

Eric K. Yaeckel [CSB No. 274608]
yaeckel@sullivanlawgroupapc.com

Ryan T. Kuhn [CSB No. 324538]
Ryan@sullivanlawgroupapc.com

SULLIVAN & YAECKEL LAW GROUP, APC
2330 Third Avenue
San Diego, California 92101
(619) 702-6760 * (619) 702-6761 FAX

Orlando Villalba (SBN 232165)
Orlando.Villalba@capstonelawyers.com
Helga Hakimi (SBN 257381)
Helga.Hakimi@capstonelawyers.com
Roxanna Tabatabaeepour (SBN 260187)
Roxanna.Taba@capstonelawyers.com

CAPSTONE LAW, APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

Attorneys for Plaintiffs JESSICA VASQUEZ and YANETH RODRIGUEZ MELGAR in a Representative capacity only, and on behalf of other members of the general public similarly situated,

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA

JESSICA VASQUEZ and YANETH
RODRIGUEZ MELGAR, in a
Representative capacity only, and on behalf
of other members of the general public
similarly situated,

Plaintiff,

v.

SALKHI FAMILY HOLDINGS, INC., a
California Corporation; SALKHI
PETROLEUM, INC., a California
Corporation; and DOES 1-10, inclusive.

Defendants.

CASE NO. **C21-02223**

COMPLAINT FOR:

1. MEAL AND REST PERIOD VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.*
2. MINIMUM WAGE VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.*
3. OVERTIME VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.*
4. WAGE STATEMENT VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.*
5. FAILURE TO REIMBURSE PURSUANT TO LABOR CODE § 2698 *et seq.*

FILED
NOV 03 2021

K. BIEKER CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA
By: K. Vasquez, Deputy Clerk

PER LOCAL RULE, THIS
CASE IS ASSIGNED TO
DEPT. 33, FOR ALL
PURPOSES.

SUMMONS ISSUED

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6. **FAILURE TO PAY WAGES UPON
SEPARATION PURSUANT TO
LABOR CODE § 2698 *et seq.***

Demand for Jury Trial

COMES NOW Plaintiff JESSICA VASQUEZ and YANETH RODRIGUEZ MELGAR ("Plaintiffs"), in a Representative capacity only, on behalf of all aggrieved employees, and alleges for their complaint as follows:

PARTIES, JURISDICTION, AND VENUE

1. This Court has jurisdiction over this matter in that all parties are residents of, or do business within, the State of California and the amount in controversy exceeds the statutory minimum limit of this Court. The monetary damages and restitution sought by Plaintiffs exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. Furthermore, there is no federal question at issue as Wage and Hour protections and remedies related thereto are based solely on California Law and Statutes, including the Labor Code, Civil Code, and IWC Wage Order(s). Also, the Ninth Circuit has recently held that, for purposes of establishing federal diversity jurisdiction, penalties pursuant to the Private Attorneys General Act of 2004 ("PAGA") may **not** be aggregated. *Urbino v. Orkin Servs. of California, Inc.*, 726 F.3d 1118, 1122 (9th Cir. 2013).
2. Venue before this Court is proper in that certain wrongful acts which gave rise to Plaintiffs' injuries occurred in the County of Contra Costa, State of California.
3. Plaintiffs are informed and believe and thereon allege that at all relevant times mentioned herein, Defendant SALKHI FAMILY HOLDINGS, INC., was and is a California Corporation doing business throughout the state, including the County of Contra Costa, State of California. Defendant SALKHI PETROLEUM, INC., was and is a California Corporation doing business throughout the state, including the County of Contra Costa, State of California. (These entities are collectively referred to herein as "Defendants" or "SALKHI").

- 1 4. While there are two different corporate entities, each holds itself out as part of one chain of
2 "Salkhi" gas station/convenience stores with standard policies and practices, as detailed below.
3 SALKHI has various locations that are currently operating throughout California. The two
4 named "Salkhi" Defendants share the same entity address located at 1777 Abrams Ct. #1678,
5 San Leandro, CA 94577. Each Salkhi entity has represented that either Arash Salkhi or Ali
6 Salkhi are president and/or have a managing interest, pursuant to California's Secretary of
7 State filings. Each of these corporate entities who make up SALKHI are acting as Plaintiffs',
8 and all other employees', co-employers for purposes of California law.
- 9 5. Plaintiffs are presently unaware of the true names, capacities and liability of defendants named
10 herein as DOES 1 through 10, inclusive. Accordingly, Plaintiffs will seek leave of court to
11 amend this complaint to allege their true names and capacities after the same have been
12 ascertained.
- 13 6. Plaintiffs are informed and believe and thereon allege that each of the fictitiously named
14 Defendants is responsible in some manner for the wrongs and damages as herein alleged, and
15 in so acting was functioning as the agent, servant, partner, and employee of the co-Defendants,
16 and in doing the actions mentioned below, was acting within the course and scope of his or her
17 authority as such agent, servant, partner, and employee with the permission and consent of the
18 co-Defendants. Plaintiff's injuries as herein alleged were proximately caused by said
19 Defendants. Wherever it is alleged herein that any act or omission was done or committed by
20 any specially named Defendant or Defendants, Plaintiffs intend thereby to allege and do allege
21 that the same act or omission was also done and committed by each and every Defendant
22 named as a DOE, both separately and in concert with the named Defendant or Defendants.
- 23 7. Plaintiffs are informed and believe and thereon allege that Defendants, and each of them,
24 including DOES 1 through 10, are and at all times herein mentioned were either individuals,
25 sole proprietorships, partnerships, registered professionals, corporations, alter egos or other
26 legal entities which were licensed to do and/or were doing business in the County of Contra
27 Costa, State of California at all times relevant to the subject matter of this action.
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FACTUAL BACKGROUND

- 2 8. In or about June, 2016, Plaintiff VASQUEZ commenced working for Defendants as a non-
3 exempt employee. In or about December 28, 2016, Plaintiff RODRIGUEZ commenced
4 working for Defendants as a non-exempt employee. Plaintiff VASQUEZ's employment with
5 Defendants was terminated by Defendants in March of 2021. Plaintiff RODRIGUEZ's
6 employment with Defendants was terminated by Defendants in February of 2021. Throughout
7 Plaintiffs' employment with Defendants, Plaintiffs performed their job in a capable and
8 competent manner and were commended for doing so.
- 9 9. Throughout the term of their employment, Plaintiffs and all other aggrieved employees were,
10 and currently are, denied the benefits and protections of the Labor Code due to Defendants'
11 institutionalized pay practices, standard as to all of Defendants' California-based employees.
- 12 10. On August 25, 2021, counsel for Plaintiffs prepared and electronically submitted a letter to the
13 California Labor & Workforce Development Agency ("LWDA") via the California Department
14 of Industrial Relations' "PAGA Filing" website. A copy of the letter was mailed to the
15 Defendants via USPS Certified Mail. The letter contained the specific provisions of the
16 California Labor Code violated by Defendants, as well as the facts and theories in support of
17 Plaintiffs' claims. (Please see **Exhibit 1**, a true and correct copy of this letter and automated
18 return receipt from the LWDA.)
- 19 11. The statutory time period for the LWDA to investigate and/or respond, and for the employers
20 to respond, has concluded.

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REPRESENTATIVE ALLEGATIONS

- 22 12. As more specifically set forth below, Plaintiffs bring this action in a representative capacity on
23 behalf of all current and former aggrieved employees of Defendants. Code Civ. Proc. § 2699;
24 *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 980-981. Throughout the operative limitations
25 period, Plaintiffs and all other aggrieved employees were denied the protections and benefits
26 of the Labor Code due to Defendants' standard practices. Throughout their employment,
27 Plaintiffs and all other aggrieved employees were and are denied full and accurate
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1 compensation, including overtime compensation, in violation of, *inter alia*, Labor Code
2 sections 510, 1194, and 1197. Plaintiffs and the other aggrieved employees were and are
3 denied Meal and Rest Periods and Meal and Rest Period payments, in violation of, *inter alia*,
4 Labor Code sections 226.7 and 512. Defendants failed to furnish accurate itemized wage
5 statements in violation of, *inter alia*, Labor Code section 226. Defendants failed to reimburse
6 Plaintiffs and other aggrieved employees for necessary business expenditures in violation of,
7 *inter alia*, Labor Code section 2802. Defendants failed to provide all compensation due at
8 termination of employment in violation of, *inter alia*, Labor Code sections 201 through 203.

9 13. Plaintiffs bring this action on the grounds that they and other current and former aggrieved
10 employees of Defendants were and are improperly denied the mandated wages resulting from
11 the above-referenced violations. Code Civ. Proc. § 2699; *Arias*, 46 Cal. 4th at 980-981. The
12 number of current and former aggrieved employees is believed to exceed Two Hundred (200)
13 members.

14 14. The approximately Two Hundred (200) employees are comprised of Defendants' current or
15 former California-based non-exempt employees.

16 15. The questions of law and fact common to all aggrieved employees arising from Defendants'
17 actions include, among others, the following:

- 18 a. Whether Defendants failed to pay its employees the proper straight-time, overtime, and
19 double time wages due and owing to them;
 - 20 b. Whether Defendants failed to pay its employees all compensation due and owing at
21 termination of employment;
 - 22 c. Whether Defendants failed to provide its employees with statutorily-compliant Meal
23 and/or Rest Periods, in violation of, *inter alia*, California Labor Code section 512 and
24 226.7, in that Defendants' written policies are not compliant with California law, and
25 Defendants do not allow its employees duty-free breaks on occasion;
 - 26 d. Whether Defendants failed to properly provide Meal and Rest Period Premiums in
27 accordance with law;
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- 1 e. Whether Defendants failed to properly calculate and pay its employees overtime
2 compensation or Meal and Rest Period Premiums in accordance with law by failing to
3 properly calculate, into the Regular Rate of Pay, the value of all employee benefits and
4 other non-discretionary compensation; and
- 5 f. Whether Defendants failed to properly reimburse its employees for necessary business
6 expenditures for, *inter alia*, cell phone costs and other work supplies, in violation of
7 Labor Code section 2802.
- 8 16. At all times mentioned herein, Defendants were subject to the Labor Codes and Industrial
9 Welfare Commission Wage Orders of the State of California, including, but not limited to,
10 California Labor Code section 2698 *et seq.*
- 11 17. At all times mentioned herein, Defendants are and were an “employer” as that term is used
12 within the relevant sections of the California Labor Code.
- 13 18. Plaintiffs have exhausted their administrative remedies and pre-filing requirements pursuant
14 to California Labor Code section 2699.3, and has also fulfilled all notice requirements under
15 the statute. (Please See **Exhibit 1**). The statutory time period for the LWDA to investigate
16 and/or respond, and for the employers to respond, has concluded, allowing Plaintiffs to proceed
17 with formal litigation.
- 18 19. Throughout the operative limitations period, Plaintiffs and all other aggrieved employees were
19 denied the protections and benefits of the Labor Code and IWC Wage Order(s) due to
20 Defendants’ standard policies and practices. Said violations are set forth below.

21 **FIRST CAUSE OF ACTION**
22 **Meal and Rest Period Violations Pursuant to Labor Code § 2698 et seq.**
23 **Representative Action**
(By Plaintiffs against Defendants and DOES 1 through 10)

- 24 20. Plaintiffs hereby incorporate by reference paragraphs 1 through 19 as though fully set forth
25 herein.
- 26 21. Labor Code section 1198 states:
27 The maximum hours of work and the standard conditions of labor fixed
28 by the commission shall be the maximum hours of work and the
standard conditions of labor for employees. The employment of any

employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

Defendants violated this section by establishing working conditions below the standard of the applicable Wage Order.

22. Under applicable California law, "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes [...] An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes." Lab. Code § 512(a); see also I.W.C. Wage Order 7, codified as 8 Cal. Code Regs. § 11070 (11)(A).
23. Unless the employee is relieved of all duty during a thirty (30) minute Meal Period, the Meal Period shall be considered an "on duty" Meal Period and counted as time worked. 8 Cal. Code Regs. § 11070 (11).
24. California law requires employers to provide nonexempt employees with a 10-minute Rest Period for every four hours worked, or "major fraction thereof." 8 Cal. Code Regs. § 11070 (12).
25. An employer who fails to provide Meal or Rest Periods as required by an applicable Wage Order must pay the employee one additional hour of pay at the employee's regular rate of pay for each workday that the Meal or Rest Period was not provided. Lab. Code § 226.7(b); 8 Cal. Code Regs. § 11070 (11), (12).
26. Defendants failed to provide compliant Meal Periods or requisite Meal Period penalty payments, in violation of, *inter alia*, Labor Code sections 226.7, 512, and IWC Wage Order 7, codified as Title 8, California Code of Regulations, section 11070 (7) and (11).
27. For example, Defendants do not possess a legal Meal Period policy, and make no attempt to ensure that their employees are either timely or wholly provided Meal Periods in compliance with California law. The employees would often either miss a Meal Period entirely, be provided a short or untimely Meal Period, or be provided only one Meal Period, even where they were working in excess of 10 hours a day. Defendants would pressure their employees to

1 either skip or cut short a Meal Period to address customers or workload concerns. Defendants
2 routinely did not provide adequate staffing, which contributed to these meal period violations.
3 Finally, Defendants failed to provide Meal Period penalty payments to employees on such
4 occasions.

5 28. Defendants failed to provide compliant Rest Periods or requisite Rest Period penalty payments,
6 in violation of, *inter alia*, Labor Code sections 226.7, and I.W.C. Wage Order 7. These
7 violations are due, in part, to the fact that Defendants do not possess a legal Rest Period policy
8 or practice, as its purported Rest Period policy lacks required language, including failing to
9 provide for breaks for every four hours "*or major fraction thereof*," resulting in employees
10 failing to receive all Rest Periods legally due. Defendants do not provide Rest Periods, as
11 defined by California law. Defendants would pressure their employees to either skip or cut
12 short a Rest Period to address customers or workload concerns. Defendants routinely did not
13 provide adequate staffing, which contributed to these Rest Period violations. Finally,
14 Defendants have never provided a Rest Period penalty payment to any employee.

15 29. Moreover, Defendants' policies and practices preclude "duty-free" Meal and Rest Periods.
16 Specifically, employees were required to be "on-call" and to respond to the employer
17 immediately and remain on the premises at all times during Meal and Rest Periods. These
18 institutional and established practices of Defendants are illegal, in that Plaintiffs and all other
19 aggrieved employees were denied proper and/or timely Meal and Rest Periods.

20 30. Defendants willfully failed and refused to pay Plaintiffs and all other aggrieved employees one
21 additional hour of pay at their regular rate of pay for all workdays that a Meal or Rest Period
22 was not provided, as required by Labor Code section 226.7 and IWC Wage Order 7 (11), (12).

23 31. Any payments made by Defendants for missed or late Meal Periods or Rest Periods were not
24 paid at an employee's regular rate in violation of Labor Code section 226.7 and the operative
25 I.W.C. Wage Orders. Instead, these payments were made at an employee's base rate and did
26 not include the value of, *inter alia*, all actual compensation owed, and/or all employee benefits
27 such as, for example, non-discretionary compensation and other employee benefits.
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1 32. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor
2 Code, Plaintiffs and all other aggrieved employees have been damaged in an amount to be
3 proven at trial.

4 33. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiffs
5 on behalf of themselves and all other aggrieved employees by and through Labor Code section
6 2699.3, and as Plaintiffs have complied with all pre-filing requirements, Plaintiffs may recover
7 these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
8 Prayer For Relief.

9 34. Plaintiffs seek an award of statutory civil penalties for each underpaid employee of Defendants
10 pursuant to Labor Code sections 2699(a) for each of these employees.

11 35. Plaintiffs also seek an award of reasonable attorneys' fees and costs pursuant to Labor Code
12 section 2699(g)(1).

13 **SECOND CAUSE OF ACTION**
14 **Minimum Wage Violations Pursuant to Labor Code § 2698 et seq.**
15 **Representative Action**
(By Plaintiffs against Defendants and DOES 1 through 10)

16 36. Plaintiffs hereby incorporates by reference paragraphs 1 through 35 as though fully set forth
17 herein.

18 37. Defendants failed to provide all compensation, including minimum wage and overtime
19 compensation, to their employees in violation of, *inter alia*, Labor Code sections 1194 and 510
20 and the I.W.C. Wage Orders, codified as Title 8, California Code of Regulations, section
21 11070 (3). This illegal action is due, in part, to Defendants' policies of (1) altering (and
22 deducting) the work-time reported by its employees prior to payment, (2) failing to properly
23 retain accurate Time Records, in violation of California law, and (3) failing to provide
24 compensation for all time worked by the employees, or in control of the employer. Defendants
25 would instruct Plaintiffs, and other employees, to report their scheduled (as opposed to actual)
26 work hours, resulting in a loss of compensation. Additionally, Defendants would often require
27 Plaintiffs and other employees, to work extended hours (beyond their scheduled hours and
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- 1 during Meal Periods), without compensation. SALKHI is on notice as its own security records,
2 register records, and electronic records will evidence instances of Ms. Vasquez and Ms.
3 Rodriguez working significant amounts of overtime per week without receiving compensation.
- 4 38. As a result of Defendants' failure to comply with the provisions of the Labor Code, Plaintiffs
5 and all other aggrieved employees have been damaged in an amount to be proven at trial.
- 6 39. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiffs
7 on behalf of themselves and all other aggrieved employees by and through Labor Code section
8 2699.3, and as Plaintiffs have complied with all pre-filing requirements, Plaintiffs may recover
9 these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
10 Prayer For Relief.
- 11 40. Plaintiffs seek an award of statutory civil penalties for each underpaid employee of Defendants
12 pursuant to Labor Code sections 2699(a) for each of these employees.
- 13 41. Plaintiffs also seek an award of reasonable attorneys' fees and costs pursuant to Labor Code
14 section 2699(g)(1).

15 **THIRD CAUSE OF ACTION**
16 **Overtime Violations Pursuant to Labor Code § 2698 et seq.**
17 **Representative Action**
(By Plaintiffs against Defendants and DOES 1 through 10)

- 18 42. Plaintiffs hereby incorporate by reference paragraphs 1 through 41 as though fully set forth
19 herein.
- 20 43. Defendants failed to pay Plaintiffs and all other aggrieved employees all compensation,
21 including Overtime Compensation, due in violation of, among other statutes, Labor Code
22 section 510. These violations occurred due to Defendants' illegal policies, referenced above,
23 whereby employees experienced monetary under-compensation on workdays where overtime
24 compensation was due pursuant to California law. Additionally, Defendants failed to calculate
25 the correct regular rate of pay for purposes of paying overtime compensation, as Defendants
26 due not include the value of non-discretionary compensation and other employee benefits when
27 determining the overtime rate of pay owed to employees. The systematic failure to provide
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proper overtime compensation is a violation of California law.

44. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiffs and all other aggrieved employees have been damaged in an amount to be proved at trial.

45. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiffs on behalf of themselves and all other aggrieved employees by and through Labor Code section 2699.3, and as Plaintiffs have complied with all pre-filing requirements, Plaintiffs may recover these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below Prayer For Relief.

46. Plaintiffs seek an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code sections 2699(a) for each of these employees.

47. Plaintiffs also seek an award of reasonable attorneys' fees and costs pursuant to Labor Code section 2699(g)(1).

FOURTH CAUSE OF ACTION
Wage Statement Violations Pursuant to Labor Code § 2698 et seq.
Representative Action
(By Plaintiff against Defendants and DOES 1 through 10)

48. Plaintiffs hereby incorporate by reference paragraphs 1 through 47 as though fully set forth herein.

49. Defendants failed to provide Plaintiffs and all other aggrieved employees with accurate itemized wage statements in violation of, among other statutes, Labor Code section 226. These violations include, but are not limited to, Defendants' failure to accurately identify all applicable regular and overtime (including double-time) rates of pay in violation of section 226(a)(9), and providing inaccurate representations of both "gross" and "net wages." Defendants also failed to accurately list "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate," in violation of 226(a)(9). Defendants also failed to provide an accurate showing of the "total hours worked," in violation of Labor Code section 226(a)(2). For example, Defendants had notice of

1 employees working outside of their scheduled and/or reported hours, as well as within Meal
2 and Rest Periods, but did not provide compensation. Defendants also failed to provide an
3 accurate name and address for the legal entity that is the employer, in violation of Labor Code
4 section 226(a)(8). As an example, please see Exhibit A and B of **Exhibit 1** (the attachment to
5 Plaintiff's LWDA notice correspondence).

6 50. Further, the Defendants' wage statement listings are confusing and employees cannot readily
7 ascertain their total hours worked, applicable rates, and all gross and net wages. As one
8 example, Defendants are apparently using a time calculating system other than "minutes", but
9 without explanation to the employees within the wage statement.

10 51. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor
11 Code, Plaintiffs and all other aggrieved employees have been damaged in an amount to be
12 proven at trial.

13 52. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiffs
14 on behalf of themselves and all other aggrieved employees by and through Labor Code section
15 2699.3, and as Plaintiffs have complied with all pre-filing requirements, Plaintiffs may recover
16 these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
17 Prayer For Relief.

18 53. Plaintiffs seek an award of statutory civil penalties for each underpaid employee of Defendants
19 pursuant to Labor Code sections 2699(a) for each of these employees.

20 54. Plaintiffs also seek an award of reasonable attorneys' fees and costs pursuant to Labor Code
21 section 2699(g)(1).

22 **FIFTH CAUSE OF ACTION**
23 **Failure to Reimburse Pursuant to Labor Code § 2698 et seq.**
24 **Representative Action**
(By Plaintiffs against Defendants and DOES 1 through 10)

25 55. Plaintiffs hereby incorporate by reference paragraphs 1 through 54 as though fully set forth
26 herein.

27 56. Defendants failed to provide compliant expense reimbursement payments in violation of, *inter*
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alia, Labor Code section 2802, by failing to provide payments for expenses incurred by Plaintiffs and other non-exempt employees, including expenses for cell-phone costs, mileage and other necessary work supplies like uniform jackets for working in refrigerated areas.

57. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiffs and all other aggrieved employees have been damaged in an amount to be proven at trial.

58. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiffs on behalf of themselves and all other aggrieved employees by and through Labor Code section 2699.3, and as Plaintiffs have complied with all pre-filing requirements, Plaintiffs may recover these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below Prayer For Relief.

59. Plaintiffs seek an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code sections 2699(a) for each of these employees.

60. Plaintiffs also seek an award of reasonable attorneys' fees and costs pursuant to Labor Code section 2699(g)(1).

SIXTH CAUSE OF ACTION
Failure to Pay Wages Upon Separation Pursuant to Labor Code § 2698 et seq.
Representative Action
(By Plaintiffs against Defendants and DOES 1 through 10)

61. Plaintiffs hereby incorporate by reference paragraphs 1 through 60 as though fully set forth herein.

62. Defendants failed to provide Plaintiffs and other aggrieved employees with all wages earned and unpaid at termination in violation of, among other statutes, Labor Code sections 201 through 203. These violations resulted from, among other unlawful actions, Defendants' willful failure to provide accurate and complete compensation to aggrieved employees under Labor Code sections 226.7, 510, 512, 1197, and 2802, as set forth above. Additionally, Defendants failed to timely pay Plaintiffs, and other aggrieved employees, all wages actually owed at the time of termination, including but not limited to, all vacation pay owed.

63. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiffs and all other aggrieved employees have been damaged in an amount to be proven at trial.

64. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiffs on behalf of themselves and all other aggrieved employees by and through Labor Code section 2699.3, and as Plaintiffs have complied with all pre-filing requirements, Plaintiffs may recover these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below Prayer For Relief.

65. Plaintiffs seek an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code sections 2699(a) for each of these employees.

66. Plaintiffs also seek an award of reasonable attorneys' fees and costs pursuant to Labor Code section 2699(g)(1).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs on behalf of all aggrieved employees, pray for judgment as follows:

1. For an award of attorneys' fees and costs of suit herein pursuant to Labor Code section 2699(g)(1);
2. For an award of statutory civil penalties pursuant to Labor Code section 2699(f)(2); and
3. For such other relief as the Court deems just and proper.

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Dated: October 28, 2021

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Ryan T. Kuhn

-15-
Complaint

Exhibit 1

SULLIVAN & YAECKEL

LAW GROUP

A PROFESSIONAL CORPORATION

2330 THIRD AVENUE
SAN DIEGO, CALIFORNIA 92101

PHONE 619-702-6760
FACSIMILE 619-702-6761

August 25, 2021

Labor and Workforce Development Agency
Attn. PAGA Administrator

Submitted Via Online Filing

Re: Jessica Vasquez, Yaneth Rodriguez Melgar v. Salkhi
Family Holdings, Inc., et al.
Our File No.: 7258

Dear Administrator:

Please allow this correspondence to serve as "written notice," as required by California Labor Code section 2699.3(a)(1), of the specific provisions of the California Labor Code believed to have been violated by Salkhi Family Holdings, Inc., Salkhi Petroleum, Inc., and Grand Salkhi Properties, LLC (hereinafter "Salkhi"), in the above referenced matter. This "written notice" is filed on behalf of Ms. Vasquez, Ms. Rodriguez, and all current and former non-exempt employees employed by Salkhi. Thank you for your assistance and instruction on this issue.

The specific provisions alleged to have been violated by Salkhi are as follows:

CALIFORNIA LABOR CODE SECTIONS 201-203, 226, 226(a), 226.7, 510, 512, 558, 1194, 1197.1, 1198.5 and 2802, as well as IWC Wage Order 7, and any other applicable wage orders, codified as Title 8, California Code of Regulations, section 11070 *et seq.*

Facts and theories supporting the allegations: Our client, Jessica Vasquez, was employed as a non-exempt employee for Salkhi from approximately June, 2016, through March 10, 2021. Our client, Yaneth Rodriguez Melgar, was employed as a non-exempt employee for Salkhi from approximately December 28, 2018 through February 2, 2021.

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Throughout the term of Ms. Vasquez and Ms. Rodriguez employment, Salkhi required Ms. Vasquez, Ms. Rodriguez and all other non-exempt employees to experience actions illegal under the California Labor Code, including the following:

Minimum Wage and Overtime Violations

- Salkhi failed to provide all compensation, including minimum wage and overtime compensation, as well as compensation for work performed inside of Meal and Rest Periods, to its employees in violation of, *inter alia*, Labor Code sections 1194, 510, IWC Wage Order 7, and any other applicable wage orders. This illegal action is due, in part, to Salkhi's policies of (1) failing to properly retain accurate Time Records, in violation of California law, and (2) failing to provide compensation (including both minimum and overtime compensation) for all time worked by the employees, or in control of the employer. For instance, Salkhi would instruct Ms. Vasquez and Ms. Rodriguez to report scheduled (as opposed to *actual*) work hours, resulting in a loss of compensation. Additionally, Salkhi would often require Ms. Vasquez and Ms. Rodriguez to work extended hours (beyond scheduled hours), without compensation. Further, Salkhi would regularly contact Ms. Vasquez and Ms. Rodriguez outside of normal work hours (*i.e.*, "after hours" or during lunch) without compensation. Salkhi is on notice as its own security records, register records, and electronics records will evidence instances of Ms. Vasquez and Ms. Rodriguez working several significant amounts of overtime per week without receiving compensation.
- Additionally, among other issues, Salkhi has notice of Ms. Vasquez and Ms. Rodriguez, and others, working outside of their scheduled and/or reported hours, as well as *within* Meal and Rest Periods, but fails to provide any compensation for this work-time. Further, Salkhi failed to properly calculate and pay overtime at the actual overtime rate of pay, as Salkhi ignores certain compensation when calculating the Regular Rate of Pay.

Failure to Provide Compliant Meal Periods

- Salkhi failed to provide compliant Meal Periods or requisite Meal Period penalty payments, in violation of, *inter alia*, Labor Code sections 226.7, 512, and IWC Wage Order 7, or any other applicable wage orders. For example, Salkhi does not possess a legal Meal Period policy and makes no attempt to ensure that its employees are either timely or wholly provided Meal Periods. The employees would often either miss a Meal Period entirely, or be provided a short or untimely Meal Period. Whether or not an employee was provided a Meal Period was often contingent upon the how busy the store was that day.
- Salkhi would pressure its employees to either skip, or cut short, a Meal Period as employees were expected to respond to customers at all times. Salkhi has never

provided a compliant Meal Period penalty payment to any employee as to the above referenced issues. Finally, on the rare occasions when employees *were* paid Meal Period penalties (*i.e.* California Meal Period Premiums), such payments do not “cure” the stated Labor Code violation under section 226.7. The California Supreme Court held that “An employer’s failure to provide an additional hour of pay does not form part of a section 226.7 violation, and an employer’s provision of an additional hour of pay does not excuse a section 226.7 violation. The failure to provide required meal and rest breaks is what triggers a violation of section 226.7.” (*Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, 1256, italics added.). Even more recently, a 2020 California Supreme Court ruling stated that, “The remedy for a Labor Code violation, through settlement or other means, is distinct from the fact of the violation itself. For example, employers can pay an additional hour of wages as a remedy for failing to provide meal and rest breaks. (§ 226.7, subd. (c).) But we have held that payment of this statutory remedy ‘does not excuse a section 226.7 violation.’” *Kim v. Reins International California, Inc.*, (2020) 9 Cal.5th 73. To be clear, payment of a Meal Period penalty to employees does not rectify the violation, it is in fact an admission of a Labor Code violation. Finally, Salkhi failed to pay Meal Period Premiums at the proper rate, as Salkhi fails to either (1) pay a full hours worth of pay, or (2) properly calculate the regular rate of pay for purposes of determining the premium rate owed. *Ferra v. Loews Hollywood Hotel, LLC*, S259172 (Slip Op. at p.1).

- Salkhi’s Meal Period policy illegally retained control over its employees during Rest Periods. Salkhi’s actual policy and practice would not allow its employees to “leave the premises” during Meal Periods, in order to be prepared for customer rushes and store deliveries.
- Finally, Salkhi required its employees to constantly monitor their cell phones and be “on-call” at all times, specifically during Meal Periods. On occasion, Salkhi would interrupt, or cut short, its employees’ Meal Periods and require them to return to work.

Failure to Provide Compliant Rest Periods

- Salkhi failed to provide compliant Rest Periods or requisite Rest Period penalty payments, in violation of, *inter alia*, Labor Code sections 226.7, 512, and IWC Wage Order 7, and any other applicable wage orders. For example, Salkhi does not possess a legal Rest Period policy, as its Rest Period policy lacks required language under California law. Salkhi makes no attempt to ensure that its employees are either timely or wholly provided Rest Periods. The employees would often either miss a Rest Period entirely, be provided a short or untimely Rest Period, or be provided only one Rest Period, even when they were working in excess of 6.5 hours a day. Salkhi would pressure its employees to either skip, or cut short, a Rest Period as employees were

expected to respond to deliveries at all times. Salkhi has never provided a compliant Rest Period penalty payment to any employee as to the above referenced issues. Finally, on the rare occasions in which Salkhi would provide a Rest Period penalty, it would pay said penalty at an improper (and *lesser*) rate, due to the failure to properly calculate the Regular Rate of Pay.

- Salkhi required its employees to constantly monitor their cell phones and be "on-call" at all times, specifically during Rest Periods. On occasion, Salkhi would interrupt, or cut short, its employees' Rest Periods and require them to return to work.
- Finally, Salkhi illegally retained control over its employees during Rest Periods. For example, Salkhi required its employees to "remain on the premises," and to remain "On Call" (*i.e.* monitor their telephones) at all times, including during Rest Periods.

Wage Statement Violations

- Salkhi violated Labor Code section 226(a)(2) by failing to furnish an accurate showing of all hours worked at each hourly rate by the employee. Ms. Vasquez a, Ms. Rodriguez, and other employees were not compensated for all hours worked (due in part to Salkhi's requirement that employees list only *scheduled* work-times, not actual work-times.)
- Salkhi violated Labor Code section 226(a)(5) by failing to furnish an accurate showing of the net wages earned by its employees. For example, Salkhi (a) would not provide compensation for all hours and minutes worked, (b) would use an improper (and lesser) Overtime Rate of Pay, and (c) would fail to pay Meal and/or Rest Period penalties when due. Further, on the rare occasions in which Salkhi would provide a Meal or Rest Period penalty, it would pay said penalty at an improper (and lesser) rate, due to the failure to properly calculate the Regular Rate of Pay.
- Salkhi violated Labor Code section 226(a)(8) by failing to provide an accurate showing of the address of the legal entity that is the employer. For example, the address for "Salkhi Family Holdings, Inc." is listed on Ms. Rodriguez's Wage Statement as, "PO Box 1678, San Leandro, CA 94577-0801". However according to the California Secretary of State website, the actual entity address for Salkhi Family Holdings, Inc., is "1777 Abram Ct. #1678, San Leandro CA 94577." (See Exhibit A). The same is true for Ms. Vasquez's Wage Statement. (See Exhibit B).
- Salkhi violated Labor Code section 226(a)(9) by failing to furnish an accurate showing of all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Ms.

Vasquez, Ms. Rodriguez, and the other employees were not compensated for all hours worked (due in part to Salkhi requiring employees to list only *scheduled* work-times, not actual work-times to include "on-call" hours). Additionally, and as an example, for the pay period ending October 18, 2020, Salkhi states that it paid Ms. Vasquez for "67.75" regular hours of Regular Pay, and "1.33" regular hours of Overtime Pay. (Please see **Exhibit C**). However, Ms. Vasquez cannot "readily ascertain" what 67.75 or 1.33 means without "reference to other documents or information." In fact, Ms. Vasquez and Ms. Rodriguez cannot "readily ascertain" what these figures mean at all. This is because Salkhi is apparently using a time-calculating system other than "minutes," but without explanation to the employees within the wage statement. As minutes are measured on a scale of 1 through 60, it is not apparent what these figures are meant to represent. Without an explanation for how these figures were arrived at, employees cannot "readily ascertain" their total hours worked. Therefore, Salkhi failed to provide an accurate showing of the "total hours worked" by its employees pursuant to section 226(a)(2), due to all the aforesaid reasons.

Failure to Provide Compliant Expense Reimbursement Payments

Salkhi failed to provide compliant expense reimbursement payments in violation of, *inter alia*, Labor Code section 2802, by failing to provide payments for expenses incurred by Ms. Vasquez, Ms. Rodriguez, and other non-exempt employees, including expenses for cell-phone costs, other necessary work supplies, mileage, and uniform jackets used for working in refrigerated areas.

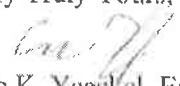
Willful Failure to Provide All Compensation to Ex-Employees

Salkhi failed to provide all compensation upon termination of employment in violation of Labor Code sections 201-203, due, in part, to the fact that Salkhi failed to provide proper compensation for all hours worked, and failed to pay full Meal or Rest Period penalties, as discussed above.

To confirm, Salkhi is a "person" as defined within California Labor Code section 18.

Again, thank you for your assistance and instruction throughout this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very Truly Yours,


Eric K. Yaeckel, Esq.

cc: *Via Certified U.S. Mail*

SALKHI FAMILY HOLDINGS INC.

Ali Salkhi

Agent for Service of Process

1777 Abram Ct. #1678

San Leandro, CA 94577

SALKHI PETROLEUM INC.

Arash Salkhi

Agent for Service of Process

1777 Abram Ct. #1678

San Leandro, CA 94577

GRAND SALKHI PROPERTIES LLC

Amin Salkhi

Agent for Service of Process

605 Contra Costa Blvd.

Concord, CA 94523

cc: *Courtesy Copy and Filing Fee via U.S. Mail*

Department of Industrial Relations

Accounting Unit

455 Golden Gate Ave, 10th Floor

San Francisco, CA 94102

Exhibit A

Description	Rate	Hours	Dollar	STD Hour	STD Dollar	Description	Current	STD	Description	Current	STD
Regular	16.0000	71.45	1,143.20	71.45	1,143.20	REGULAR	16.00	71.45	REGULAR	16.00	71.45
Reg Overtime	16.0000	0.40	6.40	0.40	6.40	REG OVERTIME	16.00	0.40	REG OVERTIME	16.00	0.40
Net Amt Off	24.0000	0.00	0.00	0.00	0.00	NET AMT OFF	24.00	0.00	NET AMT OFF	24.00	0.00
SDA	0.0000	0.00	0.00	0.00	0.00	SDA	0.00	0.00	SDA	0.00	0.00
Continuing P. 11.5	0.0000	0.00	0.00	0.00	0.00	CONTINUING P. 11.5	0.00	0.00	CONTINUING P. 11.5	0.00	0.00

Total:	71.85	1,152.34	746.05	11,972.02	TOTAL:	205.44	2,206.82	TOTAL:	0.00	0.00
CURRENT PERIOD LEAVE ACCRUAL										
Accrued:	0.0000	0.00	0.00	0.00	Accrued:	0.0000	0.00	Accrued:	0.0000	0.00

Saikhi Family Holdings, Inc.
 PO Box 1678
 San Leandro, CA 94577-0801

CHECK DATE	VOUCHER ID
5/8/2020	V1209813

TOTAL NET PAY
*****\$542.90

1044 012 HFT Cashier
 Yaneth Rodriguez Mesaar

Dr. Shirley N. Weber
California Secretary of State



Business Search - Entity Detail

The California Business Search is updated daily and reflects work processed through Tuesday, August 24, 2021. Please refer to document [Processing Times](#) for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity. Not all images are available online.

C3515410 SALKHI PETROLEUM INC.

Registration Date:

10/22/2012

Jurisdiction:

CALIFORNIA

Entity Type:

DOMESTIC STOCK

Status:

ACTIVE

Agent for Service of Process:

ARASH SALKHI

1777 ABRAM CT. #1678

SAN LEANDRO CA 94577

1777 ABRAM CT. #1678

SAN LEANDRO CA 94577

PO BOX 1678

SAN LEANDRO CA 94577

Entity Address:

Entity Mailing Address:

Certificate of Status

A Statement of Information is due EVERY year beginning five months before and through the end of October.

Document Type	File Date	PDF
SI-COMplete	06/18/2021	
SI-COMplete	03/17/2020	
AMENDMENT	01/24/2013	
REGISTRATION	10/22/2012	

Exhibit B

Dr. Shirley N. Weber
California Secretary of State



Business Search - Entity Detail

The California Business Search is updated daily and reflects work processed through Tuesday, August 24, 2021. Please refer to document Processing Times for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity. Not all images are available online.

C3779279 SALKHI FAMILY HOLDINGS INC.

Registration Date:
Jurisdiction:
Entity Type:
Status:
Agent for Service of Process:

Entity Address:

Entity Mailing Address:

Certificate of Status

04/21/2015
CALIFORNIA
DOMESTIC STOCK
ACTIVE
ALI SALKHI
1777 ABRAM CT. #1678
SAN LEANDRO CA 94577
1777 ABRAM CT. #1678
SAN LEANDRO CA 94577
PO BOX 1678
SAN LEANDRO CA 94577

A Statement of Information is due EVERY year beginning five months before and through the end of April.

Document Type	File Date	PDF
SI-COMplete	06/18/2021	
SI-COMplete	05/04/2015	
REGISTRATION	04/21/2015	

* Indicates the information is not contained in the California Secretary of State's database.

Exhibit C

Statement of Earnings For: Jessica Vasquez										Salkhi Petroleum, Inc	
Employee #: 2121		Department: 007		Period Begin: 10/5/2020		Check Date: 10/23/2020		PO Box 1678			
Clock Number:		Timestar Pay: HFTCashier		Period End: 10/18/2020		Pay Type: Hourly		San Leandro, CA 94577-0801			
Company Id: 1907017-1		Federal Filing: Single		Exemptions: 2		Additional Tax:					
State Filing: Single or		Exemptions: 2		Additional Tax:							
Voucher Id	Check Amount	Gross Pay		Net Pay		Check Message					
V1458663	\$0.00	\$1,150.87		\$966.81							
EARNINGS						TAXES		DEDUCTIONS			
Description	Rate	Hours	Dollars	YTD Hours	YTD Dollars	Description	Current	YTD	Description	Current	YTD
Regular	15.5000	67.75	1,050.12	1,484.84	23,015.00	SOC SEC TE	71.35	1,581.58			
Reg Overnight	16.5000	4.23	69.79	61.96	1,022.33	MED EE	16.69	369.89			
*Regular OT	15.5000	1.33	20.61	18.03	279.44	FEDERAL WH	73.28	1,616.07			
Wgt Avg OT	23.2750	1.33	30.96	20.79	486.53	CALIFORNIA WH	11.24	255.66			
*Overnight OT		0.00	0.00	2.76	45.54	CALIFORNIA SDI	11.50	255.09			
Sick		0.00	0.00	35.00	542.50						
Bonus Earnings		0.00	0.00	0.00	75.00						
Overtime @ 1.5		0.00	0.00	15.83	368.07						
Total:						Total:	184.06	4,078.29	Total:	0.00	0.00
CURRENT PERIOD LEAVE ACCRUAL						DISTRIBUTION OF NET PAY					
SICK	Accrued:	0.0000	Taken:	0.00	Balance	0.00	Checking	Account: #####6217	Deposit Amount:	966.81	

Salkhi Petroleum, Inc
PO Box 1678
San Leandro, CA 94577-0801

CHECK DATE	VOUCHER ID
10/23/2020	V1458663
TOTAL NET PAY	
*****\$966.81	

2121 007 HFTCashier
Jessica Vasquez
9839 C Street
Oakland, CA 94603

NOT NEGOTIABLE