

MAYALL HURLEY P.C.
ROBERT J. WASSERMAN (SBN: 258538)
rwasserman@mayalllaw.com
JOHN P. BRISCOE (SBN: 273690)
jbriscoe@mayalllaw.com
RACHEL ALLGAIER (SBN: 318664)
rallgaier@mayalllaw.com
2453 Grand Canal Boulevard
Stockton, California 95207-8253
Telephone: (209) 477-3833
Facsimile: (209) 473-4818

Attorneys for Plaintiff Joanna Ramirez

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOANNA RAMIREZ, an individual,

Plaintiff,

vs.

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

Defendants.

Case No.: 2:20-CV-01671-KJM-CKD

STIPULATED ORDER PERMITTING
FILING OF FIRST AMENDED COMPLAINT

IT IS HEREBY STIPULATED between Plaintiff Joanna Ramirez (“Plaintiff”) and Defendant Western Refining Retail, LLC (“Defendant”) that Plaintiff shall have leave to file the First Amended Complaint attached hereto as **Exhibit A**. The parties further stipulate and agree that Defendant shall have all rights to contest the First Amended Complaint on any and all grounds, including by motion or other responsive pleading, and does not waive any defense or ground to contest the First Amended Complaint. Finally, the parties stipulate and agree that Defendant shall

1 have 30 days from the date the First Amended Complaint is filed by the Clerk to file a responsive
2 pleading.

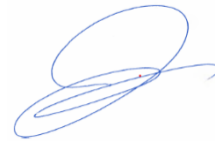
3 **DATED:** September 23, 2020

MAYALL HURLEY P.C.

4
5 By /s/ John P. Briscoe
6 ROBERT J. WASSERMAN
7 JOHN P. BRISCOE
8 RACHEL ALLGAIER
9 Attorneys for Plaintiff

10
11 **DATED:** September 23, 2020

SHOOK, HARDY & BACON L.L.P.

12 

13 By: _____

14 Jesus J. Torres
15 William C. Martucci (*pro hac*
16 *vice* forthcoming)
17 Kristen A. Page (*pro hac vice*
18 forthcoming)

19 Attorneys for Defendant
20 Western Refining Retail, LLC
21
22
23
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ORDER

Having reviewed the terms of the parties' above stipulation, and for good cause showing, IT IS HEREBY ORDERED that Plaintiff may file the First Amended Complaint (submitted as **Exhibit A** to the aforementioned stipulation). The clerk is hereby directed to file the First Amended Complaint, and Defendant's responsive pleading will be due within 30 days of the filing of the First Amended Complaint.

IT IS SO ORDERED.

DATED: _____

UNITED STATES DISTRICT COURT JUDGE

EXHIBIT A

MAYALL HURLEY P.C.
ROBERT J. WASSERMAN (SBN: 258538)
rwasserman@mayalllaw.com
JOHN P. BRISCOE (SBN: 273690)
jbriscoe@mayalllaw.com
RACHEL ALLGAIER (SBN: 318664)
rallgaier@mayalllaw.com
2453 Grand Canal Boulevard
Stockton, California 95207-8253
Telephone: (209) 477-3833
Facsimile: (209) 473-4818

Attorneys for Plaintiff Joanna Ramirez and the Putative Class

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOANNA RAMIREZ, an individual,

Plaintiff,

vs.

WESTERN REFINING RETAIL, LLC, a
limited liability company;

Defendant.

Case No.: 2:20-CV-01671-KJM-CKD

FIRST AMENDED 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
7. PRIVATE ATTORNEYS GENERAL ACT

JURY TRIAL DEMANDED

1 Plaintiff Joanna Ramirez brings this class, collective, and individual action against Western
2 Refining Retail, LLC, a limited liability company for violations of the Fair Labor Standards Act, the
3 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 California Labor Code and the applicable California Industrial Wage
8 Commission (“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 **JURISDICTION, VENUE, AND JURY TRIAL DEMAND**

15 4. This Court has jurisdiction pursuant to 28 U.S.C. § 1332, subdivision (d). This court
16 has supplemental jurisdiction pursuant to 28 U.S.C. § 1367. Venue is proper in this court pursuant to
17 28 U.S.C. § 1391(b) because the unlawful acts alleged herein took place in San Joaquin County,
18 California and Plaintiff’s place of employment with Defendant was within this District. Plaintiff
19 hereby demands a jury trial.

20 **GENERAL ALLEGATIONS**

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

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28 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.

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

4 7. Ramirez and WRR's other hourly, nonexempt employees were also eligible for and at
5 times received nondiscretionary bonuses, commissions, and other items of compensation. (**Exhibit 1.**²)

6 8. However, WRR willfully failed to properly calculate and pay overtime wages owed to
7 Ramirez and its other hourly, nonexempt employees throughout their employment.

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

11 10. For example, during the pay period of January 31 – February 6, 2020, Ramirez earned a
12 nondiscretionary bonus in the amount of \$198.12. (**Exhibit 1.**)

13 11. Yet, and pursuant to its uniform policy and practice, WRR failed to include the value of
14 this nondiscretionary bonus when calculating her regular rate of pay and, accordingly, underpaid her.
15 (*Id.*)

16 12. Instead, WRR utilized Ramirez's base rate of pay only and multiplied it by 1.5 or 2.0,
17 as otherwise appropriate. (*Id.*)

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

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

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28 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 15. Although Labor Code section 248.5, subdivision (l)(1) mandates that paid sick leave for
2 non-exempt employees be “calculated in the same manner as the regular rate of pay for the workweek
3 in which the employee uses paid sick time”, WRR failed to include commissions, non-discretionary
4 bonuses and other items of compensation when determining Ramirez and WRR’s other hourly, non-
5 exempt California employees’ regular rate of pay for purposes of sick pay. (*Id.*)

6 16. Instead, sick pay was only paid at Ramirez and WRR’s other hourly, non-exempt
7 California employees’ base hourly rate.

8 17. Because Ramirez and WRR’s other former hourly, non-exempt California employees
9 were not properly paid for all their overtime and sick pay at the correct rate of pay, they are not timely
10 paid all wages due and owing to them during each pay period and at the end of their employment.

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

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

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

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

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

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

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

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

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

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

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

26 28. From at least four years prior to the filing of this action, WRR has adopted and
27 employed unfair business practices. These unfair business practices include, but are not limited to,
28 failing to properly calculate and pay all overtime and sick wages due at the appropriate regular rate of

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 30. On July 16, 2020, Ramirez provided written notice to the Labor and Workforce
5 Development Agency (“LWDA”) and WRR regarding the specific provisions of the Labor Code
6 alleged to have been violated, including the facts and theories to support those alleged violations.
7 **(Exhibit 3.)**

8 31. As of the filing of this Complaint, more than 65 calendar days after Ramirez’s
9 written notice, the LWDA has not provided written notice that it intends to investigate any of the
10 allegations therein. Accordingly, Ramirez has satisfied the administrative prerequisites under
11 Labor Code section 2699.3 to bring a civil action to recover civil penalties against WRR in
12 addition to other remedies, for violations of the California Labor Code.

13 **COLLECTIVE ACTION ALLEGATIONS**

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

24 **CLASS ACTION ALLEGATIONS**

25 33. Plaintiff brings the First through Fifth Causes of Action as a class action, on her behalf
26 and on behalf of all those other persons similarly situated, pursuant to Code of Civil Procedure section
27 382. The class (“Class”) that Plaintiff seeks to represent is defined as follows:
28

- a. All current and former hourly, nonexempt employees of WRR who received commissions, non-discretionary bonuses, or other items of compensation and worked overtime during one or more pay periods from July 16, 2017 through the date of trial (the “Regular Rate Class”).
- b. All current and former hourly, nonexempt employees of WRR in California who received commissions, non-discretionary bonuses, or other items of compensation and worked overtime during one or more pay periods from July 16, 2016 through the date of trial (the “California Regular Rate Class”).
- c. All current and former hourly, non-exempt employees of WRR who received commissions, non-discretionary bonuses and/or other items of compensation and used sick leave during at least one pay period from July 16, 2016 through the date of trial (the “California Sick Pay Class”).
- d. All members of the California Regular Rate Class and California Sick Pay Class whose employment ceased at any time from July 16, 2017 through the date of trial (the “California Waiting Time Penalty Class”).
- e. All current and former hourly, nonexempt employees of WRR who earned commissions, non-discretionary bonuses, or other items of compensation and worked overtime during one or more pay periods from July 16, 2019 through the date of trial (the “California Wage Statement Class”).

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

34. The class of persons is so numerous that joinder of all members is impracticable, and the disposition of their claims in a class action is a benefit to the parties and to the Court. Plaintiff is informed and believes, and based thereon alleges, that WRR employs more than 500 employees who satisfy the class definition. Although the exact number and identity of class members is not presently known, they can be identified in WRR’s records through coordinated discovery pursuant to this class action.

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

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

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

- 13 a. Whether WRR failed to include its hourly, non-exempt employees' non-
14 discretionary bonuses, commissions, and other items of compensation when
15 calculating their regular rate of pay for purposes of overtime;
- 16 b. Whether WRR failed to include its hourly, non-exempt California employees' non-
17 discretionary bonuses, commissions, and other items of compensation when
18 calculating the rate of sick pay provided;
- 19 c. Whether WRR failed to pay all overtime owed to their hourly, nonexempt
20 employees;
- 21 d. Whether WRR failed to pay all sick wages owed to its hourly, non-exempt
22 California employees;
- 23 e. Whether WRR, because of its failure to properly calculate and pay overtime and sick
24 wages, failed to timely pay its hourly, nonexempt California employees when their
25 employment ended;
- 26 f. Whether the wage statements WRR furnished to its California hourly, nonexempt
27 employees comply with Labor Code section 226, subdivisions (a)(1), (5), and (9);
- 28 g. Whether the alleged violations constitute unfair business practices;

1 h. Whether the Class is entitled to injunctive relief; and

2 i. Whether the Class is entitled to unpaid wages, statutory penalties and/or
3 restitutionary relief, and the amount of the same.

4 38. Plaintiff's claims are typical of the claims of the members of the Class as a whole, all of
5 whom have sustained and/or will sustain damage and injury as a proximate and/or legal result of the
6 alleged violations of WRR. Plaintiff's claims are typical of those of the Class because WRR subjected
7 Plaintiff and each member of the Class to the same violations alleged herein.

8 39. The defenses of WRR, to the extent that such defenses apply, are applicable generally
9 to the whole Class and are not distinguishable as to the proposed class members.

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

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

26 42. Judicial economy will be served by maintenance of this lawsuit as a class action. To
27 process numerous virtually identical individual cases will significantly increase the expense on the
28 Court, the class members, and WRR, all while unnecessarily delaying the resolution of this matter.

1 There are no obstacles to effective and efficient management of this lawsuit as a class action by this
2 Court and doing so will provide multiple benefits to the litigating parties including, but not limited to,
3 efficiency, economy, and uniform adjudication with consistent results.

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

7 **INDIVIDUAL ALLEGATIONS**

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

13 **FIRST CAUSE OF ACTION**
14 **FAILURE TO PAY OVERTIME WAGES AT REGULAR RATE OF PAY**
15 **(Fair Labor Standards Act; Lab. Code § 510 & 1198)**
16 **By Plaintiff Against WRR**

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

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

22 47. Pursuant to Labor Code section 510, any work in excess of eight hours in one workday
23 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the
24 seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-
25 half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be
26 compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any
27 work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no
28 less than twice the regular rate of pay of an employee.

1 48. Pursuant to Labor Code section 1198, the maximum hours of work and standard
2 conditions of labor fixed by the commission shall be the maximum hours of work and the standard
3 conditions of labor for employees and the employment of any employee for longer hours than those
4 fixed by the commission or under conditions of labor prohibited by the order is unlawful.

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

9 50. During the relevant time period, Plaintiff and WRR’s other hourly, nonexempt
10 employees regularly worked overtime.

11 51. During the relevant time period, WRR failed to include commissions, non-discretionary
12 bonuses and/or other items of compensation, when determining the “regular rate of pay” for Plaintiff
13 and their hourly, nonexempt employees.

14 52. During the relevant time period, WRR failed to properly calculate the “regular rate of
15 pay” for Plaintiff and their other hourly, nonexempt employees.

16 53. During the relevant time period, WRR intentionally and willfully failed to pay the
17 proper overtime wages due to Plaintiff and their hourly, nonexempt employees.

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

20 **SECOND CAUSE OF ACTION**
21 **FAILURE TO PROPERLY CALCULATE AND PAY SICK LEAVE**
22 **(Lab. Code, §§ 218, 233, 246 *et seq.*)**
 By Plaintiff Against WRR

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

26 56. Labor Code section 246(l) requires that employers pay sick time pay to non-exempt
27 employees at that employee’s “regular rate of pay.”
28

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

5 58. During the relevant time period, WRR failed to include commissions, incentive
6 payments, non-discretionary bonuses, and/or other items of compensation when determining the
7 “regular rate of pay” for Plaintiff and their other hourly, non-exempt California employees for
8 purposes of sick time pay.

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

11 60. Labor Code section 233 provides that “any employer who provides sick leave for
12 employees shall permit an employee to use in any calendar year the employee's accrued and
13 available sick leave entitlement, in an amount not less than the sick leave that would be accrued
14 during six months at the employee's then current rate of entitlement, for the reasons specified in
15 subdivision (a) of Section 246.5.”

16 61. During the relevant time period, WRR intentionally and willfully failed to pay
17 Plaintiff and the other members of the Sick Pay Class their sick pay at the rate of pay required by
18 law. Accordingly, Plaintiff and the other members of the Sick Pay Class did not receive the full
19 amount of paid sick time that they were entitled to receive by law, and were therefore denied the
20 right to use sick leave within the meaning of Labor Code sections 233(a) and (c).

21 62. Any employer who violates Labor Code section 233 is liable to employees for the
22 greater of one days’ pay or actual damages, reasonable equitable relief, and reasonable attorneys’
23 fees and costs. (Lab. Code, § 233, subds. (d), (e).)

24 63. Further, Labor Code section 218 authorizes a private right of action to recover unpaid
25 wages

26 64. Wherefore, Plaintiff and the other members of the California Sick Pay Class have been
27 injured as set forth above and request relief as hereafter provided.
28

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

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

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

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

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

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

FOURTH CAUSE OF ACTION
FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS
(Lab. Code, § 226(a))
By Plaintiff Against WRR

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

71. Pursuant to Labor Code section 226(a) “every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when the wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee [. . .], (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, (5) net wages earned, (6) the

1 inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the
 2 last four digits of his or her social security number or an employee identification number, (8) the name
 3 and address of the legal entity that is the employer [. . .], (9) all applicable hourly rates in effect during
 4 the pay period and corresponding number of hours worked at each hourly rate by the employee and, if
 5 the employer is a temporary services employer [. . .], the rate of pay and the total hours worked for each
 6 temporary services assignment.”

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

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

24 74. As set forth above, WRR intentionally and willfully failed to furnish accurate itemized
 25 wage statements which complied with Labor Code section 226.

26 75. Wherefore, Plaintiff and the other members of the California Wage Statement Class
 27 have been injured as set forth above and request relief as hereafter provided.
 28

FIFTH CAUSE OF ACTION
UNFAIR BUSINESS PRACTICES
(Bus. & Prof. Code, § 17200, *et seq.*)
By Plaintiff Against WRR

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

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

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

SIXTH CAUSE OF ACTION
FAILURE TO PROVIDE REST PERIODS OR PAY PREMIUMS
(Lab. Code, § 226.7)
By Plaintiff Against WRR

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

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

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

1 81. Section 11 of the applicable IWC Wage Order provides:

2 “(A) Every employer shall authorize and permit all employees to take rest periods,
3 which insofar as practicable shall be in the middle of each work period. Nothing in
4 this provision shall prevent an employer from staggering rest periods to avoid
5 interruption in the flow of work and to maintain continuous operations, or from
6 scheduling rest periods to coincide with breaks in the flow of work that occur in the
7 course of the workday. The authorized rest period time shall be based on the total
8 hours worked daily at the rate of ten (10) minutes net rest time for every four (4)
9 hours worked, or major fraction thereof. Rest periods shall take place at employer
10 designated areas, which may include or be limited to the employees’ immediate
11 work area.

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

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

20 (D) If an employer fails to provide an employee a rest period in accordance with
21 the applicable provisions of this order, the employer shall pay the employee one (1)
22 hour of pay at the employee’s regular rate of compensation for each workday that
23 the rest period is not provided.”

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

26 83. Wherefore, Plaintiff has been injured and requests relief as hereinafter provided.

27 **SEVENTH CAUSE OF ACTION**
28 **PRIVATE ATTORNEYS GENERAL ACT**
 (Lab. Code, § 2698, et seq.)
 By Plaintiff Against WRR

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

 85. Pursuant to Labor Code § 2699(a), any provision of the Labor Code which provides
for a civil penalty to be assessed and collected by the LWDA for violations of the Labor Code may,
as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf

1 of himself or herself and other current or former employees pursuant to the procedures outlined in
2 Labor Code § 2699.3.

3 86. Plaintiff was employed by WRR and the alleged violations were committed against
4 him during his time of employment. Plaintiff is therefore an aggrieved employee as defined by
5 Labor Code § 2699(c). Other current and former employees are also aggrieved employees in that
6 one or more of the alleged violations were also committed against them during their time of
7 employment with WRR.

8 87. Pursuant to California Labor Code § 2699(g), an aggrieved employee may recover
9 the civil penalty on behalf of himself or herself and other current or former employees against
10 whom one or more of the alleged violations was committed. Furthermore, any employee who
11 prevails in any such action shall be entitled to an award of reasonable attorney's fees and costs.

12 88. Wherefore, Plaintiff and other current and former employees have been harmed as
13 set forth above and request relief as hereafter provided.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff prays judgment against WRR as follows:

16 **As to the First Through Fifth Cause of Action:**

- 17 1. That this Court certify the Class;
- 18 2. That this Court certify Plaintiff as the representative of the Class;
- 19 3. That this Court award injunctive relief, including that available under Labor Code
20 sections 226(h) and 248.5(e), as well as Business and Professions Code section 17203;
- 21 4. That this Court award unpaid wages as well as restitutionary relief;
- 22 5. That this Court award penalties and liquidated damages including, but not limited to,
23 those available under 29 U.S.C. § 216(b), 29 U.S.C. § 260, and Labor Code sections
24 203 and 226;
- 25 6. That this Court award statutory attorneys' fees and costs, including those available
26 under 29 U.S.C. § 216(b); Labor Code sections 226(e)(1) and (h), 248.5(e), 1194, as
27 well as those available under Code of Civil Procedure section 1021.5;
- 28

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.

As to the Seventh Cause of Action:

1. For civil penalties, including but not limited to those available under Labor Code sections 210, 226.3, 558, 1197.1, and 2699(f);

2. For injunctive relief;

3. For statutory attorneys' fees and costs, including but not limited to those available under Labor Code section 2699(g);

4. For 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

5. For such other and further relief as the court deems just and proper.

///

DATED: September 24, 2020

MAYALL HURLEY P.C.

By /s/ John P. Briscoe
ROBERT J. WASSERMAN
JOHN P. BRISCOE
RACHEL ALLGAIER
Attorneys for Plaintiff

Exhibit 1



002307
CO. FILE DEPT. CLOCK VCHR. NO.
Y1G 102706 629010 0000071170 1
078897
007-0134

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

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 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 transit ABA amount
[REDACTED] \$640.87

THIS IS NOT A CHECK

NON-NEGOTIABLE

Exhibit 2



CO. FILE DEPT CLOCK VCHR NO.
YIG 102706 629010 0000111173 1
SAC 002108 079897
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] \$577.88

NON-NEGOTIABLE

Exhibit 3

LAW OFFICES

MAYALL HURLEY

A PROFESSIONAL CORPORATION

SOUTHERN CALIFORNIA OFFICE
450 N. BRAND BLVD., SUITE 600
GLENDALE, CALIFORNIA 91203
(818) 646-6440

MAILING ADDRESS:
2453 GRAND CANAL BLVD.
STOCKTON, CALIFORNIA 95207

2453 GRAND CANAL BOULEVARD
STOCKTON, CALIFORNIA 95207-8258

FAX (209) 473-4818
TELEPHONE (209) 477-3833
WWW.MAYALLLAW.COM

VLADIMIR F. KOZINA
STEVEN A. MALCOUN
MARK E. BERRY
WILLIAM J. GORHAM III
NICHOLAS F. SCARDIGLI
ROBERT J. WASSERMAN
JENNY D. BAYSINGER
JOHN P. BRISCOE
VLADIMIR J. KOZINA
RACHAEL ALLGAIER

OF COUNSEL
J. ANTHONY ABBOTT

July 16, 2020

SUBMITTED ELECTRONICALLY

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, California 94612

SENT VIA CERTIFIED MAIL

Western Refining Retail, LLC
539 South Main St.
Findlay, OH 45840

Re: Joanna Ramirez/Western Refining Retail, LLC

To whom it may concern:

This firm represents Joanna Ramirez in relation to her former employment with Western Refining Retail, LLC ("WRR"). In accordance with California Labor Code section 2699.3, this letter shall serve as Ms. Ramirez's written notice to the Labor and Workforce Development Agency ("LWDA") and WRR regarding the following violations, and facts and theories supporting those violations, on Ms. Ramirez's behalf and, as a proxy for the LWDA, on behalf of current and other former California employees of WRR.

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.

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, and eight hours per workday, on a regular basis.

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 A.**) However, WRR willfully failed to properly calculate and pay overtime. Specifically, WRR failed to include commissions, nondiscretionary bonuses, and other items of

Labor and Workforce Development Agency
Western Refining Retail, LLC
Re: Joanna Ramirez/Western Refining Retail, LLC
July 16, 2020
Page 2 of 3

compensation when determining Ramirez's and its other hourly, nonexempt employees' regular rate of pay for purposes of calculating and paying overtime wages. For example, during the pay period of January 31 – February 6, 2020, Ramirez earned a nondiscretionary bonus in the amount of \$198.12. **(Exhibit A.)** Yet, and pursuant to its uniform policy and practice, WRR failed to include the value of this nondiscretionary bonus when calculating her regular rate of pay and, accordingly, underpaid her. (*Id.*) Instead, WRR utilized Ramirez's base rate of pay only and multiplied it by 1.5 or 2.0, as otherwise appropriate. (*Id.*)

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

Ramirez and WRR's other hourly, non-exempt California employees were also entitled to sick pay pursuant to Labor Code section 245, *et seq.* Any sick pay used appeared on their wage statements as "Sick". **(Exhibit B.)** Although Labor Code section 248.5, subdivision (l)(1) mandates that paid sick leave for non-exempt employees be "calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time", WRR failed to include commissions, non-discretionary bonuses and other items of compensation when determining Ramirez and WRR's other hourly, non-exempt California employees' regular rate of pay for purposes of sick pay. (*Id.*) Instead, sick pay was only paid at Ramirez and WRR's other hourly, non-exempt California employees' base hourly rate.

Further, Ramirez and WRR's other hourly, nonexempt employees in California were frequently denied the opportunity to take a ten-minute rest period for every four hours worked. Ramirez and WRR's other hourly, nonexempt California employees were entitled to rest breaks under applicable Order(s) of the Industrial Welfare Commission (including but not limited to Wage Order No. 7-2001). However, and due to, *inter alia*, the fact that Ramirez was frequently manning the gas station and store by herself for extended periods, she was not relieved of all duty and permitted to take such rest breaks. Additionally, WRR did not pay Ramirez an hour of pay at her regular rate of compensation for every rest period that was unlawfully denied her.

Because Ramirez and WRR's other former hourly, non-exempt California employees were not properly paid for all their overtime and sick pay at the correct rate of pay, and were also not paid an hour of pay at their regular rate of compensation for denied rest breaks, they are not timely paid all wages due and owing to them during each pay period and at the end of their employment.

Because of the violations set forth above, and as evidenced in the sample of Ramirez's wage statements attached hereto as Exhibits A and B, the wage statements furnished by WRR to their hourly, nonexempt employees violated California Labor Code section 226(a) insofar as they failed to accurately show:

Labor and Workforce Development Agency
Western Refining Retail, LLC
Re: Joanna Ramirez/Western Refining Retail, LLC
July 16, 2020
Page 3 of 3

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

As demonstrated by the foregoing, WRR violated Labor Code sections 201-204, 218, 226(a), 226.7, 233, 246, and 510. Each of these violations were committed as against current and other former employees of WRR in California, and within the last year.

If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or my client.

If the LWDA does not intend to investigate these violations, Ms. Ramirez intends to file a civil complaint against WRR pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code, § 2698 *et seq.*), on her behalf and, as a proxy for the LWDA, on behalf of all aggrieved current and former employees. Thank you for your attention in this matter.

Sincerely,

MAYALL HURLEY P.C.

By



JOHN P. BRISCOE

Exhibit A

CO 002307
 Y1G 102706 629010 0000071170 1
 078897

007-0134



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

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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TEAR HERE

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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 B

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
XXXX XXXX \$577.88

THIS IS NOT A CHECK

NON-NEGOTIABLE