of work and the standard
12 conditions of labor for employees and the employment of any employee for longer hours than those
13 fixed by the commission or under conditions of labor prohibited by the order is unlawful.

14 47. The “regular rate of pay” includes all remuneration for employment paid to the
15 employee and includes, but is not limited to, hourly earnings, salary, piece work earnings,
16 commissions, non-discretionary bonuses, and the value of meals and lodging. (See 29 U.S.C. § 207(e);
17 DLSE Enforcement Policies and Interpretations Manual Section 49.)

18 48. During the relevant time period, Plaintiff and Defendants’ other hourly, nonexempt
19 employees regularly worked overtime.

20 49. During the relevant time period, Defendants failed to include commissions, non-
21 discretionary bonuses and/or other items of compensation, when determining the “regular rate of pay”
22 for Plaintiff and their hourly, nonexempt employees.

23 50. During the relevant time period, Defendants failed to properly calculate the “regular rate
24 of pay” for Plaintiff and their other hourly, nonexempt employees.

1 51. During the relevant time period, Defendants intentionally and willfully failed to pay the
2 proper overtime wages due to Plaintiff and their hourly, nonexempt employees.

3 52. Wherefore, Plaintiff and the other members of the Regular Rate Class and the California
4 Regular Rate Class have been injured as set forth above and request relief as hereafter provided.

5 **SECOND CAUSE OF ACTION**
6 **FAILURE TO PROPERLY CALCULATE AND PAY SICK LEAVE**
7 **(Lab. Code, §§ 218, 233, 246 *et seq.*)**
8 **By Plaintiff Against Defendants**

9 53. Plaintiff hereby reallege and incorporate by reference each and every allegation set forth
10 above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of
11 this cause of action.

12 54. Labor Code section 246(l) requires that employers pay sick time pay to non-exempt
13 employees at that employee's "regular rate of pay."

14 55. The "regular rate of pay" includes all remuneration for employment paid to the
15 employee and includes, but is not limited to, hourly earnings, salary, piece work earnings, shift
16 differentials, commissions, non-discretionary bonuses, and the value of meals and lodging. (See 29
17 U.S.C. § 207(e); DLSE Enforcement Policies and Interpretations Manual Section 49.)

18 56. During the relevant time period, Defendants failed to include commissions,
19 incentive payments, non-discretionary bonuses, and/or other items of compensation when
20 determining the "regular rate of pay" for Plaintiff and their other hourly, non-exempt California
21 employees for purposes of sick time pay.

22 57. According to the California Supreme Court, sick pay is a form of wages. (*Murphy*
23 *v. Kenneth Cole Productions* (2007) 40 Cal.4th 1094, 1103.)

24 58. Labor Code section 233 provides that "any employer who provides sick leave for
25 employees shall permit an employee to use in any calendar year the employee's accrued and
26 available sick leave entitlement, in an amount not less than the sick leave that would be accrued

1 during six months at the employee's then current rate of entitlement, for the reasons specified in
2 subdivision (a) of Section 246.5.”

3 59. During the relevant time period, Defendants intentionally and willfully failed to
4 pay Plaintiff and the other members of the Sick Pay Class their sick pay at the rate of pay required
5 by law. Accordingly, Plaintiff and the other members of the Sick Pay Class did not receive the full
6 amount of paid sick time that they were entitled to receive by law, and were therefore denied the
7 right to use sick leave within the meaning of Labor Code sections 233(a) and (c).

8 60. Any employer who violates Labor Code section 233 is liable to employees for the
9 greater of one days' pay or actual damages, reasonable equitable relief, and reasonable attorneys'
10 fees and costs. (Lab. Code, § 233, subs. (d), (e).)

11 61. Further, Labor Code section 218 authorizes a private right of action to recover unpaid
12 wages

13 62. Wherefore, Plaintiff and the other members of the California Sick Pay Class have been
14 injured as set forth above and request relief as hereafter provided.

15 **THIRD CAUSE OF ACTION**
16 **FAILURE TO PAY ALL WAGES DUE AT END OF EMPLOYMENT**
17 **(Lab. Code, § 201, *et seq.*)**
18 **By Plaintiff Against Defendants**

19 63. Plaintiff hereby reallege and incorporate by reference each and every allegation set forth
20 above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of
21 this cause of action.

22 64. Labor Code section 201 provides that if an employer discharges an employee, the wages
23 earned and unpaid at the time of discharge are due and payable immediately.

24 65. Labor Code section 202 requires an employer to pay an employee all earned wages
25 within 72 hours of the employee quitting his or her employment, or immediately at the time of quitting
26 if the employee has given 72 hours previous notice of his or her intention to quit.

1 66. As set forth above, Plaintiff and the other members of the California Waiting Time
2 Penalty Class were not timely paid all of their earned but unpaid wages or meal and rest break
3 premiums when their employment with Defendants ended.

4 67. Wherefore, Plaintiff and the other members of the California Waiting Time Penalty
5 Class have been injured as set forth above and request relief as hereafter provided.

6 **FOURTH CAUSE OF ACTION**
7 **FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**
8 **(Lab. Code, § 226(a))**
9 **By Plaintiff Against Defendants**

10 68. Plaintiff hereby reallege and incorporate by reference each and every allegation set forth
11 above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of
12 this cause of action.

13 69. Pursuant to Labor Code section 226(a) “every employer shall, semimonthly or at the
14 time of each payment of wages, furnish each of his or her employees, either as a detachable part of the
15 check, draft, or voucher paying the employee’s wages, or separately when the wages are paid by
16 personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2)
17 total hours worked by the employee [. . .], (3) the number of piece-rate units earned and any applicable
18 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the
19 inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the
20 last four digits of his or her social security number or an employee identification number, (8) the name
21 and address of the legal entity that is the employer [. . .], (9) all applicable hourly rates in effect during
22 the pay period and corresponding number of hours worked at each hourly rate by the employee and, if
23 the employer is a temporary services employer [. . .], the rate of pay and the total hours worked for each
24 temporary services assignment.”

25 70. An employee suffering injury as a result of the knowing and intentional failure by an
26 employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual
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1 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
2 dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed the aggregate
3 penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's
4 fees. (Lab. Code, § 226, subd. (e)(1).)

5 71. An employee is deemed to suffer injury if the employer fails to provide a wage
6 statement or if the employer fails to provide accurate and complete information as required by any one
7 or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and
8 easily determine from the wage statement alone, i) the amount of gross/net wages paid to the employee
9 during the pay period or any of the other information required to be provided pursuant to Labor Code
10 section 226(a) items (2) to (4), inclusive, (6) and (9), ii) deductions made by the employer, iii) the name
11 and address of the employer and iv) the name of the employee and the last four digits of his or her
12 social security number or employee identification number. (Lab. Code, § 226, subds. (e)(2)(A), (B)(i)-
13 (iv).) "Promptly and easily determine" means a reasonable person would be able to readily ascertain
14 the information without reference to other documents or information. (Lab. Code, § 226, subd.
15 (e)(2)(C).)

16 72. As set forth above, Defendants intentionally and willfully failed to furnish accurate
17 itemized wage statements which complied with Labor Code section 226.

18 73. Wherefore, Plaintiff and the other members of the California Wage Statement Class
19 have been injured as set forth above and request relief as hereafter provided.

20 **FIFTH CAUSE OF ACTION**
21 **UNFAIR BUSINESS PRACTICES**
22 **(Bus. & Prof. Code, § 17200, *et seq.*)**
23 **By Plaintiff Against Defendants**

24 74. Plaintiff hereby realleges and incorporate by reference each and every allegation set
25 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
26 allegations of this cause of action.

1 75. The statutory violations, as alleged above, are unfair business practices within the
2 meaning of the Unfair Competition Law (Business and Professions Code sections 17200 *et seq*), and
3 include, but are not limited to, failing to properly calculate and pay overtime and sick wages.

4 76. Wherefore, Ramirez and the Overtime Class and the California Overtime Class have
5 been damaged as set forth above and request relief as hereafter provided.

6 **SIXTH CAUSE OF ACTION**
7 **FAILURE TO PROVIDE REST PERIODS OR PAY PREMIUMS**
8 **(Lab. Code, § 226.7)**
9 **By Plaintiff Against Defendants**

10 77. Plaintiff hereby realleges and incorporates by reference each and every allegation
11 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
12 allegations of this cause of action.

13 78. Labor Code section 226.7 requires employers to provide employees meal periods as
14 mandated by Order of the Industrial Welfare Commission. It states:

- 15 a. No employer shall require any employee to work during any meal or rest
16 period mandated by an applicable order of the Industrial Welfare
17 Commission.
18 b. If an employer fails to provide an employee a meal period or rest period in
19 accordance with an applicable order of the Industrial Welfare Commission,
20 the employer shall pay the employee one additional hour of pay at the
21 employee's regular rate of compensation for each work day that the meal or
22 rest period is not provided.

23 79. Section 11 of the applicable IWC Wage Order provides:

24 “(A) Every employer shall authorize and permit all employees to take rest periods,
25 which insofar as practicable shall be in the middle of each work period. Nothing in
26 this provision shall prevent an employer from staggering rest periods to avoid
27 interruption in the flow of work and to maintain continuous operations, or from
28 scheduling rest periods to coincide with breaks in the flow of work that occur in the
course of the workday. The authorized rest period time shall be based on the total

1 hours worked daily at the rate of ten (10) minutes net rest time for every four (4)
2 hours worked, or major fraction thereof. Rest periods shall take place at employer
3 designated areas, which may include or be limited to the employees' immediate work
4 area.

5 (B) Rest periods need not be authorized in limited circumstances when the disruption
6 of continuous operations would jeopardize the product or process of the work.
7 However, the employer shall make up the missed rest period within the same workday
8 or compensate the employee for the missed ten (10) minutes of rest time at his/her
9 regular rate of pay within the same pay period.

10 (C) A rest period need not be authorized for employees whose total daily work time
11 is less than three and one-half (3 ½) hours. Authorized rest period time shall be
12 counted as hours worked for which there shall be no deduction from wages.

13 (D) If an employer fails to provide an employee a rest period in accordance with the
14 applicable provisions of this order, the employer shall pay the employee one (1) hour
15 of pay at the employee's regular rate of compensation for each workday that the rest
16 period is not provided."

17 80. During the relevant time period, Plaintiff was not provided with rest breaks as
18 required by law and did not receive an additional hour of premium pay for each missed rest break.

19 81. Wherefore, Plaintiff has been injured and requests relief as hereinafter provided.

20 PRAYER FOR RELIEF

21 WHEREFORE, Plaintiff prays judgment against Defendants as follows:

22 As to the First Through Fifth Cause of Action:

- 23 1. That this Court certify the Class;
- 24 2. That this Court certify Plaintiff as the representative of the Class;
- 25 3. That this Court award injunctive relief, including that available under Labor Code
26 sections 226(h) and 248.5(e), as well as Business and Professions Code section 17203;
- 27 4. That this Court award unpaid wages as well as restitutionary relief;
- 28 5. That this Court award penalties and liquidated damages including, but not limited to,
those available under 29 U.S.C. § 216(b), 29 U.S.C. § 260, and Labor Code sections
203 and 226;

6. That this Court award statutory attorneys' fees and costs, including those available under 29 U.S.C. § 216(b); Labor Code sections 226(e)(1) and (h), 248.5(e), 1194, as well as those available under Code of Civil Procedure section 1021.5;
7. That this Court award prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law; and
8. That this Court award such other and further relief as the court deems just and proper.

As to the Sixth Cause of Action:

1. For unpaid wages;
2. For liquidated damages, including those available under Labor Code section 1194.2;
3. That this Court award injunctive relief, including that available under Labor Code section 226(h);
4. That this Court award statutory penalties including, but not limited to, those available under Labor Code sections 203 and 226, subdivision (e);
5. That this Court award statutory attorneys' fees and costs, including those available under Labor Code sections 218.5, 226, subdivisions (e)(1) and (h), 1194, as well as Code of Civil Procedure section 1021.5;
6. That this Court award prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including those available under Civil Code sections 3287(a) and 3289(b); and
7. That this Court award such other and further relief as the court deems just and proper.

///

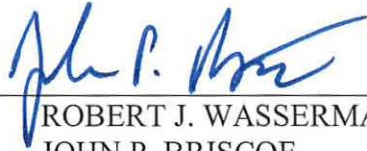
///

///

1 **DATED:** July 16, 2020

MAYALL HURLEY P.C.

2
3 By _____



ROBERT J. WASSERMAN
JOHN P. BRISCOE
RACHEL ALLGAIER
Attorneys for Plaintiff

Exhibit 1

002307
CO. FILE DEPT. CLOCK VCHR. NO.
YIG 102706 629010 0000071170 1
078897



WESTERN REFINING RETAIL, LLC
500 SPEEDWAY DRIVE
ENON, OHIO 45323

007-0134

Earnings Statement



Period Beginning: 01/31/2020
Period Ending: 02/06/2020
Pay Date: 02/13/2020

Taxable Marital Status: Single
Exemptions/Allowances:
Federal: 2
CA: 7

JOANNA L RAMIREZ

Social Security Number: [REDACTED]

Earnings	rate	hours	this period	year to date
Regular	14.5000	30.50	442.25	3,402.89
Cell Ph Allow			5.77	40.39
Ot Unscheduled	21.7500	7.87	171.17	171.17
Str Mgr Incent			198.12	374.49
Hldy Observerd				63.08
Holiday				102.34
Sick				116.00
Gross Pay			\$817.31	4,270.36

Other Benefits and Information

this period	total to date
Floating Holiday	16.00
Sick	56.00

Important Notes

YOUR EMPLOYER PHONE NUMBER IS 1-888-225-5735

Deductions	Statutory	
Federal Income Tax	-85.48	323.53
Social Security Tax	-50.67	264.76
Medicare Tax	-11.85	61.92
CA State Income Tax	-20.27	38.31
CA SUI/SDI Tax	-8.17	42.70
Net Pay	\$640.87	
Checking 1	-640.87	3,539.14
Net Check	\$0.00	

Your federal taxable wages this period are \$817.31

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Western Refining
WESTERN REFINING RETAIL, LLC
500 SPEEDWAY DRIVE
ENON, OHIO 45323

Advice number: 00000071170
Pay date: 02/13/2020

Deposited to the account of
JOANNA L RAMIREZ

account number [REDACTED] transit ABA XXXX XXXX amount \$640.87

THIS IS NOT A CHECK

NON-NEGOTIABLE

Exhibit 2

CO. FILE DEPT. CLOCK VCHR. NO.
YIG 102706 629010 0000111173 1
SEQ 002108 078897

006-0134



WESTERN REFINING RETAIL, LLC
500 SPEEDWAY DRIVE
ENON, OHIO 45323

Earnings Statement



Period Beginning: 02/28/2020
Period Ending: 03/05/2020
Pay Date: 03/12/2020

Taxable Marital Status: Single

Exemptions/Allowances:

Federal: 2

CA: 7

JOANNA L RAMIREZ

Social Security Number: [REDACTED]

Earnings	rate	hours	this period	year to date
Regular	14.5000	26.92	390.34	5,300.95
Cell Ph Allow			5.77	63.47
Sick	14.5000	8.00	116.00	232.00
Str Mgr Incent			235.31	609.80
Hldy Observerd				63.08
Holiday				102.34
Ot Unscheduled				171.17
Gross Pay			\$747.42	6,542.81

Other Benefits and Information

	this period	total to date
Floating Holiday		16.00
Sick		48.00

Important Notes

YOUR EMPLOYER PHONE NUMBER IS 1-888-225-5735

Deductions	Statutory	
Federal Income Tax	-80.81	490.10
Social Security Tax	-46.34	405.65
Medicare Tax	-10.84	94.87
CA State Income Tax	-24.07	62.38
CA SUI/SDI Tax	-7.48	65.43
Net Pay	\$577.88	
Checking 1	-577.88	5,424.38
Net Check	\$0.00	

Your federal taxable wages this period are \$747.42

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WESTERN REFINING RETAIL, LLC
500 SPEEDWAY DRIVE
ENON, OHIO 45323

Advice number: 00000111173
Pay date: 03/12/2020

Deposited to the account of
JOANNA L RAMIREZ

account number	transit ABA	amount
[REDACTED]	XXXX XXXX	\$577.88

THIS IS NOT A CHECK

NON-NEGOTIABLE