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By: J. Moyer Deputy

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

MARIA ISABEL HEREDIA, an individual,
on behalf of herself and others similarly
situated

PLAINTIFF,

v.

JAMV, INC.; and DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 21CV001070

**[Amended as a matter of right, pursuant to
Labor Code § 2699.3(a)(2)(C)]**

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Provide Rest Breaks Pursuant to Labor Code § 226.7
2. Violation of Labor Code § 2802
3. Penalties Pursuant to Labor Code § 203
4. Violation of Business & Professions Code § 17200
5. Penalties Pursuant to Labor Code §2699, et seq.

1 Plaintiff MARIA ISABEL HEREDIA, an individual, on behalf of herself, all others
2 similarly situated, and on behalf of the people of the State of California and as an “aggrieved
3 employee” under Labor Code Private Attorneys General Act of 2004, §2699, *et seq.* (hereafter
4 “PAGA”), complains of Defendant JAMV, INC. (“Defendant”) and each of them, as follows:

5 **I.**

6 **INTRODUCTION**

7 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure §
8 382 and Labor Code §2699, *et seq.*, on behalf of Plaintiff and a Proposed Class defined as:

9 All persons who are employed or have been employed as an hourly
10 employee by JAMV, INC., in the State of California who worked
11 one or more pay periods since four (4) years prior to the filing of
12 this action to the present plus any additional time during which the
13 statutes of limitation for the causes of action herein were tolled
pursuant to Emergency Rule 9 of the California Rules of Court, the
‘Emergency Rules Related to COVID-19’. (“Proposed Class”)

14 2. Any limitations period referenced in this complaint is extended pursuant to
15 Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the
16 California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of
17 limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020
18 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action
19 that exceed 180 days are tolled from April 6, 2020 until October 1, 2020.”] Any reference to the
20 relevant time period or statute of limitations referenced in this complaint is extended into the past
21 by the number of days in which this tolling was in effect.

22 3. From at least four (4) years prior to the filing of this action and continuing to the
23 present, Defendant failed to apprise Plaintiff and the Proposed Class of their rights associated with
24 rest periods and failed to provide compliant rest periods. Defendant maintained a consistent policy
25 of failing to provide Plaintiff and the Proposed Class with rest breaks of not less than ten (10)
26 minutes per four (4) hour work period or major fraction thereof. Plaintiff and the Proposed Class
27 are required to work four hour increments (or major fractions thereof) without being provided with
28 a ten (10) minute rest period. Further, Plaintiff and the Proposed Class were not compensated with

one (1) hour of wages at the regular rate of compensation for each missed rest period in violation of *Ferra* and as required by Labor Code § 226.7. Very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Defendant has had a consistent policy of paying rest period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7.

4. From at least four (4) years prior to the filing of this action and continuing to the present, Plaintiff and the Proposed Class members were required to incur substantial expenses in direct consequent of the discharge of their duties for Defendant without reimbursement. Specifically, Defendant has failed to reimburse Plaintiff and the Proposed Class the cost of using their personal cell phones for business related purposes. Defendant required that Plaintiff and the Proposed Class members be available by cell phone and answer/use their cell phones while working. This was necessary to perform their job duties. These cell phones were not provided by Defendant and Defendant failed to reimburse Plaintiff and the Proposed Class members for the costs associated with using their personal cell phones.

5. For at least three (3) years prior to the filing of this action continuing to the present, Defendant has failed to pay all wages due at the time of termination or resignation to Plaintiff and the Proposed Class.

6. Plaintiff, on behalf of herself and all Proposed Class members brings this action pursuant to Labor Code §§ 201, 202, 203, 226.7, and 2802; Wage Order 5-2001; and California Code of Regulations, Title 8, Section 11040, seeking rest period penalties, unreimbursed expenses, all wages due upon termination, other penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

7. Plaintiff, on behalf of herself and all Proposed Class members, pursuant to Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

8. For at least one (1) year prior to the date of the letter sent to the Labor Workforce and Development Agency (“LWDA”) and Defendant giving notice of the claims pursuant to PAGA and continuing to the present, and as extended by Emergency Rule 9 referenced in paragraph 2 above, Defendant has violated Labor Code provisions, as detailed below, giving rise to a claim pursuant to PAGA. Plaintiff, on behalf of herself and all aggrieved employees presently or formerly employed by Defendant during the liability period as defined in her PAGA notice letter, brings this representative action pursuant to Labor Code §2699, et seq. seeking penalties for Defendant’s failure to provide lawful rest periods, failure to reimburse business-related expenses, and failure to pay all wages due at the time of termination. A true and correct copy of Plaintiff’s notice letter is attached hereto as Exhibit “1”.

II.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over all causes of action asserted herein pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the State of California or is subject to adjudication in the courts of the State of California.

10. This Court has personal jurisdiction over Defendant because Defendant has caused injuries in the County of Alameda and the State of California through their acts, and by their violation of the California Labor Code, California state common law, and California Business & Professions Code § 17200, *et seq.*

11. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure § 395. Defendant operates within California and does business within Alameda County. The unlawful acts alleged herein have a direct effect on Plaintiff and all Proposed Class members within the State of California and the county of Alameda.

12. This case should be classified as complex according to Rule 3.400 of the California Rules of Court, and assigned to a complex litigation judge and department, as it will involve substantial documentary evidence, a large number of witnesses, and is likely to involve extensive

1 motion practice raising difficult or novel issues that will be time-consuming to resolve and would
2 require substantial post judgment judicial supervision.

3 13. Plaintiff files this amended complaint adding a claim for penalties under Labor
4 Code §2699, *et seq.* as a matter of right. (*see* Labor Code § 2699.3(a)(2)(C)).

5 **III.**

6 **PARTIES**

7 **A. PLAINTIFF**

8 14. Plaintiff MARIA ISABEL HEREDIA is a resident of California.

9 15. Plaintiff and all Proposed Class members, were regularly required to:

10 a. Work without being provided compliant rest periods; and

11 b. Work without being reimbursed for necessary business-related expenses.

12 16. Defendant willfully failed to compensate Plaintiff and all Proposed Class members
13 for wages at the termination of their employment with Defendant.

14 17. As a result of this conduct, Defendant has engaged in unfair competition and
15 unlawful business practices.

16 18. Plaintiff and all aggrieved employees as defined in her notice letter to the LWDA
17 are “aggrieved employees” within the meaning of Labor Code § 2699, *et seq.* (*see* Labor Code
18 §2699(c).)

19 **B. DEFENDANTS**

20 19. Defendant JAMV, INC. is believed to be a California corporation operating within
21 the State of California. Defendant’s corporate address is believed to be 3475 Investment Blvd.
22 Suite # 6 Hayward, CA 94545. Upon information and belief, Defendant employed Plaintiff and
23 similarly situated persons as hourly employees within California. Defendant has done and does
24 business throughout the State of California.

25 20. The true names and capacities, whether individual, corporate, associate, or
26 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
27 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
28 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants

1 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
2 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
3 capacities of the Defendants designated hereinafter as DOES when such identities become known.

4 21. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
5 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
6 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
7 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
8 employer and/or joint employer of Plaintiff and the Proposed Class members.

9 22. Furthermore, Defendants acted in all respects as the employers or joint employers
10 of the Proposed Class. Defendants, and each of them, exercised control over the wages, hours or
11 working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work, or
12 engaged, thereby creating a common law employment relationship, with the Proposed Class.
13 Therefore, Defendants, and each of them, employed or jointly employed the Proposed Class.

14 IV.

15 FACTUAL BACKGROUND

16 23. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been
17 classified as non-exempt employees by Defendant. Defendant hires employees who work as
18 hourly employees and are paid on an hourly basis.

19 24. Upon information and belief, Plaintiff and the Proposed Class are covered by
20 California Industrial Welfare Commission Occupational Wage Order No. 5-2001 (Title 8 Cal.
21 Code of Regs. § 11040).

22 25. Defendant failed to provide Plaintiff and the Proposed Class members with
23 compliant rest breaks of not less than ten (10) minutes per four (4) hour work period or major
24 fraction thereof. Defendant failed to maintain a policy informing Plaintiff and the Proposed Class
25 of this right. Plaintiff and the Proposed Class have been required to work four-hour increments
26 (or major fractions thereof) without being provided with compliant ten (10) minute rest periods.
27 Further, Plaintiff and the Proposed Class were not compensated with one (1) hour of wages at the
28 regular rate of compensation for each missed rest period as required.

26. Defendant failed to reimburse Plaintiff and the Proposed Class the cost of using their personal cell phones for business related purposes. Defendant required Plaintiff and the Proposed Class to be available by cell phone and answer/use their cell phones while working to perform their job duties. Despite being required, these cell phones were not provided by Defendant and Defendant failed to reimburse Plaintiff and the Proposed Class for the costs associated with using their personal cell phones.

27. Defendant willfully failed to pay wages and compensation, when Plaintiff and all Proposed Class members quit or were discharged. This failure was willful, without legal justification, and interfered with Plaintiff's and Class members' rights.

28. As a result of the acts alleged herein, Defendant violated Labor Code §2699, *et seq.*

V.

CLASS ACTION ALLEGATIONS

29. Plaintiff brings this action on behalf of herself and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent a proposed class composed of and defined as follows:

All persons who are employed or have been employed as an hourly employee by JAMV, INC., in the State of California who worked one or more pay periods since four (4) years prior to the filing of this action to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the ‘Emergency Rules Related to COVID-19’. (“Proposed Class”)

30. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to amend or modify the class description with greater specificity, by division into subclasses, or by limitation to particular issues.

31. This action has been brought and may properly be maintained as a class action under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and the Proposed Classes are easily ascertainable.

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1 **A. NUMEROSITY**

2 32. The potential members of the Proposed Class as defined are so numerous that
3 joinder of all the members of the Proposed Class is impracticable. While the precise number of
4 proposed Class Members has not been determined at this time, Plaintiff is informed and believes
5 that Defendant currently employ, and during the relevant time periods employed over 50 members
6 of the Proposed Class.

7 33. Plaintiff alleges that Defendant's employment records would provide information
8 as to the number and location of all Proposed Class members. Joinder of all members of the
9 Proposed Class is not practicable.

10 **B. COMMONALITY**

11 34. There are questions of law and fact common to the Proposed Class that predominate
12 over any questions affecting only individual Proposed Class members. These common questions
13 of law and fact include, without limitation:

14 a. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 5-
15 2001 or other applicable IWC Wage Orders by failing to provide required rest periods throughout
16 the term of employment and/or failing to compensate said employees one (1) hour of wages at
17 their regular rate of compensation in lieu of rest periods;

18 b. Whether Defendant violated Labor Code § 2802 by failing to reimburse
19 Plaintiff and the Proposed Class out of pocket expenses for the cost of personal cell phones;

20 c. Whether Defendant violated §§ 201-203 of the Labor Code by failing to pay
21 compensation due and owing at the time that any Proposed Class member's employment with
22 Defendant terminated;

23 d. Whether Defendant violated § 17200, *et seq.* of the Business & Professions
24 Code by engaging in the acts previously alleged; and

25 e. Whether Plaintiff and the members of the Proposed Class are entitled to
26 equitable relief pursuant to Business & Professions Code § 17200, *et seq.*

27 f. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in the
28 acts alleged herein.

1 **C. TYPICALITY**

2 35. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff and
3 all members of the Proposed Class sustained injuries and damages arising out of and caused by
4 Defendant's common course of conduct in violation of laws, regulations that have the force and
5 effect of law, and statutes as alleged herein.

6 **D. ADEQUACY OF REPRESENTATION**

7 36. Plaintiff will fairly and adequately represent and protect the interests of the
8 members of the Proposed Class.

9 37. Counsel who represent Plaintiff and the Proposed Class are competent and
10 experienced in litigating large employment class actions.

11 **E. SUPERIORITY OF CLASS ACTION**

12 38. A class action is superior to other available means for the fair and efficient
13 adjudication of this controversy. Individual joinder of all Proposed Class members is not
14 practicable, and questions of law and fact common to the Proposed Class predominate over any
15 questions affecting only individual members of the Proposed Class. Each member of the Proposed
16 Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or
17 practice of failing to provide rest periods, failing to reimburse business-related expenses, and
18 failing to pay all wages upon resignation or termination.

19 39. Class action treatment will allow those similarly situated persons to litigate their
20 claims in the manner that is most efficient and economical for the parties and the judicial system.
21 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
22 action that would preclude its maintenance as a class action.

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24 ///

1 **VI.**

2 **FIRST CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS**

4 **FAILURE TO PROVIDE REST PERIODS PURSUANT TO**

5 **LABOR CODE § 226.7**

6 40. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by
7 reference all previous paragraphs.

8 41. Labor Code § 226.7 and IWC Wage Order 4 require an employer to provide rest
9 periods or to pay an additional one (1) hour of wages for each rest period the employer fails to
10 provide. Employees are entitled to a ten (10) minute rest break for every four (4) hours worked or
11 major fraction thereof.

12 42. Defendant failed to maintain a policy informing Plaintiff and the Proposed Class of
13 this right.

14 43. Defendant maintained a consistent policy of failing to provide Plaintiff and the
15 Proposed Class with rest breaks of not less than ten (10) minutes per four (4) hour work period or
16 major fraction thereof. Plaintiff and the Proposed Class have been required to work four-hour
17 increments (or major fractions thereof) without being provided with compliant ten (10) minute rest
18 periods.

19 44. Plaintiff and the Proposed Class were not compensated with one (1) hour of wages
20 at the regular rate of compensation for each missed rest period as required by Labor Code § 226.7.
21 *Ferra v. Loews Hollywood Hotel, LLC* requires the rest period premium payments must include the
22 hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be
23 paid at an employee's base hourly rate.

24 45. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to
25 damages in an amount equal to one (1) hour of wages at the regular rate of compensation per
26 missed rest break, per day in a sum to be proven at trial.

27 ///

1 **VII.**

2 **SECOND CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS**

4 **FAILURE TO REIMBURSE EXPENSES PURSUANT TO**

5 **LABOR CODE § 2802**

6 46. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by
7 reference all previous paragraphs.

8 47. Labor Code § 2802 requires employers to indemnify employees for all necessary
9 expenditures incurred by employees in the discharge of their duties.

10 48. Plaintiff and the Proposed Class members were required to incur substantial
11 expenses in direct consequent of the discharge of their duties for Defendant without
12 reimbursement.

13 49. On a regular and consistent basis, Defendant has failed to reimburse Plaintiff and
14 the Proposed Class for the cost of using their personal cell phones for business related purposes.
15 Defendant required that Plaintiff and the Proposed Class be available by cell phone and answer/use
16 their cell phones while working as necessary to perform their job duties.

17 50. These cell phones were not provided by Defendant and Defendant failed to
18 reimburse Plaintiff and the Proposed Class for the costs associated with using their personal cell
19 phones.

20 51. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class have
21 been deprived of reimbursement in the amounts to be determined at trial, and are entitled to
22 recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

23 **VIII.**

24 **THIRD CAUSE OF ACTION**

25 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS**

26 **WAITING TIME PENALTIES UNDER LABOR CODE § 203**

27 52. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by
28 reference all previous paragraphs.

53. Numerous members of the Proposed Class including the Plaintiff are no longer employed by Defendant. They were either fired or quit Defendant's employ.

54. Defendant's failure to pay wages, as alleged above was willful in that Defendant knew wages to be due but failed to pay them, thus entitling Plaintiff and the Proposed Class to penalties under Labor Code § 203, which provides that an employee's wages shall continue as a penalty until paid for a period of up to thirty (30) days from the time they were due.

55. Defendant has failed to pay Plaintiff and others a sum certain at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiff and the Proposed Class are entitled to a penalty in the amount of Plaintiff's and the Proposed Class members' daily wage multiplied by thirty (30) days.

IX.

FOURTH CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS

UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200

56. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by reference all previous paragraphs.

57. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of herself, on behalf of the general public, and on behalf of the Proposed Class, bring this claim pursuant to Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

58. Plaintiff is a "person" within the meaning of Business & Professions Code § 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

59. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair business practices.

1 60. California's wage and hour laws express fundamental public policies. Providing
2 employees with proper wages and compensation are fundamental public policies of this State and
3 of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce
4 vigorously minimum labor standards, to ensure that employees are not required or permitted to
5 work under substandard and unlawful conditions, and to protect law-abiding employers and their
6 employees from competitors who lower their costs by failing to comply with minimum labor
7 standards.

8 61. Defendant has violated statutes and public policies as alleged herein. Through the
9 conduct alleged in this Complaint, Defendant has acted contrary to these public policies, have
10 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
11 business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving Plaintiff,
12 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
13 guaranteed to all employees under law.

14 62. Defendant's conduct, as alleged hereinabove, constitutes unfair competition in
15 violation of § 17200, *et seq.* of the Business & Professions Code.

16 63. Defendant, by engaging in the conduct herein alleged, either knew or in the exercise
17 of reasonable care, should have known that the conduct was unlawful. As such it is a violation of
18 § 17200, *et seq.* of the Business & Professions Code.

19 64. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and
20 others similarly situated have been damaged in a sum as may be proven.

21 65. Unless restrained, Defendant will continue to engage in the unlawful conduct as
22 alleged above. Pursuant to the Business & Professions Code, this court should make such orders
23 or judgments, including the appointment of a receiver, as may be necessary to prevent the use or
24 employment by Defendant, its agents, or employees, of any unlawful or deceptive practices
25 prohibited by the Business & Professions Code, and/or, including but not limited to, restitution
26 and disgorgement of profits which may be necessary to restore Plaintiff and members of the
27 Proposed Class the money Defendant has unlawfully failed to pay.

28 ///

1 X.

2 FIFTH CAUSE OF ACTION

3 PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.

4 66. Plaintiff, on behalf of herself and all aggrieved employees, realleges and
5 incorporates by reference all previous paragraphs.

6 67. As a result of the acts alleged above and specifically incorporated herein, Plaintiff
7 seeks penalties under Labor Code §2699, *et seq.* use of Defendant's violation of Labor Code §§
8 201, 202, 203, 226.7, 2802; Wage Order 4-2001; and California Code of Regulations, Title 8,
9 Section 11040, which call for civil penalties.

10 68. For each such penalty, Plaintiff and the aggrieved employees are entitled to
11 penalties in an amount to be shown at trial, subject to the following formula:

12 a. \$100 for the initial violation per employee per pay period.

13 b. \$200 for each subsequent violation per employee per pay period.

14 69. These penalties shall be allocated seventy-five percent (75%) to the LWDA and
15 twenty-five percent (25%) to the affected employees.

16 70. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the
17 LWDA¹ and mailed a letter by certified mail to Defendant's entity address, which is 3475
18 Investment Blvd. Suite #6 Hayward, CA 94545, as proscribed by the Code on October 25, 2021,
19 describing Defendant's conduct in violation of Labor Code §§ 201, 202, 203, 226.7, and 2802.
20 (*see* Exhibit "1".) Plaintiff also mailed her notice letter by certified mail to Deepak Bhatnagar, the
21 listed Agent for Service of Process for Defendant on the California Secretary of State website² on
22 October 25, 2021. (*see also* Exhibit "1".) Plaintiff obtained an e-filing confirmation from the
23 LWDA confirming receipt of the notice and a signed green return receipt from Defendant
24 indicating that it also received Plaintiff's notice letter, true and correct copies of which are attached
25 hereto as Exhibit "2" and Exhibit "3", respectively.

26
27 ¹ Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California
28 Labor and Workforce Development Agency / Department of Industrial Relations website
(<https://dir.tfaforms.net/308>).

² <https://businesssearch.sos.ca.gov/>

71. As no letter evidencing the LWDA's intention to investigate was received by Plaintiff's Counsel within sixty-five (65) calendar days, Plaintiff is entitled to commence a civil action as though the LWDA had not chosen to investigate pursuant to Labor Code §2699.3(a)(2)(A).

72. Plaintiff will also provide the LWDA with a filed-stamped copy of the First Amended Class and Representative Action Complaint immediately.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages in the amount of Plaintiff's and each Proposed Class members' hourly wage at the appropriate regular rate of compensation for each rest period that Defendant failed to provide from at least four (4) years prior to the filing of this action to the present as may be proven;

2. For compensatory damages in the amount of Plaintiff's and each Proposed Class Members' unreimbursed out of pocket expenses as a requirement of employment;

3. For penalties pursuant to Labor Code § 203 for all employees who were terminated or resigned equal to their daily wage times thirty (30) days;

4. An award of prejudgment and post judgment interest;

5. An order enjoining Defendant and its agents, servants, and employees, and all persons acting under, in concert with, or for it from providing Plaintiff with proper rest periods, reimbursement of expenses, and wages upon termination/resignation pursuant to Labor Code §§ 201, 202, 203, 226.7, 2802, and IWC 5-2001;

6. For restitution for unfair competition pursuant to Business & Professions Code § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

7. For penalties under Labor Code §2699, *et seq.* for Defendant's violation of Labor Code §§ 201, 202, 203, 226.7, 2802, and Wage Order 4-2001;

8. An award providing for payment of costs of suit;

9. An award of attorneys' fees; and

10. Such other and further relief as this Court may deem proper and just.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.

DATED: January 3, 2022

KINGSLEY & KINGSLEY, APC

By: _____

Liane Katzenstein Ly

Attorneys for Plaintiff and the Proposed Class

EXHIBIT "1"

KINGSLEY & KINGSLEY

| L A W Y E R S |

October 25, 2021

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
Via Electronic Submission: <https://dir.tfaforms.net/308>

JAMV, INC.
3475 Investment Blvd. Suite # 6
Hayward, CA 94545
Via USPS Certified Mail # 7020 0640 0002 1439 8257

JAMV, INC.
c/o Agent for Service of Process
Deepak Bhatnagar
30516 Meridien Circle
Union City, CA 94587
Via USPS Certified Mail # 7020 0640 0002 1439 8240

Re: MARIA ISABEL HEREDIA v. JAMV, INC.
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents MARIA ISABEL HEREDIA (“Plaintiff”) and a proposed group of current and former employees working for JAMV, INC. (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of herself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed as an hourly employee by JAMV, INC., in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the ‘Emergency Rules Related to COVID-19’. (“aggrieved employees”).

Any limitations period referenced in this letter is extended pursuant to Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020 [“Notwithstanding any other

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

October 25, 2021

Page 2 of 3

law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020.”] Any reference to the relevant time period or statute of limitations referenced in this letter is extended into the past by the number of days in which this tolling was in effect.

Pursuant to Labor Code § 226.7 and Wage Order 4-2001, Defendant failed to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period or major fraction thereof. Defendant failed to maintain a policy informing Plaintiff and the aggrieved employees of this right. Plaintiff and all aggrieved employees have been required to work four-hour increments (or major fractions thereof) without being provided with a ten (10) minute rest period. As such, Defendant failed to provide Plaintiff and the Proposed Class with compliant rest periods.

Further, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages at the regular rate of compensation for each missed rest period in violation of *Ferra*. Very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee’s base hourly rate. Here, Defendant has had a consistent policy of paying rest period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7.

Labor Code § 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties. Defendant has failed to reimburse Plaintiff and aggrieved employees the cost of using their personal cell phones for business related purposes. Defendant required that Plaintiff and the aggrieved employees be available by cell phone and answer/use their cell phones while working and this was necessary to perform their job duties. These cell phones were not provided by Defendant and Defendant failed to reimburse Plaintiff and the aggrieved employees for the costs associated with using these personal cell phones.

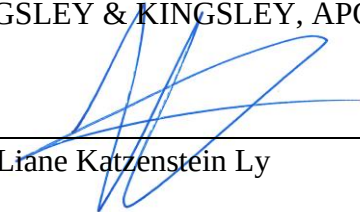
Labor Code § 203 provides that if “an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.” Here, Plaintiff and all aggrieved employees were not paid all wages due upon their separation from Defendant’s employ. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

LABOR & WORKFORCE DEVELOPMENT AGENCY
California Labor Code §2699 Penalties
October 25, 2021
Page 3 of 3

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226.7, and 2802 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 
Liane Katzenstein Ly

LKL/km

EXHIBIT "2"



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) - Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Liane

Your Last Name *

Ly

Firm Name (if any) *

Kingsley & Kingsley, APC

(Enter "in pro per" if you are representing yourself)

Your Email Address *

Service@kingsleykingsley

Your Street Name, Number and Suite/Apt *

16133 Ventura Blvd., Suite

Your Mobile Phone Number

8189908300

Your City *

Encino

Your Work Phone Number

Your State *

California

Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Maria Isabel Heredia

Plaintiff/Aggrieved Employee Occupation *

Food Service

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Please select...

Employer Name *

JAMV, Inc.

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

3475 Investment Blvd. Suite #6

Employer City *

Hayward

Employer State *

California

Employer Zip/Postal Code *

94545

Employer Industry *

Restaurant

Add additional defendants

☒ Add any entity other than an individual

Add an individual/sole proprietor employer

Additional Employer Information (Corporation/General Partnership)

Employer Entity Type

Please select...

Employer Name *

JAMV, Inc.

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

30516 Meridien Circle

Employer City *

Union City

Employer State *

California

Employer Zip/Postal Code *

94587

Employer Industry *

Restaurant

[Add Additional Employers](#)

Notice General Information

Estimated Number of Employees Impacted by Violations *

50

Notice Violations - Check All that Apply *

Child Labor - Specify Ages

Child Labor

Misclassification Employee Classified as Contractor

Misclassification NonExempt Classified as Exempt

Minimum Wage

Overtime

Not paid for all hours worked

☒ **Not paid wages due on termination**

Other Unpaid Wages

Tips or Gratuities

☒ **Payment or Reimbursement of Employee Expenses**

Improper Form of Payment Including NSF Checks

Kickbacks

☒ **Meal and Rest Breaks**

Sick Leave

Lactation Accommodation (Labor Code 1030-1033)

Not providing required time off, other

Pay Discrimination on basis of sex, (Labor Code 1197.5)

No Wage Statements

Improper or Incomplete Wage Statements

Other Notice or Posting or Recordkeeping

Public Works (Labor Code 1720 - 1815)

Apprenticeship (Labor Code 3070 - 3098)

Occupational Safety and Health (Labor Code 6300 et seq)

No Workers' Compensation

Licensing, Registration, or Permit

Unfair Immigration Activities

Agricultural Labor Relations

Industrial Homework

Retaliation for Protected Status or Activity (Specify)

Other

PAGA Claim Type - Check All that Apply *

☒ **Notice asserts one or more Labor Code violations listed in Labor Code 2699.5- not curable subject to 2699.3(a)**

Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)

Includes one or more violations not listed in Labor Code 2699.5 - curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice.

IFP

I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

Billing information

Billing First Name *

Eric

Billing Last Name *

Kingsley

Billing Email *

Service@kingsleykingsley

Billing Phone

8189908300

Billing Street Name, Number and Suite/Apt *

16133 Ventura Blvd., Suite 1200

Billing City *

Encino

Billing State *

California

Billing Zip/Postal Code *

91436

Credit Card Type *

[REDACTED]

Credit Card Number *

[REDACTED]

CVV Number *

[REDACTED]

Credit Card Expiration Month *

[REDACTED]

mm

Credit Card Expiration Year *

[REDACTED]

yyyy

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

Choose File



LWDA Letter- JAMV, Inc.....

Other Attachment - (if any) (must be a .pdf)

Choose File

no file selected

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

✓ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

Previous Page

Submit

Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

[Click Here](#) to Search Case

From: LWDA DO NOT REPLY lwdadonotreply@dir.ca.gov
Subject: Thank you for submission of your PAGA Case.
Date: Oct 25, 2021 at 12:15:44 PM
To: Service Email service@kingsleykingsley.com

External Email!

10/25/2021

LWDA Case No. LWDA-CM-849751-21
Law Firm : Kingsley & Kingsley, APC
Plaintiff Name : Maria Isabel Heredia
Employer: JAMV, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency.
Please make a note of the LWDA Case No. above as you may need this number
for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please
send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate_Attorneys_General_Act.htm&data=04%7C01%7CKimberly%40kingsleykingsley.com%7Ccb79570463064d95084c08d997ebd650%7C121a7875dbeb4c0fb25c5baf6c6ac7a5%7C0%7C0%7C637707861446284522%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6lk1haWwiLCJXVCi6Mn0%3D%7C1000&sd

a=0pEqS7KSQWp6iZViBPncCeVF8vAHwRVfjhXs5W32X%2Bs%3D&reserve
d=0

From: LWDA DO NOT REPLY lwdadonotreply@dir.ca.gov
Subject: State of California - Department of Industrial Relations Customer
Receipt / Purchase Confirmation
Date: Oct 25, 2021 at 12:16:10 PM
To: Service Email service@kingsleykingsley.com

External Email!

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-849751-21

Order Number: ORD-000140047

Total:\$75.00

Card Type: 

Date: 10/25/2021

Billing Information

Name: Eric Kingsley

Email: service@kingsleykingsley.com

Billing Address:

16133 Ventura Blvd., Suite 1200

Encino, California

91436

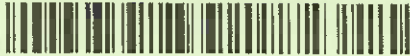
EXHIBIT "3"

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

JAMV, INC.
c/o Agent for Service of Process
Deepak Bhattacharya
30516 Meridien Circle
Union City, CA 94587



9590 9402 6094 0125 0613 67

2. Article Number (Transfer from service label)

7020 0640 0002 1439 8240

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

David B

☐ Agent☒ Addressee

B. Received by (Printed Name)

D BHATTACHARYA

C. Date of Delivery

10/29/21

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☒ No

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☒ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Insured Mail | |
| ☐ Insured Mail Restricted Delivery (over \$500) | |

Domestic Return Receipt

USPS TRACKING#

OAKLAND CA 945
29 OCT 2021 PM 5 L

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

9590 9402 6094 0125 0613 67

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

*KINGSLEY & KINGSLEY
16133 VENTURA BL., #1200
ENCINO, CA 91436*

PAGA letter
JAMV, Inc.

