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18 Attorneys for Plaintiff,
19 AHLAM JUAIFER, and all others similarly situated

20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
21 **FOR THE COUNTY OF SAN DIEGO**
22 **(UNLIMITED JURISDICTION)**

23 AHLAM JUAIFER, on behalf of herself and all
24 others similarly situated, the general public, and
25 as an “aggrieved employee” on behalf of other
26 “aggrieved employees” and the State of
27 California under the Labor Code Private
28 Attorneys General Act of 2004

Plaintiff,

vs.

SHAMYAT RESTAURANT INC., a California
corporation doing business as MAL AL SHAM
RESTAURANT; and DOES 1–50, inclusive,

Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
05/08/2023 at 03:47:11 PM
Clerk of the Superior Court
By Sophia Felix, Deputy Clerk

Case No. 37-2023-00019608-CU-OE-CTL

**COMPLAINT FOR VIOLATIONS OF
THE LABOR CODE AND CIVIL
PENALTIES UNDER THE LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, LABOR
CODE §§ 2698, ET SEQ.**

JURY TRIAL DEMANDED



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1 Plaintiff, Ms. Ahlam Juaifer (hereafter “Plaintiff” or “Juaifer”), on behalf of herself, the
2 State of California, and the other Aggrieved Employees, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this representative action based on alleged violations of the
5 California Labor Code and Industrial Welfare Commission Order No. 5-2001 (hereafter “the
6 Wage Order”), against Defendants Shamyat Restaurant Inc, a California Corporation doing
7 business as Mal Al Sham Restaurant, and Does 1 through 50, inclusive (collectively
8 “Defendants”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
10 her, the State of California, and the Aggrieved Employees (defined below), for civil penalties and
11 other related relief. These claims are based on Defendants’ failures to:

12 (A) Pay all wages, including minimum, regular, overtime and doubletime
13 wages, earned for all hours worked at the correct rates of pay;

14 (B) Provide all meal periods;

15 (C) Authorize and permit all rest breaks;

16 (D) Pay premium wages for unprovided meal periods;

17 (E) Pay premium wages for unprovided rest breaks;

18 (F) Issue only accurate and complete itemized wage statements;

19 (G) Timely pay wages during employment;

20 (H) Timely pay wages upon termination of employment;

21 (I) Maintain accurate employment records.

22 Accordingly, Plaintiff now seeks to recover civil penalties and related relief through this
23 representative action.

24 **II. THE PARTIES**

25 3. Plaintiff Ahlam Juaifer is a resident of California. At all relevant times, Plaintiff
26 was an “employee” within the meaning of Title 8 California Code of Regulations § 11050 and an
27 “aggrieved employee” within the meaning of Labor Code § 2699 (c).

28 4. Defendant Shamyat Restaurant Inc is a corporation organized and existing under
the laws of California and also a citizen of California based on Plaintiff’s information and belief.

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5. Plaintiff is ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but is informed and believes and thereon alleges that said Defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names. Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

6. The “Aggrieved Employees” are all individuals the Defendants have employed or otherwise contracted with in California as hourly, non-exempt kitchen helpers, dishwashers, individuals performing work comparable to the aforementioned, and individuals in similar positions during the period beginning one year before the Plaintiff’s notice of September 15, 2022 to the California Labor and Workforce Development Agency and ending on the date judgment is entered.

7. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees and/or servants, masters or employers of the remaining defendants, and in doing the things hereinafter alleged, were acting within the course and scope of such agency or employment, and with the approval and ratification of each of the other Defendants.

8. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack of a practice which resulted in Defendants not paying Plaintiff and the other Aggrieved Employees in accordance with applicable California labor laws as alleged herein.

9. Plaintiff is informed and believes and thereon alleges that each and every one of the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other defendants, and that said acts and failures to act were within the course and scope of said agency, employment, and/or direction and control.

III. FACTUAL ALLEGATIONS

10. IWC Wage Order 5-2001 ("the Wage Order") applies to "all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Public Housekeeping Industry" to mean any industry, business, or establishment which provides meals, housing, or maintenance services whether



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operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the Commission, and includes, but is not limited to the following:

- (1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters, cafeterias, boarding houses, clubs, and all similar establishments where food in either sold or liquid form is prepared and served to be consumed on the premises;
- (2) Catering, banquet, box lunch service, and similar establishments which prepare food for consumption on or off the premises;
- (3) Hotels, motels, apartment houses, rooming houses, camps, clubs, trailer parks, office or loft buildings, and similar establishments offering rental of living, business, or commercial quarters;
- (4) Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care;
- (5) Private schools, colleges, or universities, and similar establishments which provide board or lodging in addition to educational facilities;
- (6) Establishments contracting for development, maintenance or cleaning of grounds; maintenance or cleaning of facilities and/or quarters of commercial units and living units; and
- (7) Establishments providing veterinary or other animal care services.

Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Defendants, Juaifer, and all of the Aggrieved Employees were covered by the Wage Order because the Defendants operated, and Juaifer, and all of the Aggrieved Employees, worked for one or more restaurants. Accordingly, Juaifer and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

11. On approximately March 17, 2022, Defendants began to employ Juaifer in their restaurant “Mal Al Sham” located on 388 E Main Street in El Cajon, California, in the position of hourly, non-exempt kitchen helper. Defendants continuously employed her in that capacity until on or about April 27, 2022 when her employment ended.

12. At all relevant times, Defendants issued wages to Juaifer and all of the other Aggrieved Employees on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant times, Defendants classified Juaifer and all of the other Aggrieved Employees as non-



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exempt employees entitled to the protections of the Labor Code and the Wage Order.

13. Defendants failed to compensate Juaifer and all of the other Aggrieved Employees at the correct rates of pay for all hours worked. Defendants compensated Juaifer with \$14 per hour. At all relevant times, Juaifer and the Aggrieved Employees worked 6 to 7 days in a workweek, and for an average of 10 to 12 hours per workday. Defendants, however, paid Juaifer and the Aggrieved Employees at the regular rate of pay for all hours and failed to pay overtime wages at least one and half times (1 ½) their hourly rates of pay of all hours in excess of forty (40) in a week, all hours in excess of eight (8) in a day, and all hours on the seventh (7th) day worked in the workweek. Additionally, the Employers failed to pay Juaifer and the Aggrieved Employees at least twice their hourly rates of pay when they worked over twelve (12) hours in a workday or for hours in excess of eight (8) on the seventh (7th) workday of the workweek.

14. Defendants informed Juaifer and the Aggrieved Employees that they could only provide them with earning statements that compensated them for 10 hours at the regular rate of pay per workweek. All of Juaifer's bi-weekly paystubs indicate that she only worked for 20 hours, and only compensate her for 20 hours per pay period, although Juaifer worked an average of 140 hours per pay period. Defendants paid Juaifer any additional hours in cash at the regular rate of pay, failing to pay overtime wages at overtime premium rates. Juaifer and the Aggrieved Employees frequently complained about the inaccurate wage statements, however, Defendants refused to make any changes.

15. At all relevant times, Defendants failed to provide Juaifer and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. Due to extremely high workload and failure to hire sufficient staff members, Defendants denied Juaifer and the Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. Defendants also denied 30-minute off-duty meal periods to Juaifer and the Aggrieved Employees because anytime Juaifer asked to take a break, the Employers refused. Defendants did not have any clock-in/clock-out procedure and did not record meal breaks. Defendants also failed to pay premium wages for days on which they failed to provide Juaifer and all of the other Aggrieved Employees with meal periods as required by law.

16. At all relevant times, Defendants failed to authorize and permit Juaifer and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. Due to high workload and low staffing levels, Defendants failed



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1 to authorize and permit Juaifer and the Aggrieved Employees to take ten-minute, paid, duty-free
2 rest breaks every four hours worked or major fraction thereof. Defendants did not seek an
3 exemption from the rest period protections of the Wage Order from the California Divisions of
4 Labor Standards Enforcement. Defendants also failed to pay premium wages for days on which
5 they failed to authorize and permit Juaifer and all of the other Aggrieved Employees to take rest
6 breaks as required by law.

7 17. At all relevant times, Defendants failed to issue to Juaifer and all of the other
8 Aggrieved Employees complete and accurate wage statements that state all hours worked at the
9 correct rates of pay, and all wages earned. Defendants knowingly and intentionally failed to state
10 on the wage statements they issued to Juaifer and all of the other Aggrieved Employees the unpaid
11 wages discussed above.

12 18. Defendants also failed to timely pay Juaifer and all of the other Aggrieved
13 Employees all earned wages as described above during and at the conclusion of employment.

14 19. At all relevant times, the Defendants failed to maintain accurate employee records
15 of Juaifer and all of the other Aggrieved Employees.

16 20. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
17 unlawful practice and policies, Plaintiff and the Aggrieved Employees were:

18 A. Not paid all wages earned, including, but not limited to, minimum, regular,
19 overtime, and doubletime wages for work performed while clocked out;

20 B. Not provided with all off duty meal periods;

21 C. Not authorized and permitted to take all rest break periods;

22 D. Not paid one hour's pay for each workday in which Defendants failed to
23 authorize and permit them to take one or more timely rest periods;

24 E. Not paid one hour's pay for each workday in which Defendants failed to
25 provide them with one or more timely meal periods;

26 F. Not provided with accurate and complete wage statements; and

27 G. Not timely paid all earned and unpaid wages during their employment with
28 Defendants and at the time such employment ended.

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IV. FIRST (AND ONLY) CAUSE OF ACTION
CIVIL PENALTIES

(Lab. Code §§ 2698, *et seq.*)

(By Plaintiff, on behalf of herself and the other Aggrieved Employees, against all
Defendants)

21. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

22. At all relevant times, Plaintiff and the Aggrieved Employees have been non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

**A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT
THE CORRECT RATES OF PAY**

23. Section 2 of the Wage Order defines “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

24. Section 3 of the Wage Order states:

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

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(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

25. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consists of all hours that an employer has actual or constructive knowledge that employees are working.

26. Labor Code section 510 states:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

27. Labor Code section 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.

28. Labor Code section 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

29. Labor Code section 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

30. In conjunction, these provisions of the Labor Code require employers to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including unrecorded hours when the employer knew or reasonably should have known



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1 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
2 Cal.4th 575, 585.)

3 31. At all relevant times during the applicable limitations period, Defendants failed to
4 compensate Plaintiff and the Aggrieved Employees for all hours worked, including, but not
5 limited to overtime and doubletime wages for all minimum, regular, overtime and doubletime
6 hours, respectively, that they worked at the correct rates of pay.

7 32. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
8 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
9 failure to compensate Plaintiff and the other Aggrieved Employees for all hours worked as
10 required by California law.

11 **B. FAILURE TO PROVIDE MEAL PERIODS**

12 33. In relevant part, California Labor Code § 1198 states:

13 The maximum hours of work and the standard conditions of labor fixed by the
14 commission shall be the maximum hours of work and the standard conditions of
15 labor for employees. The employment of any employee for longer hours than those
16 fixed by the order or under conditions of labor prohibited by the order is unlawful.

17 34. In relevant part, In relevant part, California Labor Code § 512 states:

18 An employer shall not employ an employee for a work period of
19 more than five hours per day without providing the employee with
20 a meal period of not less than 30 minutes, except that if the total
21 work period per day of the employee is no more than six hours, the
22 meal period may be waived by mutual consent of both the
23 employer and employee.

24 An employer shall not employ an employee for a work period of
25 more than 10 hours per day without providing the employee with
26 a second meal period of not less than 30 minutes, except that if the
27 total hours worked is no more than 12 hours, the second meal
28 period may be waived by mutual consent of the employer and the
29 employee only if the first meal period was not waived.

30 35. In relevant part, Section 11 of the Wage Order states:

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Meal Periods

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employee and the employer. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked. An 'on duty' meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided.

36. In relevant part, California Labor Code § 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

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1 37. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
2 Aggrieved Employees were entitled to uninterrupted meal periods of at least 30 minutes for each
3 day they worked five or more hours. Pursuant to California Labor Code § 512, they were also
4 entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

5 38. Pursuant to the Wage Order, Plaintiff and the Aggrieved Employees were entitled
6 to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or
7 major fraction thereof.

8 39. Defendants intentionally failed to provide Plaintiff and the Aggrieved Employees
9 with all required 30-minute duty free meal periods and 10-minute rest periods free from any work
10 duties in accordance with the Wage Order.

11 40. At all relevant times, Defendants failed to provide Plaintiff and the Aggrieved
12 Employees with all timely rest and meal periods. Defendants denied Plaintiff and the other
13 Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work.
14 Furthermore, Defendants failed to pay premium wages for days on which they failed to provide
15 Plaintiff and the other Aggrieved Employees with timely meal periods.

16 41. Plaintiff is informed and believes and thereon alleges that, at all relevant times
17 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
18 which resulted in Defendants not providing the and the Aggrieved Employees with all off-duty
19 meal periods and rest breaks required by California law.

20 **C. FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

21 42. In relevant part, California Labor Code § 1198 states:

22 The maximum hours of work and the standard conditions of labor
23 fixed by the commission shall be the maximum hours of work and
24 the standard conditions of labor for employees. The employment
25 of any employee for longer hours than those fixed by the order or
26 under conditions of labor prohibited by the order is unlawful.

27 43. In relevant part, Section 12 of the Wage Order states:

28 **Rest Periods**

(A) Every employer shall authorize and permit all employees
to take rest periods, which insofar as practicable shall be in the
middle of each work period. The authorized rest period time shall



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1 be based on the total hours worked daily at the rate of ten (10)
2 minutes net rest time per four (4) hours or major fraction thereof.
3 However, a rest period need not be authorized for employees
4 whose total daily work time is less than three and one-half (3 1/2)
5 hours. Authorized rest period time shall be counted as hours
6 worked for which there shall be no deduction from wages.

7 (B) If an employer fails to provide an employee a rest period in
8 accordance with the applicable provisions of this Order, the
9 employer shall pay the employee one (1) hour of pay at the
10 employee's regular rate of compensation for each work day that
11 the rest period is not provided.

12 44. In relevant part, California Labor Code § 226.7 states:

13 (b) An employer shall not require an employee to work during
14 a meal or rest period mandated pursuant to an applicable
15 statute, or applicable regulation, standard, or order of the
16 Industrial Welfare Commission, the Occupational Safety
17 and Health Standards Board, or the Division of
18 Occupational Safety and Health.

19 (c) If an employer fails to provide an employee a meal period
20 or rest period in accordance with a state law, including, but
21 not limited to, an applicable statute or applicable
22 regulation, standard, or order of the Industrial Welfare
23 Commission, the Occupational Safety and Health
24 Standards Board, or the Division of Occupational Safety
25 and Health, the employer shall pay the employee one
26 additional hour of pay at the employee's regular rate of
27 compensation for each work day that the meal or rest
28 period is not provided.

29 45. Pursuant to the Wage Order, Plaintiff and the Aggrieved Employees were entitled
30 to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour
31 period of work, or major fraction thereof.

32 46. Defendants intentionally failed to authorize and permit Plaintiff and the Aggrieved
33 Employees to take all 10-minute rest periods free from any work duties in accordance with the
34 Wage Order.

35 47. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
36 Aggrieved Employees to take all timely rest periods. Furthermore, Defendants failed to pay
37 premium wages to Plaintiff and the Aggrieved Employees for days on which they failed to



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1 authorize and permit Plaintiff and the other Aggrieved Employees to take timely rest periods.

2 48. At all relevant times, due to high workload and low staffing levels, Defendants
3 failed to authorize and permit Plaintiff and the Aggrieved Employees to take ten-minute, paid,
4 duty-free rest breaks every four hours worked or major fraction thereof. Defendants did not seek
5 an exemption from the rest period protections of the Wage Order from the California Division of
6 Labor Standards Enforcement. Moreover, Defendants failed to pay Plaintiff and the Aggrieved
7 Employees premium wages on workdays they failed to authorize and permit them to take 10-
8 minute rest periods every four hours worked or major fraction thereof.

9 49. Plaintiff is informed and believes and thereon alleges that, at all relevant times
10 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
11 which resulted in Defendants not authorizing and permitting Plaintiff and the Aggrieved
12 Employees to take all rest breaks required by California law.

13 **D. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE**
14 **STATEMENTS**

15 50. Pursuant to California Labor Code § 226(a), Plaintiff and the Aggrieved
16 Employees were entitled to receive, bi-weekly or at the time of each payment of wages, an
17 accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable
18 hourly rates in effect during the pay period; and d) the corresponding number of hours worked at
19 each hourly rate by the employee.

20 51. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
21 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
22 the employer fails to provide accurate and complete information as required by California Labor
23 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
24 alone one or more of the following:

25 A. The amount of the gross wages or net wages paid to the employee during
26 the pay period or any of the other information required to be provided on the itemized wage
27 statement pursuant to California Labor Code § 226(a);

28 B. Which deductions the employer made from gross wages to determine the
net wages paid to the employee during the pay period;

C. The name and address of the employer and, if the employer is a farm labor
contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name



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1 and address of the legal entity that secured the services of the employer during the pay period;

2 D. The name of the employee and only the last four digits of his or his
3 social security number or an employee identification number other than a social security number;
4 and

5 E. The number of piece-rate units earned and the piece rate.

6 52. "Promptly and easily determine," as stated in California Labor Code § 226(e),
7 means a reasonable person would be able to readily ascertain the information without reference
8 to other documents or information.

9 53. As alleged herein, at all relevant times during the applicable limitations period,
10 Defendants violated California Labor Code section 226 because they did not properly and
11 accurately itemize each employee's gross wages earned, net wages earned, the total hours worked,
12 the corresponding number of hours worked at each rate by the employee and other requirements
13 of California Labor Code section 226. Defendants failed to state in the wage statements they
14 issued to Plaintiff and the other Aggrieved Employees all their hours worked and wages earned,
15 including, but not limited to, regular and overtime wages for work they performed off-the-clock
16 after clocking-out (as described above).

17 54. Defendants' failure to provide Plaintiff and the other Aggrieved Employees with
18 accurate wage statements was knowing and intentional. Defendants had the ability to provide
19 Plaintiff and the other Aggrieved Employees with accurate wage statements but intentionally
20 provided wage statements that Defendants knew were not accurate.

21 55. As a result of being provided with inaccurate wage statements by Defendants,
22 Plaintiff and the other Aggrieved Employees have suffered injury. Their legal rights to receive
23 accurate wage statements were violated and they were misled about the amount of wages they
24 had actually earned and were owed. In addition, the absence of accurate information on their wage
25 statements prevented immediate challenges to Defendants' unlawful pay practices, has required
26 discovery and mathematical computations to determine the amounts of wages owed, has caused
27 difficulty and expense in attempting to reconstruct time and pay records and/or has led to the
28 submission of inaccurate information about wages to state and federal government agencies.
Further, Plaintiff and the other Aggrieved Employees were not able to ascertain from the wage
statements whether Defendants complied with their obligations under California Labor Code
section 226(a).



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1 **E. UNTIMELY WAGES DURING EMPLOYMENT**

2 56. Labor Code § 204 states:

- 3 (a) All wages, other than those mentioned in Section 201,
4 201.3, 202, 204.1, or 204.2, earned by any person in any
5 employment are due and payable twice during each
6 calendar month, on days designated in advance by the
7 employer as the regular paydays. Labor performed
8 between the 1st and 15th days, inclusive, of any calendar
9 month shall be paid for between the 16th and the 26th day
10 of the month during which the labor was performed, and
11 labor performed between the 16th and the last day,
12 inclusive, of any calendar month, shall be paid for
13 between the 1st and 10th day of the following month. ...
14
15 (b) (1) Notwithstanding any other provision of this
16 section, all wages earned for labor in excess of the normal
17 work period shall be paid no later than the payday for the
18 next regular payroll period.
19
20 (2) An employer is in compliance with the
21 requirements of subdivision (a) of Section 226
22 relating to total hours worked by the employee, if
23 hours worked in excess of the normal work period
24 during the current pay period are itemized as
25 corrections on the paystub for the next regular pay
26 period. Any corrections set out in a subsequently
27 issued paystub shall state the inclusive dates of
28 the pay period for which the employer is
correcting its initial report of hours worked.
- (c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.
- (d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

57. Defendants failed to compensate Plaintiff and the Aggrieved Employees for all hours worked at the correct rates of pay, including overtime. Defendants failed to provide Plaintiff



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1 and the Aggrieved Employees with all meal and rest periods in compliance with California laws.
2 Defendants also failed to provide Plaintiff and the Aggrieved Employees with all premium wages
3 on workdays they failed to provide them with one or more meal or rest periods in compliance
4 with California laws. As a result, Defendants failed to timely pay all earned minimum, overtime,
5 and premium wages due during employment within the time periods set by California Labor Code
6 section 204.

6 **F. UNTIMELY FINAL WAGES**

7 58. Labor Code § 201 provides that all earned and unpaid wages of an employee who
8 is discharged are due and payable immediately at the time of discharge.

9 59. Labor Code § 202 provides that all earned and unpaid wages of an employee who
10 quits after providing at least 72-hours notice before quitting are due and payable at the time of
11 quitting and that all earned and unpaid wages of an employee who quits without providing at least
12 72-hours notice before quitting are due and payable within 72 hours.

13 60. By failing to pay earned minimum and premium wages to Plaintiff and the
14 Aggrieved Employees, Defendants failed to timely pay them all earned and unpaid wages in
15 violation of Labor Code § 201 or § 202.

16 61. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
17 and the Aggrieved Employees all of their earned and unpaid wages (described above) have been
18 willful in that, at all relevant times, Defendants have deliberately maintained policies and
19 practices that violate the requirements of the Labor Code and the Wage Order, even though at all
20 relevant times, they have had the ability to comply with those legal requirements.

20 **G. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS**

21 62. Labor Code § 1174 states:

22 Every person employing labor in this state shall:

23 ...

24 (c) Keep a record showing the names and addresses of all employees
25 employed and the ages of all minors.

26 (d) Keep, at a central location in the state or at the plants or establishments
27 at which employees are employed, payroll records showing the hours
28 worked daily by and the wages paid to, and the number of piece-rate
units earned by and any applicable piece rate paid to, employees



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employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

63. Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

64. Section 7 of the Wage Order states:

(a) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation, and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

65. Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.



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66. On information and belief, Defendants have willfully failed to maintain the records required by § 1174 and Wage Order, including, but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Plaintiff and the Aggrieved Employees.

67. Accordingly, Juaifer seeks an award of civil penalties against the Defendants on behalf of herself and all of the other Aggrieved Employees as follows: (1) \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and (2) \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

H. CIVIL PENALTIES SOUGHT

68. Defendants paid wages to employees on regular intervals. Defendants failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

69. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198 and related Labor Code statutes.

70. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

71. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved Employees are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198 and related Labor Code statutes during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code § 226, two hundred fifty dollars (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per employee for each



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subsequent violation (penalty amounts established by California Labor Code § 226.3).

C. For violations of California Labor Code §§ 510 and 512, fifty dollars (\$50.00) for each aggrieved employee for each initial violation for pay period for which the employee was underpaid and one hundred dollars (\$100.00) for each underpaid employee for each pay period for which the employee was underpaid (penalty amounts established by California Labor Code § 558).

D. For violations of California Labor Code § 1174, five hundred dollars (\$500.00) for each Aggrieved Employee for each initial violation (penalty amounts established by Labor Code § 1174.5).

E. For violations of California Labor Code § 1197, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed) (penalty amounts established by California Labor Code § 1197.1).

F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194, and 1198, one hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

I. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS

72. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated September 15, 2022, Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of Plaintiff’s letter to the LWDA dated September 15, 2022 is attached hereto as Exhibit A. The LWDA has not responded to Plaintiff’s letter.

73. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved Employees are entitled to an award of civil penalties, reasonable attorneys’ fees, and costs in connection with their claims for civil penalties.

///

///



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V. PRAYER FOR RELIEF

74. WHEREFORE, Plaintiff, on behalf of herself and the Aggrieved Employees, prays for relief and judgment against Defendants as follows:

- A. Civil penalties;
- B. Costs of suit;
- C. Reasonable attorneys' fees; and
- D. Such other relief as the Court deems just and proper.

VI. DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all other Aggrieved Employees, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: May 8, 2023

By: 

DAVID G. SPIVAK,
MAYA CHEAITANI Attorneys for
Plaintiff, MS. AHLAM JUAIFER, and
all others similarly situated



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EXHIBIT “A”



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SENT BY ELECTRONIC SUBMISSION, AND CERTIFIED MAIL

September 15, 2022

Attn: PAGA Administrator
Labor and Workforce Development Agency
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Ahlam Juaifer / Shamyat Restaurant Inc.

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Ahlam Juaifer (hereafter “Juaifer” or “Complainant”) provides notice that Shamyat Restaurant Inc doing business as Mal Al Sham Restaurant, and related entities (collectively “the Mal Al Sham Employers” or “the Employers”) violated her rights and those of all other individuals the Mal Al Sham Employers have employed or otherwise contracted with in California as hourly, non-exempt employees, including kitchen helpers and dishwashers, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198. On behalf of herself and all other Aggrieved Employees, Juaifer hereby provides this notice to the Labor & Workforce Development Agency and the Mal Al Sham Employers and their agents and representatives.

At all relevant times, the Mal Al Sham Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Juaifer and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately March 17, 2022, the Mal Al Sham Employers began to employ Juaifer in their restaurant “Mal Al Sham” located on 388 E Main Street in El Cajon, California, in the position of hourly, non-exempt kitchen helper. The Mal Al Sham Employers continuously employed her in that capacity until on or about April 27, 2022 when her employment ended.

At all relevant times, the Mal Al Sham Employers issued wages to Juaifer and all of the other Aggrieved Employees on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant times, the Mal Al Sham Employers classified Juaifer and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Mal Al Sham Employers failed to compensate Juaifer and all of the other Aggrieved Employees at the correct rates of pay for all hours worked. The Mal Al Sham Employers compensated Juaifer with \$14 per hour. At all relevant times, Juaifer and the Aggrieved Employees worked 6 to 7 days in a workweek, and for an average of 10 to 12 hours per workday. The Mal Al Sham Employers, however, paid Juaifer and the Aggrieved Employees at the regular rate of pay for all hours and failed to pay overtime wages at least one and half times (1 ½) their hourly rates of pay of all hours in excess of forty (40) in a week, all hours in excess of eight (8) in a day, and all hours on the seventh (7th) day worked in the workweek. Additionally, the Employers failed to pay Juaifer and the Aggrieved Employees at least twice their hourly rates of pay when they worked over twelve (12) hours in a workday or for hours in excess of eight (8) on the seventh (7th) workday of the workweek.

The Mal Al Sham Employers informed Juaifer and the Aggrieved Employees that they could only provide them with earning statements that compensated them for 10 hours at the regular rate of pay per workweek. All of Juaifer’s bi-weekly paystubs indicate that she only worked for 20 hours, and only compensate her for 20 hours per pay period, although Juaifer worked an average of 140 hours per pay period. The Mal Al Sham Employers paid Juaifer any additional hours in cash at the regular rate of pay, failing to pay overtime wages at overtime premium rates. Juaifer and the Aggrieved Employees frequently complained about the inaccurate wage statements, however, the Mal Al Sham Employers refused to make any changes.

At all relevant times, the Mal Al Sham Employers failed to provide Juaifer and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. Due to extremely high workload and failure to hire sufficient staff members, the Mal Al Sham Employers denied Juaifer and the Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Mal Al Sham Employers also denied 30-minute off-duty meal periods to Juaifer and the Aggrieved Employees because anytime Juaifer asked to take a break, the Employers refused. The Mal Al Sham Employers did not have any clock-in/clock-out procedure and did not record meal breaks. The Mal Al Sham Employers also failed to pay premium wages for days on which they failed to provide Juaifer and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Mal Al Sham Employers failed to authorize and permit Juaifer and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. Due to high workload and low staffing levels, the Mal Al Sham Employers failed to authorize and permit Juaifer and the Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. the Mal Al Sham Employers did not seek an exemption from the rest period protections of the Wage Order from the California Divisions of Labor Standards Enforcement. The Mal Al Sham Employers also failed to pay premium wages for days on which they failed to authorize and permit Juaifer and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Mal Al Sham Employers failed to issue to Juaifer and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Mal Al Sham Employers knowingly and intentionally failed to state on the wage statements they issued to Juaifer and all of the other Aggrieved Employees the unpaid wages discussed above.

The Mal Al Sham Employers also failed to timely pay Juaifer and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Mal Al Sham Employers failed to maintain accurate employee records of Juaifer and all of the other Aggrieved Employees.

For the reasons stated herein, Juaifer alleges the following violations of the Labor Code and the Wage Order on behalf of herself and all of the other Aggrieved Employees:

- (a) The Mal Al Sham Employers failed to pay Juaifer and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including overtime, and doubletime wages;
- (b) The Mal Al Sham Employers failed to provide Juaifer and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Mal Al Sham Employers failed to authorize and permit Juaifer and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Mal Al Sham Employers failed to compensate Juaifer and all of the other Aggrieved Employees at one hour's pay for each day in which the Mal Al Sham Employers failed to provide them with one or more meal periods as required by law;
- (e) The Mal Al Sham Employers failed to compensate Juaifer and all of the other Aggrieved Employees at one hour's pay for each day in which the Mal Al Sham Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Mal Al Sham Employers knowingly and intentionally failed to provide Juaifer and all of the other Aggrieved Employees with accurate wage statements;
- (g) The Mal Al Sham Employers willfully failed to timely pay Juaifer and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Mal Al Sham Employers and when their employment ended;
- (h) The Mal Al Sham Employers failed to maintain accurate employment records pertaining to Juaifer and all of the other Aggrieved Employees.

Accordingly, Juaifer now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees based on the Mal Al Sham Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Public Housekeeping Industry" to mean

any industry, business, or establishment which provides meals, housing, or maintenance services whether operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the Commission, and includes, but is not limited to the following:

- (1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters, cafeterias, boarding houses, clubs, and all similar establishments where food in either sold or liquid form is prepared and served to be consumed on the premises;

Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Mal Al Sham Employers, Juaifer, and all of the Aggrieved Employees were covered by the Wage Order because the Mal Al Sham Employers owned and operated, and Juaifer, and all of the Aggrieved Employees, worked for one or more restaurants. Accordingly, Juaifer and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure To Pay Wages For All Hours Worked At The Correct

Rates of Pay

(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code section 1197, "The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful."

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in

any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half ($1\frac{1}{2}$) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7^{th}) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7^{th}) consecutive day of work in a workweek; and
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth ($1/40$) of the employee's weekly salary.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

With respect to overtime wages, the regular rate of pay under California law must include "all remuneration for employment paid to, on behalf of, the employee." O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses must be included in the regular rate whether they are the sole source of the employee's compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the Mal Al Sham Employers, Juaifer and all of the other Aggrieved Employees earned rest period premium wages, meal period premium wages during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the

Mal Al Sham Employers, Juaifer failed to pay to Juaifer and all of the other Aggrieved Employees rest period premium wages, meal period premium wages overtime and double time premium pay on such rest period premium wages, meal period premium wages.

At all relevant times during the applicable limitations period, the Mal Al Sham Employers failed to compensate Juaifer and all of the other Aggrieved Employees for all hours worked, including, but not limited to overtime, and doubletime wages for all hours they worked at the correct rates of pay. Accordingly, Juaifer now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

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, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. 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, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. . . .

- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the Mal Al Sham Employers failed to provide Juaifer and all of the other Aggrieved Employees with all timely meal periods. Due to extreme workload and failure to hire sufficient staff members, the Mal Al Sham Employers denied Juaifer and the Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Mal Al Sham Employers also denied 30-minute off-duty meal periods to Juaifer and the Aggrieved Employees because anytime Juaifer asked to take a break, the Employers refused. Furthermore, the Mal Al Sham Employers failed to pay premium wages for days on which they failed to provide Juaifer and all of the other Aggrieved Employees with timely meal periods. Accordingly, Juaifer now seeks civil penalties for these Labor Code violations that the Mal Al Sham Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a

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

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

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

The Mal Al Sham Employers failed to authorize and permit Juaifer and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Mal Al Sham Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Moreover, the Mal Al Sham Employers failed to pay Juaifer and all of the other Aggrieved Employees premium wages on workdays the Mal Al Sham Employers failed to provide Juaifer and all of the other

Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Juaifer now seeks civil penalties for these Labor Code violations that the Mal Al Sham Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
5. Net wages earned;

6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the Mal Al Sham Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Mal Al Sham Employers failed to state in the wage statements they issued to Juaifer and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular, overtime and double-time wages. The Mal Al Sham Employers knowingly and intentionally failed to state on the wage statements they issued to Juaifer and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state, and other required information.

Accordingly, Juaifer seeks civil penalties for the Labor Code violations that the Mal Al Sham Employers have committed against her and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Timely Pay Wages During Employment **(Lab. Code § 204)**

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable

twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Mal Al Sham Employers failed to compensate Juaifer and all of the other Aggrieved Employees for wages earned, including regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, and other compensation, at the intervals stated above. As a result, the Mal Al Sham Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Juaifer now seeks civil penalties for the Labor Code violations that the Mal Al Sham Employers have committed against her and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201, 202, and 203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the 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.

The Mal Al Sham Employers failed to pay Juaifer and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Juaifer, including regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, and other compensation. Additionally, the Mal Al Sham Employers failed to issue to Juaifer and all of the other Aggrieved Employees whose employment ended their final paychecks. By failing to pay Juaifer and all of the other Aggrieved Employees as set forth above at the end of employment, the Mal Al Sham Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all of the other Aggrieved Employees, Juaifer seeks civil penalties from the Mal Al Sham Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

- (A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The Mal Al Sham Employers failed to compensate Juaifer and all of the other Aggrieved Employees for all hours worked at the correct rates of pay. As a result, the Mal Al Sham Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Juaifer and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Juaifer seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

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1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Ahlam Juaifer will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

David@spivaklaw.com

cc: Ahlam Juaifer
Walter Haines, Esq.

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