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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Fernando Gonzalez, Deputy Clerk

Attorneys for Plaintiffs KRISTIAN E. FONSECA and
ZACARIAS JUNIOR FELIX

SUPERIOR COURT OF CALIFORNIA

SAN DIEGO COUNTY

KRISTIAN E. FONSECA, an individual; and
ZACARIAS JUNIOR FELIX, an individual,

Plaintiffs,

v.

LAST CHANCE STORE LLC; BAHA A.
SHEHAB, an individual; HUSSEIN HIJAZ, an
individual; ASHRAF FAHAD HIJAZ, an
individual; and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: 37-2023-00031717-CU-OE-CTL

COMPLAINT FOR DAMAGES:

1. FAILURE TO PAY WAGES
2. FAILURE TO TIMELY FURNISH
ACCURATE ITEMIZED WAGE
STATEMENTS
3. UNFAIR BUSINESS PRACTICES
4. WAITING TIME PENALTIES
5. MEAL AND REST PERIOD
VIOLATIONS
6. FAILURE TO PROVIDE A COPY OF
PAYROLL RECORDS AND EMPLOYEE
FILE AND FAILURE TO MAINTAIN
ACCURATE TIME RECORDS
7. PRIVATE ATTORNEYS GENERAL
ACT OF 2004 ("PAGA") PER LABOR
CODE §2699, et seq.

[IMAGED FILE]

Plaintiffs KRISTIAN E. FONSECA, an individual, and ZACARIAS JUNIOR FELIX, an individual, (collectively hereinafter “Plaintiffs”) allege as follows:

GENERAL ALLEGATIONS

The public policy of California declares:

It is the public policy of this state to vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions or for employers that have not secured the payment of compensation and to protect employers who comply with the law from those who attempt to gain a competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

(Labor Code §90.5 subd. (a).)

Despite this clear mandate, DEFENDANTS blatantly violated the California Labor Code and the Industrial Welfare Commission (“IWC”) Wage Orders. Defendants willfully failed to pay all mandated minimum wages and overtime wages, failed to provide meal and rest periods and failed to pay them meal and rest period premiums, and failed to provide and maintain proper employee records and make FICA withholdings and contributions at the expense of the employees and the State and Federal governments.

1. This lawsuit is brought in response to the Defendants' refusal to pay Plaintiffs and the other aggrieved employees all wages and premium wages that they earned during their employment with Defendants, failed to fully relieved of their duties during their meal and rest periods, and failed to provide them with proper records, among other Labor Code violations.

2. The acts complained of herein have occurred within the time period from four (4) years preceding the filing of the original Complaint herein (hereinafter, the “Relevant Time Period”).

JURISDICTION AND VENUE

3. The Superior Court of the State of California for the County of San Diego has jurisdiction over this case due to the fact that some of the alleged violations (a) of California

1 Labor Code (i.e. §§ 200 et seq.), (b) California Business and Professions Code §§ 17200 *et seq.*
2 and (c) related common law violations occurred in the County of San Diego.

3 4. Venue is proper in Central Division of San Diego County Superior Court pursuant
4 to Code of Civil Procedure §395(a) and §395.5, because *inter alia*, (a) the Defendants' and
5 Defendant corporation's businesses are situated in this County and liabilities claimed occurred in
6 this County, and (b) complaints regarding such issues may be filed in the Central Division.

7
8 **PARTIES**

9 5. Plaintiff KRISTIAN E. FONSECA is an individual over the age of eighteen (18)
10 and was an employee of Defendants during the last 4 years.

11 6. Plaintiff ZACARIAS JUNIOR FELIX is an individual over the age of eighteen
12 (18) and was an employee of Defendants during the last 4 years.

13 7. Plaintiffs are informed and believe that Defendant LAST CHANCE STORE LLC
14 is a California Limited Liability Company that owns and runs several retail stores in San Diego,
15 Orange, and other counties in California, and possibly other businesses, and at all times
16 mentioned herein operated its business within the jurisdiction of this Court.

17 8. Plaintiffs are informed and believe that Defendant BAHA A. SHEHAB is an
18 individual who during the relevant time period has owned, managed and operated and continues
19 to own, manage and operate LAST CHANCE STORE LLC, and who at all times mentioned in
20 this Complaint herein resided within the jurisdiction of this Court. BAHA A. SHEHAB was and
21 remains a person acting on behalf of LAST CHANCE STORE LLC, on information and belief as
22 the chief executive officer, managing agent, and director of LAST CHANCE STORE LLC, who
23 violated and/or who caused to violate various Labor Code sections and other provisions
24 regulating hours and days of work established by the Industrial Welfare Commission of the State
25 of California rendering him individually liable pursuant to Labor Code Sections 558, 558.1,
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1 1197.1, and 2699 et. seq. In addition, BAHA A. SHEHAB is an officer, director, and person
2 acting either individually or as a managing agent, who paid or caused to be paid the Plaintiffs
3 and the other aggrieved employees a wage less than the minimum, regular, and/or overtime rate
4 of pay under the law, failed to relieve them of duties during their meal and rest periods, failed to
5 reimburse, and failed to provide accurate records, or by an order of the commission and is
6 therefore subject to a civil penalty, restitution of wages payable to the employee, and any
7 applicable wages, damages and penalties plus fees and costs imposed pursuant to Labor Sections
8 203, 558, 558.1, and 2699 et. seq.

10 9. Plaintiffs are informed and believe that Defendant HUSSEIN HIJAZ is an
11 individual who during the relevant time period has owned, managed and operated and continues
12 to own, manage and operate LAST CHANCE STORE LLC, and who at all times mentioned in
13 this Complaint herein resided within the jurisdiction of this Court. HUSSEIN HIJAZ was and
14 remains a person acting on behalf of LAST CHANCE STORE LLC, on information and belief as
15 a managing agent and director of LAST CHANCE STORE LLC, who violated and/or who
16 caused to violate various Labor Code sections and other provisions regulating hours and days of
17 work established by the Industrial Welfare Commission of the State of California rendering him
18 individually liable pursuant to Labor Code Sections 558, 558.1, 1197.1, and 2699 et. seq. In
19 addition, HUSSEIN HIJAZ is believed to be an officer, director, and person acting either
20 individually or as a managing agent, who paid or caused to be paid the Plaintiffs and the other
21 aggrieved employees a wage less than the minimum, regular, and/or overtime rate of pay under
22 the law, failed to relieve them of duties during their meal and rest periods, failed to reimburse,
23 and failed to provide accurate records, or by an order of the commission and is therefore subject
24 to a civil penalty, restitution of wages payable to the employee, and any applicable wages,
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1 damages and penalties plus fees and costs imposed pursuant to Labor Sections 203, 558, 558.1,
2 and 2699 et. seq.

3 10. Plaintiffs are informed and believe that Defendant ASHRAF FAHAD HIJAZ is
4 an individual who during the relevant time period has owned, managed and operated and
5 continues to own, manage and operate LAST CHANCE STORE LLC, and who at all times
6 mentioned in this Complaint herein resided within the jurisdiction of this Court. ASHRAF
7 FAHAD HIJAZ was and remains a person acting on behalf of LAST CHANCE STORE LLC, on
8 information and belief as a managing agent and director of LAST CHANCE STORE LLC, who
9 violated and/or who caused to violate various Labor Code sections and other provisions
10 regulating hours and days of work established by the Industrial Welfare Commission of the State
11 of California rendering him individually liable pursuant to Labor Code Sections 558, 558.1,
12 1197.1, and 2699 et. seq. In addition, ASHRAF FAHAD HIJAZ is believed to be an officer,
13 director, and person acting either individually or as a managing agent, who paid or caused to be
14 paid the Plaintiffs and the other aggrieved employees a wage less than the minimum, regular,
15 and/or overtime rate of pay under the law, failed to relieve them of duties during their meal and
16 rest periods, failed to reimburse, and failed to provide accurate records, or by an order of the
17 commission and is therefore subject to a civil penalty, restitution of wages payable to the
18 employee, and any applicable wages, damages and penalties plus fees and costs imposed
19 pursuant to Labor Sections 203, 558, 558.1, and 2699 et. seq.
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23 11. DOES 1 to 50, inclusive are now, and/or at all times mentioned in this Complaint
24 were licensed to do business and/or actually doing business in the State of California. Plaintiffs
25 do not know the true names or capacities, whether individual, partner or corporate, of DOES 1 to
26 50, inclusive and for that reason, DOES 1 to 50 are sued under such fictitious names pursuant to
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1 California Code of Civil Procedure (“CCP”) §474. Plaintiffs will amend this Complaint to allege
2 such names and capacities as soon as they are ascertained.

3 12. Plaintiffs are informed and believe and thereon allege that DOES 1 to 50,
4 inclusive, are former co-employers and/or joint employers of Plaintiffs.

5 13. Plaintiffs are informed and believe and thereon allege that DOES 1 to 50,
6 inclusive, are successors in interest to Defendants or are otherwise obligated to pay Plaintiffs the
7 wages due and owing to them, e.g. by way of statute, common law, quantum meruit, express
8 written contract, implied in fact contract, or by way of common counts such as money had and
9 received. Plaintiffs reserve the right to augment the foregoing allegations to more clearly set
10 forth this Defendant’s liability as discovery progresses and reveals the same.

11 14. Plaintiffs are informed and believe, and based upon such information and belief
12 allege that the Defendants, and each of them, are now and/or at all times mentioned in this
13 Complaint were in some manner legally responsible for the events, happenings and
14 circumstances alleged in this Complaint.

15 15. Plaintiffs are further informed and believe, and based upon such information and
16 belief alleges, that at all times herein mentioned, all Defendants, and each of them, were and are
17 the agents, servants, employees, joint venturers, and/or partners of each of the other Defendants,
18 and were, at all such times, acting within the course and scope of said employment and/or
19 agency; furthermore, that each and every Defendant herein, while acting as a high corporate
20 officer, director and/or managing agent, principal and/or employer, expressly directed, consented
21 to, approved, affirmed and ratified each and every action taken by the other co-Defendants, as
22 herein alleged and was responsible in whole or in part for the matters referred to herein.

23 16. Plaintiffs are further informed and believe, and based upon such information and
24 belief alleges, that at all times herein mentioned, Defendants, and each of them, proximately
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1 caused Plaintiffs to be subjected to the unlawful practices, wrongs, complaints, injuries and/or
2 damages alleged in this Complaint.

3 17. Plaintiffs are further informed and believe, and based upon such information and
4 belief alleges, that at all times herein mentioned, Defendants, and each of them were co-
5 employers and/or joint employers of Plaintiffs.
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7 18. Defendants, and each of them, are now and/or at all times mentioned in this
8 Complaint were members of and/or engaged in a joint venture, partnership and common
9 enterprise, and were acting within the course and scope of, and in pursuit of said joint venture,
10 partnership and common enterprise and, as such were co-employers and/or joint employers of
11 Plaintiffs.
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13 19. Defendants, and each of them, at all times mentioned in this Complaint concurred
14 with, contributed to, approved of, aided and abetted, condoned and/or otherwise ratified the
15 various acts and omissions of each and every one of the other Defendants in proximately causing
16 the complaints, injuries and/or damages alleged in this Complaint.

17 20. Plaintiffs are informed and believe and thereon alleges that at all times herein
18 mentioned, some of the Defendants DOES 1 through 50, Inclusive, were the *alter egos* of the
19 named Defendants. Plaintiffs are informed and believe and thereon allege that there exists such a
20 unity of interest and ownership between the named Defendants and DOES 1 through 50, that the
21 individuality and separateness of the named Defendants and DOES 1 through 50 has ceased to
22 exist. The business affairs of named Defendants and DOES 1 through 50, are, and at all times
23 relevant hereto were, so mixed and intermingled that the same cannot reasonably be segregated,
24 and the same are in inextricable confusion. Defendants, and at all times relevant hereto, used
25 each other as a mere shell and conduit for the conduct of certain of Defendants' affairs. The
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1 recognition of the separate existence of Defendants would not promote justice, in that it would
2 permit Defendants to insulate themselves from liability to Plaintiffs. Accordingly, the named
3 Defendants constitute the *alter ego* of Defendants DOES 1 through 50, and the fiction of their
4 separate existence must be disregarded.

5
6 **FIRST CAUSE OF ACTION**

7 **FAILURE TO PAY WAGES**

8 **(Against all Defendants)**

9 21. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this
10 section as though fully set forth herein.

11 22. Plaintiffs were each an “employee” of Defendants (as defined by section 350 of
12 the Labor Code) but Defendants failed to pay Plaintiffs and the other aggrieved employees all
13 wages earned for all hours worked. Plaintiffs and the other aggrieved employees were employed
14 as retail store clerks and laborers.

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16 23. Pursuant to Labor Code §1197 and local laws, payment of less than the minimum
17 wage fixed by the commission is unlawful.

18 24. During the entire period of time that Plaintiffs and the other aggrieved employees
19 were employed by Defendants, and for the four (4) years preceding the filing of this lawsuit,
20 Defendants were required to compensate them at least at the minimum wage, but failed to carry
21 out their duties and responsibilities as an employer imposed under the laws and regulations of the
22 State of California and violated the law by failing to pay Plaintiffs and the other aggrieved
23 employees at least the minimum wage for all hours worked pursuant to all applicable wage
24 orders and in accordance with Labor Code sections 200, 226, 500, 510, 558.1, 1194, 1194.2
25 1197, and 1197.1 and local laws.

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1 25. Defendants regularly failed to pay Plaintiffs and the other aggrieved employees
2 all of the wages that they earned. Specifically, Defendants have intentionally failed to pay
3 Plaintiffs and the other aggrieved employees at least at the minimum wage rate of pay for all
4 hours worked, paying them at a rate of pay lower than the minimum wage rate, and Defendants
5 also skimmed their employees' pay by deducting on average at least \$30 to \$80 per day from
6 each of their employees' pay ("wage theft"), causing the employees to not receive at least the
7 minimum, regular, and/or overtime wage for all of their hours worked.
8

9 26. In violation of state and municipal law, Defendants have knowingly and willfully
10 refused to perform their obligations to compensate Plaintiffs and the other aggrieved employees
11 for minimum and regular wages earned and all hours worked. As a direct result, Plaintiffs and
12 the other aggrieved employees have suffered, and continue to suffer, substantial losses related to
13 the use and enjoyment of such unpaid wages, lost interest on such wages, costs and attorneys'
14 fees in seeking to compel Defendants to fully perform its obligation under state and municipal
15 law, all to their damage in amounts according to proof at the time of trial, but in amounts in
16 excess of the minimum jurisdiction requirement of this Court. Defendants committed the acts
17 alleged herein knowingly and willfully, with wrongful and deliberate intent.
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19 27. Defendants' conduct described herein violates Labor Code sections 200, 226, 500,
20 510, 558, 558.1, 1194, 1194.2, 1197, and 1197.1 and local laws. As a proximate result of the
21 aforementioned violations, Plaintiffs and the other aggrieved employees have been damaged in
22 an amount according to proof at the time of trial, but in an amount in excess of the minimum
23 jurisdiction requirement of this Court. Therefore, pursuant to Labor Code sections 200, 203,
24 226, 558, 558.1, 1194, 1194.2, 1197, and 1197.1 and local laws, Plaintiffs are entitled to recover
25 the unpaid balance of minimum wages and damages for minimum wage violations, including but
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1 not limited to LC 1194.2 liquidated damages in an amount to be proven at trial, plus interest,
2 penalties, attorneys' fees, expenses, and costs of suit.

3 28. Pursuant to Labor Code §200, "wages" includes all amounts for labor performed
4 by employees of every description, whether the amount is fixed or ascertained by the standard of
5 time, task, piece, commission basis, or other method of calculation.
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7 29. Plaintiffs and the other aggrieved employees have not been paid for all of their
8 hours worked at least at their regular rate of pay and are thus entitled to their earned unpaid
9 wages in an amount to be proven at trial, plus interest, penalties, attorneys' fees and costs.

10 30. Under California law, including but not limited to, Labor Code sections 200, 226,
11 500, 510, 558, 558.1, and 1198, Defendants were required to compensate Plaintiffs and the other
12 aggrieved employees for all overtime, which is calculated at one and one-half (1.5) times the
13 regular rate of pay for hours worked in excess of forty (40) per week or after eight (8) in one day,
14 and double time (2) times the regular rate of pay for hours worked on the seventh consecutive
15 work day, or after twelve (12) hours in any workday.
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17 31. Throughout their employment with Defendants, Plaintiffs and the other aggrieved
18 employees regularly worked overtime hours, working on average at least 12 hours per day, five
19 days a week. Plaintiffs and the other aggrieved employees are or were non-exempt employees
20 entitled to overtime pay under California law, including but not limited to Labor Code sections
21 200, 226, 500, 510, 558, 558.1, 1194 and 1198. Throughout Plaintiff's employment, Defendants
22 failed to pay Plaintiffs and the other aggrieved employees at the overtime rate of pay for any of
23 their overtime hours worked where Defendants pay their employees at less than the minimum
24 wage rate of pay and also shave the employees' wages (see above).
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1 32. Under the applicable wage orders, statutes and regulations, Plaintiffs and the other
2 aggrieved employees are entitled to one and one-half (1.5) times and double their regular rate of
3 pay for overtime work performed during the entire course of their employment with Defendants.

4 33. As a direct result, Plaintiffs and the other aggrieved employees have suffered
5 substantial losses related to the use and enjoyment of such wages, lost interest on such wages,
6 and expenses and attorneys' fees in seeking to compel Defendants to fully perform its obligation
7 under state law, all to their respective damage in amounts according to proof at the time of trial,
8 but in amounts in excess of the jurisdiction of this Court. Defendants committed the acts alleged
9 herein knowingly and willfully, with the wrongful and deliberate intention of injuring Plaintiffs,
10 from improper motives amounting to malice, and in conscious disregard of Plaintiffs' rights.
11 Plaintiffs' are thus entitled to recover nominal, actual, compensatory damages in amounts
12 according to proof at the time of trial, but in amounts in excess of the jurisdiction of this Court.
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14 34. Defendants' conduct described herein violates Labor Code sections 200, 226, 500,
15 510, 558, 558.1, 1194, and 1198 and local laws. As a proximate result of the aforementioned
16 violations, Plaintiffs have been damaged in an amount according to proof at the time of trial, but
17 in an amount in excess of the jurisdiction of this Court. Therefore, pursuant to Labor Code
18 sections 200, 203, 226, 558, 558.1, 1198, and 1194 and local laws, Plaintiffs are entitled to
19 recover the unpaid balance of overtime compensation Defendants owe to Plaintiffs in an amount
20 to be proven at trial, plus interest, penalties, attorneys' fees, expenses, and costs of suit.
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22 35. An employer must pay its employees sick leave pursuant to Labor Code Section
23 246, et seq. and local laws. Defendants failed to pay for sick pay leave in violation of Labor
24 Code Section 246, et seq. and local laws. Therefore, Plaintiffs are entitled to unpaid sick pay
25 leave in an amount to be proven at trial, plus interest, penalties, attorneys' fees and costs.
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38. Plaintiffs seek damages and penalties pursuant to Labor Code §226(e) for each violation by Defendants of Labor Code §226 and pursuant to §§ 226.3, 558, 558.1 regarding

1 themselves and the other aggrieved employees, plus attorneys' fees and costs. In addition,
2 Plaintiffs seek preliminary and permanent injunctive relief pursuant to Labor Code §226(h).

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4 **THIRD CAUSE OF ACTION**

5 **UNFAIR BUSINESS PRACTICES**

6 **(BUSINESS & PROFESSIONS CODE §17200, et seq.)**

7 **(Against all Defendants)**

8 39. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this
9 section as though fully set forth herein.

10 40. Defendants have engaged in unfair business practices in California by utilizing
11 and engaging in an unlawful pattern and practice of failing to properly pay employee
12 compensation as described throughout this Complaint, specifically, by requiring the Plaintiffs
13 and the other aggrieved employees to perform work without proper payment of overtime,
14 regular, minimum, and sick leave pay earned, without meal and rest periods and without meal
15 and rest period premiums, without proper records, and failed to pay and report proper taxes to the
16 US and California governments. Defendants' use of such practices constitutes a statutorily
17 illegal, and thus, unfair business practice and provides an unfair advantage over Defendants'
18 competitors.
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21 41. Plaintiffs seek full restitution by Defendants as necessary and according to proof,
22 to restore any and all monies withheld, acquired and/or converted by the Defendants by means of
23 the unfair business practices complained of herein.

24 42. Plaintiffs seek the appointment of a receiver, as necessary, to oversee said
25 restitution, including all wages earned and unpaid, including interest thereon.

26 43. The acts complained of herein, occurred, at least in part, within the last 4 years
27 preceding this Complaint for Damages.
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44. Further, if Defendants are not enjoined from the unlawful conduct described above, Defendants will continue unabated in its unlawful conduct, which will continue to result in irreparable injury to members of the general public, including, but not limited to Plaintiffs and the other aggrieved employees, who are current and former employees of the Defendants, and for which there is no adequate remedy at law. Thus, Plaintiffs request that the Court issue a preliminary and permanent injunction prohibiting Defendants from engaging in the foregoing conduct.

FOURTH CAUSE OF ACTION

FAILURE TO PAY WAGES UPON SEPARATION OF EMPLOYMENT

WAITING TIME PENALTIES PURSUANT TO LABOR CODE §203

(Against all Defendants)

45. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this section as though fully set forth herein.

46. Defendants failed to pay Plaintiffs and the other aggrieved employees all earned wages upon the separation of their employment with Defendants in violation of Labor Code sections 201 and 202, including but not limited to, overtime, minimum, regular, sick pay, and meal and rest period premium wages. Defendants have several times paid their employees late, causing damages to the employees in violation of Labor Code §204.

47. Defendants' failure to pay Plaintiffs and the other aggrieved employees all wages due was willful and done with malice. Plaintiffs and the other aggrieved employees are therefore entitled to penalties and damages pursuant to Labor Code §203, 204, and pursuant to §§ 558, 558.1, plus attorneys' fees and costs.

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FIFTH CAUSE OF ACTION
MEAL AND REST PERIOD VIOLATIONS
LABOR CODE §§ 226.7 and 512
(Against all Defendants)

48. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this section as though fully set forth herein.

49. Under California Labor Code sections 226.7, 512 and California Wage Orders, Off Duty Meal Periods of 30 minutes are required for all non-exempt employees who work at least 5 hours in a shift, except that when a work period of not more than 6 hours will complete the day's work then the meal period may be waived by mutual consent of the employer and employee. Time records of meal periods must be kept except that meal periods during which operations cease need not be recorded. Employers must provide non-exempt employees 2 Off Duty Rest Periods of 10 minutes each in a normal 8 hour shift. Rest Periods need not be recorded. The Meal Periods are unpaid unless the employee is not fully relieved of all duties. Rest Periods must be paid. An employer who fails to provide off duty meal and rest periods (breaks) must pay the employee an additional 1 hour regular pay for each category of break not provided in a work day.

50. At all times mentioned herein, Defendants violated Labor Code sections 226.7 and 512 by refusing to allow Plaintiffs and the other aggrieved employees to be fully relieved of their duties during their meal and rest periods. Defendants did not allow Plaintiffs and the aggrieved employees to be fully relieved of their duties during their meal and rest periods and even if they did allow them to, the employees would not be able to finish their required duties in time if they did, causing Defendants to reprimand them or verbally or physically harass them.

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51. Accordingly, Plaintiffs and the other aggrieved employees are entitled to seek damages available pursuant to the Labor Code, including but not limited to Labor Code sections 226.7, 512, 558, and 558.1 in an amount proven at trial, plus interest, penalties, fees, and costs.

SIXTH CAUSE OF ACTION

EMPLOYEE FILE & PAYROLL RECORDS VIOLATION

LABOR CODE §§ 1198.5, 432, 226(b), (c), and (f), 1174.5

(Against all Defendants)

52. Plaintiffs incorporate by reference and re-allege each and every one of the allegations contained in this Complaint as though fully set forth herein.

53. On or about October 3, 2022, Plaintiffs, through their counsel, requested in writing that Defendants provide Plaintiffs with a copy of certain documents in their employee file and payroll and time records. Defendants failed to timely furnish Plaintiffs with a copy of their employee file and payroll and time records in violation of Labor Code §§432, and 226(b),(c), (f), and 1198.5; IWC Orders 1 through 15, Section 7, and IWC Order 16, Section 6. Plaintiffs are entitled to recover any and all penalties and compensation provided by the Labor Code, including the above mentioned sections and sections 558 and 558.1, for Defendant's failure to furnish the requested personnel and payroll and time records including at least \$750.00 in penalties pursuant to LC §§226(f) and 1198.5, plus attorneys' fees and costs.

54. Pursuant to Labor Code §1174(d), Defendants have a legal obligation to “[k]eep, 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.”

55. Defendants failed to maintain any records of Plaintiffs' and the other aggrieved employees' accurate hours worked which Defendant was required to keep pursuant to Labor Code §1174(d). Therefore, Defendants violated Labor Code §1174(d) by failing to collect and keep records indicating the accurate daily hours worked by Plaintiffs and the other aggrieved employees.

56. Pursuant to Labor Code §1174.5, “any person employing labor who willfully fails to maintain... accurate and complete records required by subdivision (d) of Section 1174... shall be subject to a civil penalty of five hundred dollars (\$500).” Accordingly, Defendants are required to pay Plaintiffs and the other aggrieved employees an additional \$500.00 each along with consequential damages.

SEVENTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT OF 2004 (“PAGA”)

PER LABOR CODE §2699, et seq.

(Against All Defendants)

57. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this section as though fully set forth herein.

58. On or about November 7, 2022, pursuant Labor Code sections 2699(a) and 2699.3, Plaintiffs, through their counsel, provided notice in writing by online submission to the California Labor Workforce Development Agency (“LWDA”) and via certified US Mail to Defendants and each of them, that Plaintiffs intended to assert a PAGA claim pursuant to section 2699(a) on their own behalf, and in a representative capacity on behalf of other aggrieved employees of Defendants, for Defendants’ violations of specified provisions of the California Labor Code. See Exhibit 1 attached to this Complaint. The LWDA did not respond within 65 days.

1 59. As a result, Plaintiffs have perfected their right to sue Defendants in a civil action,
2 and to collect statutory penalties, pursuant to Labor Code section 2699.3(a)(2)(A)(1) on behalf of
3 all aggrieved employees (PAGA Employees).

4
5 60. As a result of the acts alleged throughout this Complaint, Plaintiffs bring this
6 action on their own behalf, and in a representative capacity on behalf of other current or former
7 aggrieved employees (PAGA Employees), for penalties pursuant to California Labor Code
8 section 2699 for Defendants' violations of the enumerated Labor Code sections, including, but
9 not limited to sections 200, 201, 202, 203, 204, 210, 216, 220, 221, 222, 223, 224, 225.5, 226,
10 226.3, 226.7, 227, 227.3, 233, 246, 510, 512, 558, 558.1, 98.6, 1102.5, 1174, 1174.5, 1175, 1194,
11 1194.2, 1197.1, 1198, 1198.5, 1199, 1770-1781, and 2802.

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13 61. Pursuant to California Labor Code section 2699, Plaintiffs and PAGA Employees
14 are entitled to be awarded twenty-five (25%) percent of all penalties due under California law, in
15 addition to interest, attorney's fees and costs.

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17 62. The Court should award seventy-five (75%) percent of all penalties due under
18 California law to the State of California.

19 63. Plaintiffs, on behalf of the State of California and the aggrieved employees,
20 therefore seek to recover from Defendants, and each of them, allowable damages and civil
21 penalties for the violations claimed above regarding Plaintiffs' claims, plus interest, costs, and
22 attorneys' fees, plus civil penalties regarding the other aggrieved employees' claims in an
23 amount according to proof at trial, in accordance with Labor Code sections 2699, *et seq.*

24
25 64. Labor Code Section 558 states that "[a]ny employer or *other person* acting on
26 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
27 provision regulating hours and days of work in any order of the Industrial Welfare Commission
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1 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
2 each underpaid employee for each pay period for which the employee was underpaid in addition
3 to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one
4 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
5 was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages
6 recovered pursuant to this section shall be paid to the affected employee. The Section goes on to
7 state that “[t]he civil penalties provided for in this section are in addition to any other civil or
8 criminal penalty provided by law.”
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10 65. Labor Code Section 558.1(a) provides in pertinent part: “Any employer or other
11 person acting on behalf of an employer, who violates, or causes to be violated, any provision
12 regulating minimum wages or hours and days of work in any order of the Industrial Welfare
13 Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or
14 2802, may be held liable as the employer for such violation.”
15

16 66. Defendants violated/violate, or caused/causes to be violated, multiple sections of
17 the Labor Code as well as provisions regulating hours and days of work in any order of the
18 Industrial Welfare Commission including those requiring payment of minimum and regular
19 wages and payment of overtime wages, meal and rest periods, records violations, as set forth in
20 detail throughout this Complaint.
21

22 67. Accordingly, Plaintiffs are also entitled to recovery of wages, premium wages,
23 damages, and penalties pursuant to Labor Code Sections 558 and 558.1.
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1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiffs pray for judgment against Defendants, as follows:

- 3 1. For compensatory damages, including but not limited to, those pursuant to Labor Code
4 §§ 200, 201, 203, 218, 221, 222, 223, 224, 225.5, 226, 226.3, 226.7, 233, 246, 350-356, 500,
5 510, 512, 558, 558.1, 98.6, 1102.5, 1174, 1174.5, 1194, 1194.2, 1194.3, 1197.1, 1198, 1198.5,
6 1770-1781, 2802, 2699, et seq., California Wage Orders, local and municipal laws, and other
7 statutes and laws;
8
9 2. For pre-judgment interest pursuant to all applicable statutes including but not limited to,
10 Labor Code §§218.6, et seq., local and municipal laws, loss of earnings damages, and pursuant to
11 Civil Code §§ 3287(b) and 3289;
12
13 3. For penalties pursuant to Labor Code §§ 203, 225.5, 226, 226(f) and 1198.5, 226.3,
14 226.7, 233, 246, 350-356, 98.6, 1102.5, 512, 558, 558.1, 1174.5, 1194.2, 1197.1, 2802, civil
15 penalties pursuant to section 2699, et seq., local and municipal laws, and other statutes and laws;
16
17 4. For all damages available pursuant to all applicable sections of the Labor Code;
18
19 5. For injunctive relief pursuant to Labor Code §226(h);
20
21 6. For an award of reasonable attorneys' fees and costs;
22
23 7. For restitution of all monies due to Plaintiffs and disgorged profits from the unlawful
24 business practices of Defendants;
25
26 8. For all remedies available pursuant to Business and Professions Code section 17200 et
27 seq.;
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29 9. For all other appropriate injunctive, declaratory and equitable relief;
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31 10. For interest to the extent permitted by law; and

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11. For such other and further relief as the Court may deem proper.

Dated: July 23, 2023


Rodolfo Ruiz-Velasco, Esq.
Attorneys for Plaintiffs

EXHIBIT 1

RUIZ-VELASCO LAW FIRM

November 7, 2022

Via Electronic Submission

California Labor & Workforce Development Agency
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

All By Certified Mail

Baha A Shehab
Last Chance Store LLC
1360 W Edinger Ave
Santa Ana, CA 92704

Hussein Hijaz
Last Chance Store LLC
7263 Raleigh Way N
Mobile, AL 36695

Ashraf Fahad Hijaz
Last Chance Store LLC
1136 Laurel Brook LN
Montgomery, AL 36117

Via email (greg@yaglaw.net)

Greg Yaghmai
Yaghmai Law, LLC
2081 Columbiana Rd
Birmingham, AL 35216

Attorneys for Defendants

Re: **Fonseca, et al. v. Last Chance Store LLC, et al.**

To Whom It May Concern:

We represent Kristian E. Fonseca and his legal guardian and parent Karla Martinez, and Zacarias Junior Felix and his legal guardian and parent Irma Felix, individually and on behalf of all other individuals (collectively "Plaintiffs") who are either former or current employees of Last Chance Store LLC, a California Limited

Liability Company, and its owners, officers, managers, and members Baha A Shehab, Hussein Hijaz, and Ashraf Fahad Hijaz (collectively “Defendants”). Pursuant to Labor Code section 2699.3, this letter constitutes written notice of Defendant’s Labor Code violations and of our clients’ intent to recover statutory penalties under the Labor Code Private Attorney General Act of 2004. A copy of this letter is also being sent to Defendants via certified mail pursuant to Labor Code section 2699.3, and to their attorneys via email.

Plaintiffs were employed by Defendants as laborers in their retail stores. Plaintiffs are regularly required to work on average at least 12 hours per day without receiving at least the minimum wage nor overtime compensation, but Defendants instead pay the employees at the regular rate of pay for their overtime hours worked, thus causing overtime wage violations, and regularly deduct from their wages causing minimum wage violations (“wage theft”). Defendants deduct from Plaintiffs’ wages if they do not finish their tasks for the day or if they take breaks, causing further minimum wage and overtime violations. Defendants pay Plaintiffs in cash for their work.

Defendants have failed to provide any paycheck statements with accurate hours worked, rate of pay, and regular and overtime hours, and all other required information on the paycheck statements. Further, Defendants failed to keep accurate time records regarding Plaintiffs, in violation of Section 7 of the Wage Orders and Labor Code section 1174.5. On or about October 3, 2022, Plaintiffs requested in writing through their attorneys a copy of their employee file and records pursuant to LC 226, 1198.5, and 432. Defendants failed to timely provide any records in response in violation of LC 226, 1198.5, and 432.

Plaintiffs were not paid all of their wages owed at the time of their separation of work in violation of LC §§ 203 and 204.

In addition, Defendants failed to fully relieve Plaintiffs from meal and rest periods, but fail to pay them any premiums for their on-duty meal and rest periods. Specifically, Plaintiffs and other current and former employees are not fully relieved of their duties during their meal and rest periods because Defendants require them to work through their meal and rest periods and if Plaintiffs take a meal or rest period, they are deducted from their pay.

Baha A Shehab, Hussein Hijaz, and Ashraf Fahad Hijaz as the owners, officers, managers and members of Last Chance Store LLC are jointly and severally liable for the above violations pursuant to LC Sections 558, 558.1, 1197.1, and others.

The payment of a less wage than the California minimum wage and minimum wage violations, including failure to pay split shift premiums, are unlawful pursuant to Labor Code Sections 1197, 1197.1, 1194, 558, 558.1. Overtime compensation is statutorily required by California Labor Code Section 510, 558, 558.1. Meal and rest periods are required pursuant to Labor Code section 226.7 and 512, 558, 558.1. Failure to reimburse for expenditures incurred in the course of one's employment is a violation of Labor Code Section 2802, et seq. Accurate wage statements must be timely given to employees pursuant to Labor Code section 226. Illegal deductions are in violation of LC Sections 220, 221, 222, 223, 224, et seq. Taking of gratuities from aggrieved employees is a violation of Labor Code sections 350-356. Failure to pay sick pay wages is a violation of LC 246. Failure to pay vacation pay is a violation of LC 227, 227.3. Defendants' misclassification of Plaintiffs is a violation of LC 226.8. Defendants' employment practices implicate violations of numerous other Labor Code sections, including but not limited to the following: Labor Code §§ 98.6, 201, 202, 203, 204, 220, 221, 222, 223, 224, 225.5, 226, 226.3, 226.7, 227.3, 350-356, 510, 512, 558, 558.1, 1102.5, 1194, 1194.2, 1197.1, 2802, 2810, 2810.3, et seq., and 2698, et seq.

Accordingly, Plaintiffs respectfully request that the Labor & Workforce Development Agency ("LWDA") initiate an enforcement action with respect to the aforementioned violations. If the LWDA declines to pursue enforcement, Plaintiffs will pursue these claims for statutory penalties on behalf of themselves and all other current and former employees. If you have any questions or concerns regarding the above, do not hesitate to contact us.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Rodolfo Ruiz-Velasco', with a stylized, flowing script.

Rodolfo Ruiz-Velasco, Esq.