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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN JOAQUIN

JOSE ENRIQUE MARTINEZ CAZARES, an
individual, and
ENRIQUE MARTINEZ FUENTES, an
individual, on behalf of themselves and all
Aggrieved Employees,

Plaintiffs,

v.

S K S ENTERPRISE, INC. a California
corporation; WEN CHANG SU, an individual;
ADOLFO GOMEZ, an individual, doing
business as ADOLFO GOMEZ FARM
LABOR CONTRACTOR; and
DOES 1-50, inclusive,

Defendants.

Case N

STK-CV-

2022-306

COMPLAINT FOR DAMAGES

1. Failure to Pay Regular and Minimum Wages (Labor Code §§ 1194, 1197, 1771, 221; IWC Wage Order 14);
2. Failure to Pay Overtime Wages (Labor Code §§ 510, 1194, 221; IWC Wage Order 14);
3. Failure to Provide Meal Periods (Labor Code §§ 226.7, 512; IWC Wage Order 14);
4. Failure to Authorize and Permit Rest Periods (Labor Code § 226.7; IWC Wage Order 14);
5. Failure to Provide Itemized Accurate Wage Statements (Labor Code § 226; IWC Wage Order 14);
6. Failure to Provide Employment Records (Labor Code §§ 226(e) and 1198.5);
7. Continuing Wages Penalty (Labor Code §§ 201, 202, 203, 203);
8. Unfair Competition (Bus. and Prof. Code § 17200, *et seq.*)
9. Civil Penalties Pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code § 2698 *et seq.*);
10. Retaliation (Labor Code § 1102.5);
11. Wrongful termination in Violation of Public Policy; and
12. Intentional Infliction of Emotional Distress.

DEMAND FOR JURY TRIAL

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7. Continuing Wages Penalty (Labor Code §§ 201, 202, 203, 203);
8. Unfair Competition (Bus. and Prof. Code § 17200, *et seq.*)
9. Civil Penalties Pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code §2698 *et seq.*);
10. Retaliation (Labor Code § 1102.5);
11. Wrongful termination in Violation of Public Policy; and
12. Intentional Infliction of Emotional Distress.

DEMAND FOR JURY TRIAL

1 Plaintiffs JOSE ENRIQUE MARTINEZ CAZARES and ENRIQUE MARTINEZ
2 FUENTES allege as follows:

3 **NATURE OF ACTION**

4 1. Plaintiffs JOSE ENRIQUE MARTINEZ CAZARES (“CAZARES”) and
5 ENRIQUE MARTINEZ FUENTES (“FUENTES”) (together “Plaintiffs”), on behalf of
6 themselves and all other “Aggrieved Employees” (as defined herein), bring this action against
7 Defendants S K S ENTERPRISE, INC. a California corporation (“SKS”); WEN CHANG SU,
8 an individual (“SU”); ADOLFO GOMEZ, an individual, doing business as ADOLFO GOMEZ
9 FARM LABOR CONTRACTOR (“GOMEZ”); and DOES 1-20, inclusive, (collectively
10 referred to hereafter as “Defendants”), seeking damages and penalties for failure to pay regular
11 and minimum wages, failure to pay overtime compensation, failure to provide meal breaks,
12 failure to authorize and permit rest periods, failure to provide accurate wage statements, failure
13 to produce employment records, failure to pay all wages due upon termination, injunctive relief
14 and restitution pursuant to California Business and Professions Code §17200, *et seq.*, civil
15 penalties pursuant to the Private Attorneys General Act 2004, California Labor Code § 2698, *et*
16 *seq.* (“PAGA”), retaliation for reporting and resisting illegal conduct, wrongful termination in
17 violation of public policy; and intentional infliction of emotional distress.

18 **PRELIMINARY ALLEGATIONS**

19 2. At all times herein mentioned CAZARES and FUENTES have resided in the
20 County of San Joaquin, within the State of California.

21 3. Defendant SKS’ registered address is located in San Joaquin County, California.
22 At all times relevant to this complaint, SKS operated an egg and poultry processing and
23 packaging facility in San Joaquin County, California.

24 4. Plaintiffs are informed, believe, and thereon allege, that at all times herein
25 mentioned, Defendant SU was an individual who resides in and conducts business in the
26 County of San Joaquin, California.

1 5. Plaintiffs are informed, believe, and thereon allege, that at all times herein
2 mentioned, Defendant GOMEZ was an individual who resides and conducts business in the
3 County of San Joaquin, California.

4 6. The true names and capacities of the Defendants sued herein as DOES 1 through
5 50 are unknown to the Plaintiffs, and therefore Plaintiffs sue these Defendants by such
6 fictitious names. Plaintiffs will amend this Complaint to allege their true names and capacities
7 when ascertained. Plaintiffs are informed and believe and, on that basis, alleges that each of the
8 fictitiously named Defendants are responsible for the occurrences and injuries to Plaintiffs as
9 herein alleged. Each reference in this Complaint to “Defendant,” “Defendants,” or a
10 specifically named Defendant refers to, and includes all Defendants sued under fictitious
11 names.

12 7. Plaintiffs are informed and believe, and thereon allege, that, at all times herein
13 mentioned, each of the Defendants sued herein were the agents and employees of each of the
14 remaining Defendants and were at all times acting within the purpose and scope of such
15 agency and employment.

16 8. Plaintiffs are informed and believe, and thereon allege, that SU is the owner
17 and/or director and/or officer of SKS and acted on behalf of SKS at all times relevant to this
18 complaint. Accordingly, SU is individually liable for damages alleged in this action pursuant to
19 Labor Code § 558.1 during all time periods said statute was legally operative.

20 9. Between approximately January 6, 2021, until January 25, 2022, Plaintiffs were
21 employed and worked for Defendants as hourly paid employees in Defendants’ egg and poultry
22 processing and packaging facility.

23 10. During the period of Plaintiff’s employment, Defendants conducted their
24 businesses in association with each another and shared control over the wages, hours and
25 working conditions of Plaintiffs and the other “Aggrieved Employees.”

26 11. Defendants failed to pay Plaintiffs all regular and overtime wages owed to them;
27 failed to provide Plaintiffs with their legally mandated meal periods and rest periods; failed to
28 provide itemized accurate wage statements; failed to produce Plaintiffs’ employment records

1 upon request; failed to pay all wages within the specific pay period required; and failed to pay
2 all wages owed to Plaintiffs upon termination of their employment.

3 12. When Plaintiffs complained to Defendants about Defendants' violations of
4 California's wage and hour laws including but not limited to Defendants' failure to pay
5 overtime, Defendants retaliated against Plaintiffs for reporting and resisting Defendants' illegal
6 conduct, and wrongfully terminated Plaintiffs in violation of public policy with the intent to
7 inflict emotional distress upon Plaintiffs.

8 13. At all times relevant to this action, Defendants were the joint employers of
9 Plaintiffs and are accordingly jointly and severally liable for all wages, restitution, penalties
10 and attorney's fees and costs owed to Plaintiffs.

11 14. On or about February 9, 2022, pursuant to Labor Code § 2699.3, Plaintiffs filed
12 notice with California's Labor and Workforce Development Agency ("LWDA") and posted by
13 certified U.S. mail to Defendants notice of the specific provisions of the Labor Code alleged to
14 have been violated, including the facts and theories to support the violations.

15 15. The LWDA has failed to notify Plaintiffs of its intent to investigate these
16 penalty claims within sixty-five (65) days.

17 16. Thus, Plaintiffs have exhausted administrative remedies under PAGA's Labor
18 Code § 2699.3(a)(2)(A) and may pursue PAGA civil penalties in a representative capacity as a
19 matter of right.

20 **JURISDICTION AND VENUE**

21 17. Pursuant to Article VI, §10 of the California Constitution, subject matter
22 jurisdiction is proper in the Superior Court of California, County of San Joaquin, State of
23 California.

24 18. Pursuant to §§395 and 395.5 of the California Code of Civil Procedure, venue is
25 proper in the Superior Court of California for the County of San Joaquin, State of California,
26 because this is where Plaintiffs were employed, where Plaintiffs reside, it is where the
27 wrongful misconduct alleged occurred, and it is where Defendants do business.

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY REGULAR AND MINIMUM WAGES**

3 **[Cal. Labor Code §§ 1194, 1197, 558.1, and IWC Wage Order 14]**

4 **(Against All Defendants)**

5 19. Plaintiffs re-allege and incorporate into this cause of action each of the
6 preceding paragraphs.

7 20. During Plaintiffs' employment with Defendants, Plaintiffs were required,
8 suffered and permitted to work regular and overtime hours by Defendants.

9 21. Defendants failed to accurately record the actual hours worked by Plaintiffs on
10 each date they performed work for Defendants.

11 22. When Plaintiffs attempted to record their actual hours worked, Defendants
12 manually modified Plaintiffs' timecards to reflect fewer hours than Plaintiffs had actually
13 worked.

14 23. Defendants failed to compensate Plaintiffs at the applicable minimum wage rate
15 for all hours Plaintiffs worked.

16 24. Defendants failed to compensate Plaintiffs at their regular rate of pay for all
17 hours worked.

18 25. Based upon the days and hours Plaintiffs worked during said time period,
19 Defendants, and each of them, are liable to Plaintiffs for unpaid minimum and regular wages.

20 26. In addition, pursuant to Labor Code § 1194.2, Plaintiffs are entitled to recover
21 liquidated damages in an amount equal to the minimum wages unlawfully unpaid.

22 27. In addition, Defendants are liable to Plaintiffs for reasonable attorney's fees,
23 which are hereby demanded, in an amount to be proved according to law.

24 28. In addition, Defendants are liable to Plaintiffs for costs of suit.

25 29. SU, while acting as owner, officer, director and/or managing agent of SKS
26 caused said corporation to violate provisions of California Industrial Welfare Commission
27 Wage Order 14 as well as California Labor Code § 1194 with respect to Plaintiffs. Therefore,
28 pursuant to Labor Code § 558.1, SU is jointly and severally liable along with SKS and

1 GOMEZ for unpaid regular and minimum wages, liquidated damages, attorney's fees,
2 prejudgment interest and costs, pursuant to California Labor Code § 1194.

3 **SECOND CAUSE OF ACTION**

4 **FAILURE TO PAY OVERTIME WAGES**

5 **[Cal. Labor Code §§ 510; 1194; 1771; 558.1, and IWC Wage Order 14]**

6 **(Against All Defendants)**

7 30. Plaintiffs re-allege and incorporate into this cause of action each of the
8 preceding paragraphs.

9 31. During Plaintiffs employment with Defendants, Plaintiffs were required,
10 suffered and permitted to work overtime hours by Defendants.

11 32. Based upon the days and hours Plaintiffs worked during said time period,
12 pursuant to California Labor Code § 1194, Defendants, and each of them, did not pay Plaintiffs
13 all overtime wages owed and are liable to Plaintiffs for unpaid overtime compensation.

14 33. Pursuant to Labor Code § 204, Plaintiffs were entitled to receive all wages
15 owing, on designated days, no less frequently than twice a month. Because Defendants failed
16 timely to pay Plaintiffs all compensation legally owing, including overtime compensation,
17 Defendants are liable for prejudgment interest in an amount to be proven at trial.

18 34. In addition, Defendants are liable to Plaintiffs for reasonable attorney's fees,
19 which are hereby demanded, in an amount to be proven according to law.

20 35. In addition, Defendants are liable to Plaintiffs for costs of suit.

21 36. SU, while acting as owner, officer, director and/or managing agent of SKS,
22 caused said corporation to violate provisions of California Industrial Welfare Commission
23 Wage Order 14 as well as California Labor Code § 1194 with respect to Plaintiffs. Therefore,
24 pursuant to Labor Code § 558.1, SU, is jointly and severally liable along with SKS and
25 GOMEZ for unpaid overtime wages, attorney's fees, prejudgment interest and costs, pursuant
26 to California Labor Code § 1194.

(Against All Defendants)

44. SU, while acting as owner, officer, director and/or managing agent of SKS caused said corporation to violate provisions of California Industrial Welfare Commission Wage Order 14 as well as California Labor Code §§ 512 and 226.7 with respect to Plaintiffs. Therefore, pursuant to Labor Code § 558.1, SU is jointly and severally liable along with SKS

1 and GOMEZ for meal period premium pay, damages, prejudgment interest and costs, pursuant
2 to California Labor Code §§ 512 and 226.7.

3 **FOURTH CAUSE OF ACTION**

4 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

5 **[Cal. Labor Code §§ 226.7, 558.1, and IWC Wage Order No. 14]**

6 **(Against All Defendants)**

7 45. Plaintiffs re-allege and incorporate into this cause of action each of the
8 preceding paragraphs.

9 46. Pursuant to Labor Code § 226.7, and California Industrial Welfare Commission
10 Wage Order 14, Plaintiffs were, each workday, entitled to one off-duty rest period (no less than
11 10 minutes in duration) for every 4 hours worked, or major fraction thereof. Defendants, and
12 each of them, contrary to law, did not authorize and permit Plaintiffs to take the off-duty rest
13 periods to which they were entitled and also did not pay Plaintiffs one extra hour of pay for
14 each day they did not receive all legally required rest periods.

15 47. As a result, Defendants, and each of them, are liable for unpaid compensation
16 pursuant to Labor Code § 226.7(b).

17 48. Because Defendants failed timely to pay Plaintiffs all compensation legally
18 owing, including compensation for rest periods not received, Defendants are liable for
19 prejudgment interest in an amount to be proven at trial.

20 49. SU, while acting as owner, officer, director and/or managing agent of SKS
21 caused said corporation to violate provisions of California Industrial Welfare Commission
22 Wage Order 14 as well as California Labor Code §§ 512 and 226.7 with respect to Plaintiffs.
23 Therefore, pursuant to Labor Code § 558.1, SU is jointly and severally liable along with SKS
24 and GOMEZ for rest period premium pay, damages, prejudgment interest and costs, pursuant
25 to California Labor Code §§ 512 and 226.7.

26 **FIFTH CAUSE OF ACTION**

27 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

28 **[Cal. Labor Code §§ 226, 558.1, and IWC Wage Order 14]**

(Against All Defendants)

50. Plaintiffs re-allege and incorporate into this cause of action each of the preceding paragraphs.

51. Defendants were obligated by California Labor Code § 226, and California Industrial Welfare Commission Wage Order 14, to keep accurate records of Plaintiffs' days and hours worked and to provide Plaintiffs, each time they were paid, an accurate statement of (among other things) the total hours they worked in the applicable pay period and total gross wages paid. Each and every pay period, Defendants knowingly and intentionally failed to provide Plaintiffs with accurate wage statements. As a result, Plaintiffs were denied the accurate wage statements to which they was legally entitled and Plaintiffs cannot promptly and easily determine the exact hours they worked during each pay period. In addition, Plaintiffs will incur costs attempting to obtain information which Defendants should have provided in accurate pay statements.

52. Further, Defendants failed to provide wage statements with the information required by Labor Code § 226(a)(8), which provides: "An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing ... the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer..."

53. Plaintiffs are informed and believe that GOMEZ is a farm labor contractor within the meaning of that statute. Nevertheless, the wage statements provided to Plaintiffs did not include the name or address of the legal entity that secured their services.

54. Accordingly, Plaintiffs are entitled to the penalty specified in Labor Code §226(e) in the amount of \$4,000.00.

55. In addition, Defendants are liable to Plaintiffs for reasonable attorney's fees, costs, and interest, which are hereby demanded, in an amount to be proven according to law.

56. SU, while acting as owner, officer, director and/or managing agent of SKS, caused said corporation to violate provisions of California Industrial Welfare Commission Wage Order 14 as well as California Labor Code § 226 with respect to Plaintiffs. Therefore, pursuant to Labor Code § 558.1, SU is jointly and severally liable along with SKS and GOMEZ for penalties, attorney's fees, prejudgment interest and costs, pursuant to California Labor Code § 226.

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE EMPLOYMENT RECORDS

[Cal. Labor Code §§ 226(f) and 1198.5(k)]

(Against All Defendants)

57. Plaintiffs re-allege and incorporate into this cause of action each of the preceding paragraphs.

58. On February 9, 2022, Plaintiffs' legal counsel made a written request to Defendants for employment records pursuant to Labor Code §§226(b) and 1198.5. Defendants failed to provide the requested records within the statutorily required time periods and, to date, have not provided any responsive records. Pursuant to Labor Code §226(f), Plaintiffs are each entitled to receive a penalty in the sum of \$750.00 due to Defendants' failure to timely respond to Plaintiffs' respective requests for employment records within 21 days of such request pursuant to Labor Code §226(c). Pursuant to Labor Code §1198.5(k), Plaintiffs are also each entitled to receive a second penalty in the sum of \$750.00 for failure to timely respond to these respective requests within 30 days.

59. Plaintiffs are entitled to reasonable attorney's fees, which are hereby demanded, in an amount to be proved according to law.

60. In addition, Plaintiffs are entitled to costs of suit.

1 **SEVENTH CAUSE OF ACTION**
2 **CONTINUING WAGES PENALTY**

3 **[Cal. Labor Code §§ 201, 202, 203, and 558.1]**

4 **(Against All Defendants)**

5 61. Plaintiffs re-allege and incorporate into this cause of action each of the
6 preceding paragraphs.

7 62. Pursuant to Labor Code § 201 and § 202, upon termination of their employment,
8 Plaintiffs were entitled to receive timely payment of all earned wages, including regular wages,
9 overtime compensation and compensation for meal and rest periods not received. Because
10 Defendants failed to pay such wages, Plaintiffs are entitled to continuing wages set forth in
11 California Labor Code § 203.

12 63. SU, while acting as owner, officer, director and/or managing agent of SKS
13 caused said corporation to violate provisions of California Industrial Welfare Commission
14 Wage Order 14 as well as California Labor Code §203 with respect to Plaintiffs. Therefore,
15 pursuant to Labor Code § 558.1, SU is jointly and severally liable along with SKS and
16 GOMEZ for the continuing wages penalties, attorney's fees, prejudgment interest and costs,
17 pursuant to California Labor Code § 203.

18 **EIGHTH CAUSE OF ACTION**

19 **UNFAIR COMPETITION**

20 **[Cal. Bus. & Prof. Code §§ 17200-17208]**

21 **(Against All Defendants)**

22 64. Plaintiffs re-allege and incorporate into this cause of action each of the
23 preceding paragraphs.

24 65. Defendants, and each of them, are "persons" as defined by Business and
25 Professions Code § 17201.

26 66. By this cause of action, Plaintiffs seek to enforce important rights affecting the
27 public interest. Plaintiffs sue for their own interests as the former employees of Defendants
28 and as a party harmed by Defendants' unfair business practices.

1 67. Plaintiffs suffered injuries-in-fact and have lost money as a result of
2 Defendants' unfair competition alleged herein.

3 68. Defendants have previously or continue to engage in unlawful, unfair, and/or
4 fraudulent business practices in violation of California Business and Professions Code
5 §17200, *et seq.*

6 69. Defendants, and each of them, have personally and intentionally participated
7 in, assisted, and/or conspired to commit these unlawful, unfair, and fraudulent business
8 practices.

9 70. Defendants, and each of them, have profited from these unlawful, unfair, and
10 fraudulent business practices at the expense of Plaintiffs, at the expense of law-abiding
11 businesses, at the expense of Defendants' current and former employees, and at the expense of
12 the public.

13 71. As a direct and proximate result of Defendants' unfair and unlawful business
14 practices as alleged herein, Plaintiffs have sustained injury and damages, including unpaid
15 wages and meal and rest period premium pay, in an amount to be established at trial.

16 72. Defendants, and each of them, should therefore be ordered to immediately
17 cease from engaging in the unlawful, unfair, and fraudulent conduct alleged herein and restore
18 as restitution to Plaintiffs those amounts accrued during the relevant claim period, and not
19 otherwise awarded in connection with the previous causes of action, as follows:

- 20 a) Unpaid minimum wage compensation required by California law, in an amount
21 to be proven at trial;
- 22 b) Unpaid overtime compensation required by California law, in an amount to be
23 proven at trial;
- 24 c) Unpaid compensation for meal periods not received in accordance with
25 California law, in an amount to be proven at trial; and
- 26 d) Unpaid compensation for rest periods not received in accordance with
27 California law, in an amount to be proven at trial.
- 28

1 73. Plaintiffs seek restitution of all wages due from all Defendants in an amount to
2 be proven at trial, an injunction prohibiting Defendants from engaging in the unlawful, unfair,
3 and fraudulent conduct alleged herein, and attorneys fees, costs and interest.

4 **NINTH CAUSE OF ACTION**

5 **CIVIL PENALTIES UNDER THE**

6 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

7 **[Cal. Labor Code §§ 558, 558.1, and 2698, *et seq.*]**

8 **(On Behalf of Plaintiffs and All Other Aggrieved Employees, Against All Defendants)**

9 74. Plaintiffs re-allege and incorporate into this cause of action each of the
10 preceding paragraphs.

11 75. The Private Attorneys General Act 2004 (California Labor Code §§ 2698, et
12 seq.) (“PAGA”) expressly establishes that any provision of the California Labor Code which
13 provides for a civil penalty to be assessed and collected by the California Labor and Workforce
14 Development Agency (“LWDA”), or any of its departments, divisions, commissions, boards,
15 agencies or employees for a violation of the California Labor Code, may be recovered through
16 a civil action brought by an aggrieved employee on behalf of himself or herself, and other
17 current or former employees.

18 76. On February 9, 2022, pursuant to PAGA, Plaintiffs filed a notice with the
19 LWDA of the facts and theories supporting their claims. Plaintiffs’ PAGA notice defines the
20 “Aggrieved Employees” as all of Defendants’ hourly-paid employees in California, beginning
21 February 9, 2021, (one year prior to the filing of Plaintiffs’ PAGA notice). Plaintiffs hereby
22 assert this cause of action under PAGA on behalf of all such “Aggrieved Employees,” all of
23 which are current or former employees of Defendants, and all of which who suffered one or
24 more of the alleged violations by Defendants.

25 77. Pursuant to California Labor Code § 2699, Plaintiffs in a representative capacity
26 on behalf of all Aggrieved Employees, request and are entitled to recover from Defendants and
27 each of them, civil penalties according to proof, interest, attorneys’ fees and costs.

1 78. Pursuant to California Labor Code § 2699, subdivision (i), civil penalties
2 recovered by Aggrieved Employees shall be distributed as follows: seventy-five percent (75%)
3 to the LWDA for the enforcement of labor laws and education of employers and employees
4 about their rights and responsibilities and twenty-five percent (25%) to the Aggrieved
5 Employees.

6 79. As described in greater detail *supra*, at all times relevant to this action,
7 Defendants devised, formulated, implemented, and enforced, the following policies and
8 procedures in violation of California Law, including but not limited to the provisions of the
9 California Labor Code and Industrial Welfare Commission (“IWC”) Wage Order 14, which
10 give rise to PAGA civil penalties under Cal. Lab. Code § 2698, *et seq.*:

11 **Civil Penalties for Failure to Pay Minimum Wages**

12 80. Through their policies and practices, Defendants failed to pay Plaintiffs and
13 other Aggrieved Employees at least the applicable minimum wage for all hours, in violation of
14 Labor Code §§ 1194, 1197, 1191.1, and 1199.

15 **Civil Penalties for Failure to Pay Overtime**

16 81. While employed by Defendants, Plaintiffs and other Aggrieved Employees were
17 required, suffered and permitted to work overtime hours.

18 82. Through their policies and practices, Defendants failed to pay premium wages
19 for all overtime hours, in violation of Labor Code §§ 510; 1194, and IWC Wage Order 14.

20 **Civil Penalties for Failure to Provide Meal Periods**

21 83. Through their policies and practices, Defendants failed to provide legally
22 compliant meal periods in violation of the Wage Order 14 and California Labor Code section
23 226.7 and California Labor Code § 512.

24 **Civil Penalties for Failure to Authorize and Permit Rest Periods**

25 84. Through their policies and practices, Defendants failed to authorize and permit
26 legally compliant rest periods in violation of the Wage Order 14 and California Labor Code
27 section 226.7.

1 85. During the relevant time period, Defendants implemented an illegal policy and
2 practice of failing to authorize and permit Plaintiffs and other Aggrieved Employees to take a
3 paid rest period of 10 minutes for every four hours worked, or major fraction thereof.

4 **Civil Penalties for Failure to Timely Pay Wages Upon Separation**

5 86. Through their policies and practices, Defendants failed to timely pay Plaintiffs
6 and other Aggrieved Employees all wages due upon separation from their employment in
7 violation of California Labor Code sections 201, 202, and 203.

8 87. Further, even though Defendants failed to timely pay employees all wages due
9 upon separation, Defendants also failed to pay continuing wages under Labor Code section
10 203.

11 **Civil Penalties for Failure to Timely Pay Wages During Employment**

12 88. Through their policies and practices, Defendants intentionally and willfully
13 failed to pay Plaintiffs and other Aggrieved Employees, all wages due to them within the
14 specific pay periods required under California Labor Code section 204.

15 89. For example, in violation of Labor Code section 204(b)(1), Defendants did not
16 pay all overtime wages owed “no later than the payday for the next regular payroll period.”

17 **Civil Penalties for Failure to Provide Compliant Wage Statements**

18 90. Through their policies and practices, Defendants failed to provide Plaintiffs and
19 other Aggrieved Employees compliant wage statements in violation of California Labor Code
20 section 226, subdivision (a).

21 **Civil Penalties for Failure to Keep Complete and Accurate Payroll Records**

22 91. Through their policies and practices, Defendants failed to keep complete and
23 accurate payroll records in violation of California Labor Code section 1174(d). Among other
24 violations, Defendants failed to record all time worked by Plaintiffs and other Aggrieved
25 Employees.

26 **Civil Penalties for Violations of IWC Wage Order**

27 92. Labor Code section 1199(c) makes it a misdemeanor, punishable by monetary
28 fine, for employers that, among other things, violate the provisions of the IWC Wage Orders.

1 As described herein, Defendants violated the Wage Order 14 in many respects, including
2 without limitation, failure to pay minimum wages, failure to pay all required daily and weekly
3 overtime hours, failure to accurately record all work periods, including the beginning and
4 ending of meal periods, and failure to provide duty-free meal and rest periods.

5 **Civil Penalties for Retaliation for Exercising the Rights of an Employee**

6 93. Labor Code section 98.6 prohibits retaliation against employees for exercising
7 their rights under the Labor Code.

8 94. Plaintiffs complained about Defendants' refusal to pay all their overtime wages
9 and demanded compensation for the overtime hours they had worked and had not been paid.
10 Defendants sent Plaintiffs home from work and promised to investigate and resolve the issue.

11 95. Several days later, Plaintiffs were told to attend the work premises to collect
12 their unpaid overtime checks. After Plaintiffs collected their overtime checks from the work
13 premises, they were sent home. Defendants did not call Plaintiffs back to work again.

14 96. The next day, Plaintiffs called their supervisor to ask when they could return to
15 work but were informed that there was no more work for them.

16 97. Defendants terminated Plaintiffs' employment because Plaintiffs complained
17 about Defendants' refusal to pay overtime wages.

18 98. Any other purported basis for Plaintiffs' termination is false and pretextual.

19 **Exhaustion of Administrative Remedies under PAGA**

20 99. On February 9, 2022, pursuant to California Labor Code § 2699.3, Plaintiffs,
21 through their counsel, on behalf of themselves and all Aggrieved Employees, provided the
22 LWDA with written notice of the specific provisions of the California Labor Code that are
23 alleged to have been violated, including the facts and theories to support such violations.

24 100. A copy of said notice was also posted to Defendants by certified mail pursuant
25 to the requirements of Labor Code § 2699.3.

26 101. The LWDA has failed to notify Plaintiffs of its intent to investigate these
27 penalty claims within sixty-five (65) days.
28

102. Thus, Plaintiffs have exhausted administrative remedies under PAGA's Labor Code § 2699.3(a)(2)(A).

103. Pursuant to Labor Code Section 2698 *et seq.*, Plaintiffs, in a representative capacity, are entitled to recover civil penalties on behalf of themselves and each Aggrieved Employee, for each and every pay period in which a Labor Code violation or applicable IWC Wage Order violation occurred, in an amount according to proof at trial.

104. Plaintiffs on behalf of themselves and the Aggrieved Employees, are informed and believes, and based thereon alleges, that SU is the owner, officer, and/or manager of SKS and while acting in this capacity caused said corporation to violate provisions of the Labor Code and IWC Wage Order 14 with respect to Plaintiffs and other Aggrieved Employees. Thus, pursuant to Labor Code § 558.1, SU is jointly and severally liable with SKS and GOMEZ for the violations alleged herein, and the resulting penalties owed.

105. Plaintiffs and all aggrieved employees are also entitled to reasonable attorney's fees and costs pursuant to Labor Code §§ 2699(g), and any other applicable statute, which are respectfully requested, in an amount according to proof at trial.

TENTH CAUSE OF ACTION

RETALIATION FOR REPORTING AND RESISTING ILLEGAL CONDUCT

[Cal. Labor Code §1102.5]

(Against All Defendants)

106. Plaintiffs re-allege and incorporate into this cause of action each of the preceding paragraphs.

107. California Labor Code § 1102.5, including but not limited to § 1102.5 (b), prohibits employers from terminating employees that disclose information to an employer where the employee has reasonable cause to believe that the information discloses a violation of state or federal law, or a violation or noncompliance with a state or federal rule or regulation. Further, California Labor Code § 1102.5 (c), prohibits employers from retaliating against an employee for refusing to participate in an activity that would result in a violation of

1 state or federal statute, or a violation or noncompliance with a state or federal rule or
2 regulation.

3 108. As alleged in greater detail herein, Defendants terminated Plaintiffs'
4 employment because they complained about Defendants' refusal to pay overtime wages, and
5 because they reported their reasonable belief that it was illegal for Defendants to force their
6 employees to work without being properly compensated for overtime hours worked.

7 109. Any other purported basis for Plaintiffs' termination is false and pretextual.

8 110. SKS has liability, as the conduct was undertaken by SU, the owner and of SKS,
9 and SKS knew about, ratified, and failed to prevent SU's unlawful conduct.

10 111. As a direct, foreseeable, and proximate result of Defendants' conduct, Plaintiffs
11 have suffered, and continue to suffer, emotional distress, losses in salary, wages, job benefits,
12 health insurance, and other employment benefits that they would have received from
13 Defendants, plus expenses for not being regularly employed at their full-time position, all to
14 their damage in a sum within the jurisdiction of this Court, to be ascertained according to
15 proof.

16 112. Plaintiffs also pray for reasonable costs and attorney fees against Defendants, as
17 allowed by any and all applicable statutes.

18 113. Defendants' actions were willful, malicious, oppressive, and were committed
19 with the wrongful intent to injure Plaintiffs and in conscious disregard of Plaintiffs' rights,
20 which entitles Plaintiffs to exemplary and/or punitive damages in an amount to be proven at
21 trial.

22 114. To the extent that any violations of the above cause of action is based upon the
23 conduct of executives, managers, and supervisors, SKS knew about such conduct and ratified
24 such conduct and did so with the wrongful intent to injure Plaintiffs and in conscious disregard
25 of Plaintiffs' rights.

1 **ELEVENTH CAUSE OF ACTION**

2 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

3 **(Against All Defendants)**

4 115. Plaintiffs re-allege and incorporate into this cause of action each of the
5 preceding paragraphs.

6 116. A California employee may bring a cause of action for wrongful termination in
7 violation of public policy if an employer discharges her for a reason that violates fundamental
8 public policy. *See Tameny v. Atlantic Richfield Co.*, 27 Cal.3d 167, 170 (1980) (“when an
9 employer’s discharge of an employee violates fundamental principles of public policy, the
10 discharged employee may maintain a tort action and recover damages traditionally available in
11 such actions.”).

12 117. The provisions of the California Labor Code and the IWC Wage Orders
13 constitute fundamental public policy.

14 118. Defendants wrongfully terminated Plaintiffs because Plaintiffs complained of
15 Defendants violation of the California Labor Code and the IWC Wage Orders.

16 119. As a direct and proximate result of Defendants’ wrongful termination of
17 Plaintiffs, Plaintiffs have suffered and continued to suffer damages, including without
18 limitation, past and future lost income, emotional distress, anxiety, humiliation, and other
19 mental and physical suffering.

20 120. Defendants’ wrongful termination of Plaintiffs was a substantial factor in
21 causing this harm to Plaintiffs.

22 121. As alleged herein, Defendants’ conduct was outrageous and willful, and
23 Defendants acted towards Plaintiffs with malice, oppression, fraud and with reckless and
24 conscious disregard for Plaintiffs’ rights and for their physical and mental health. Such
25 unlawful actions were taken by and/or ratified by Defendants’ managing agents, including SU,
26 the owner of SKS. Accordingly, Plaintiffs are entitled to an award of punitive damages.

27 122. Plaintiffs are permitted to recover their attorney’s fees in connection with their
28 wrongful termination cause of action pursuant to Code of Civil Procedure §1021.5. Plaintiffs’

1 action seeks to enforce an important right affecting the public interest, including the right to
2 receive payment of all wages owed and to be free from retaliation for making complaints
3 regarding Defendants' failure to pay Plaintiffs all wages owed. Plaintiff's action seeks to
4 confer a significant benefit, not only to themselves, but to the public and/or a large group of
5 individuals. Further, the importance and the burden of private enforcement of these rights
6 makes an award of attorney's fees necessary and appropriate.

7 **TWELTH CAUSE OF ACTION**

8 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

9 **(Against All Defendants)**

10 123. Plaintiffs re-allege and incorporate into this cause of action each of the
11 preceding paragraphs.

12 124. Defendants engaged in an unlawful, deceitful, and cruel scheme to terminate
13 Plaintiffs' employment for making complaints about Defendants' illegal conduct, refusing to
14 work without overtime pay, and requesting payment of unpaid overtime wages to which they
15 were legally entitled.

16 125. Defendants' actions were plainly retaliatory and targeted Plaintiffs for
17 attempting to enforce their rights under California law. Defendants' actions inflicted, and
18 continue to inflict, severe emotional distress, including humiliation, anxiety, and depression.

19 126. Defendants' conduct, individually and through their managers and agents, was
20 intended to cause harm to Plaintiffs and was carried on with conscious disregard of Plaintiffs'
21 legal rights, physical and emotional health.

22 127. These actions, which were taken by and/or ratified by Defendants and their
23 managing agents, warrant an award of exemplary and punitive damages to Plaintiffs.

24
25 **PRAYER**

26 WHEREFORE Plaintiffs pray judgment be entered against Defendants, and each of them,
27 as follows:
28

ON THE FIRST CAUSE OF ACTION

1. For unpaid wage compensation pursuant to California Labor Code § 1194 in an amount to be proven at trial;
2. For liquidated damages equal to unpaid minimum wage pursuant to Labor Code 1194.2;
3. For attorneys fees, costs, and interest; and

ON THE SECOND CAUSE OF ACTION

4. For unpaid overtime compensation pursuant to California Labor Code § 1194 in an amount to be proven at trial;
5. For restitution of unpaid overtime compensation owing pursuant to California law in an amount to be proven at trial;
6. For attorneys fees, costs, and interest;

ON THE THIRD CAUSE OF ACTION

7. For compensation for meal periods not received pursuant to Labor Code § 226.7 in an amount to be proven at trial;
8. For restitution of unpaid compensation for meal periods not received pursuant to California law in an amount to be proven at trial;

ON THE FOURTH CAUSE OF ACTION

9. For compensation for rest periods not received pursuant to Labor Code § 226.7 in an amount to be proven at trial;
10. For restitution of unpaid compensation for rest periods not received pursuant to California law in an amount to be proven at trial;

ON THE FIFTH CAUSE OF ACTION

11. For the penalty specified in Labor Code § 226(e) in an amount to be proven at trial of \$4,000.00;
12. For attorneys fees, costs, and interest;

ON THE SIXTH CAUSE OF ACTION

13. For the penalty specified in Labor Code § 226(f) in the sum of \$750;

14. For the penalty specified in Labor Code § 1198.5(f) in the sum of \$750;
15. For attorneys fees, costs, and interest;

ON THE SEVENTH CAUSE OF ACTION

16. For the penalty specified in Labor Code § 203 in an amount to be proven at trial;

ON THE EIGHTH CAUSE OF ACTION

17. For restitution of wages under Business & Professions Code §§ 17200, *et seq.*;
18. For an order enjoining Defendants from further unfair and unlawful business practices in violation of Business & Professions Code §§ 17200, *et seq.*;
19. For attorneys' fees, costs, and interest;

ON THE NINTH CAUSE OF ACTION

20. For civil penalties pursuant to Labor Code § 2699, plus all unpaid compensation owing, and reasonable attorney's fees and costs, in an amount according to proof at trial;

ON THE TENTH CAUSE OF ACTION

21. For unpaid wage compensation;
22. For damages for emotional distress, pain, and suffering, according to proof;
23. For punitive damages, according to proof;
24. For pre- and post-judgment interest on the damages awarded; and
25. For attorney's fees and costs;

ON THE ELEVENTH CAUSE OF ACTION

26. For damages for emotional distress, pain, and suffering, according to proof;
27. For punitive damages, according to proof;
28. For pre- and post-judgment interest on the damages awarded; and
29. For attorney's fees and costs;

ON THE TWELTH CAUSE OF ACTION

30. For damages for emotional distress, pain, and suffering, according to proof;
31. For punitive damages, according to proof;
32. For pre- and post-judgment interest on the damages awarded; and

33. For attorney's fees and costs;

ON ALL CAUSES OF ACTION

34. For attorneys' fees, as allowable by statute;

35. For penalties, as allowable by statute;

36. For pre-judgment interest according to proof and as allowable by statute;

37. For costs of suit incurred; and

38. For such further relief as the Court deems proper.

Dated: April 26, 2022

VAN HOOK LAW FIRM
THE BYRNE LAW GROUP



John A. Van Hook
Adrian C. Byrne
Attorneys for Plaintiffs JOSE ENRIQUE
MARTINEZ CAZARES and
ENRIQUE MARTINEZ FUENTES and all
Aggrieved Employees

DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of themselves individually, and all aggrieved employees, hereby
demand a trial by a jury.

Dated: April 26, 2022

VAN HOOK LAW FIRM
THE BYRNE LAW GROUP



John A. Van Hook
Adrian C. Byrne
Attorneys for Plaintiffs JOSE ENRIQUE
MARTINEZ CAZARES and
ENRIQUE MARTINEZ FUENTES and all
Aggrieved Employees