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Superior Court of California,
County of San Diego
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Clerk of the Superior Court
By Malka Manneh, Deputy Clerk

Attorneys for Plaintiff NELIDA VILLALVA GOMEZ

SUPERIOR COURT OF CALIFORNIA
SAN DIEGO COUNTY

NELIDA VILLALVA GOMEZ, an individual,	)	CASE NO.: 37-2023-00014287-CU-WT-CTL
	)	
Plaintiff,	)	COMPLAINT FOR DAMAGES:
	)	
v.	)	1. FAILURE TO PAY WAGES
	)	2. FAILURE TO TIMELY FURNISH
R NAMOU, CORP; RAZAK NAMOU, an	)	ACCURATE ITEMIZED WAGE
individual; MAHIR NAMOU, an individual;	)	STATEMENTS
RANI SAFA, an individual; and DOES 1	)	3. UNFAIR BUSINESS PRACTICES
through 50, inclusive,	)	4. WAITING TIME PENALTIES PER
	)	LABOR CODE §203
Defendants.	)	5. MEAL AND REST PERIOD
	)	VIOLATIONS
	)	6. FAILURE TO REIMBURSE
	)	7. FAILURE TO PROVIDE A COPY OF
	)	PAYROLL RECORDS AND EMPLOYEE
	)	FILE
	)	8. PRIVATE ATTORNEYS GENERAL
	)	ACT OF 2004 ("PAGA") PER LABOR
	)	CODE §2699, et seq.
	)	9. WRONGFUL TERMINATION IN
	)	VIOLATION OF PUBLIC POLICY
	)	10. WRONGFUL TERMINATION AND
	)	RETALIATION IN VIOLATION OF
	)	LABOR CODE §1102.5, et seq.
	)	
	)	[IMAGED FILE]
	)	

1 Plaintiff NELIDA VILLALVA GOMEZ, an individual (hereinafter “Plaintiff”) alleges as
2 follows:

3 **GENERAL ALLEGATIONS**

4 The public policy of California declares:

5
6 It is the public policy of this state to vigorously enforce minimum labor standards in
7 order to ensure employees are not required or permitted to work under substandard
8 unlawful conditions or for employers that have not secured the payment of compensation
9 and to protect employers who comply with the law from those who attempt to gain a
10 competitive advantage at the expense of their workers by failing to comply with
11 minimum labor standards.

12 (Labor Code §90.5 subd. (a).)

13 Despite this clear mandate, DEFENDANTS blatantly violated the California Labor Code
14 and the Industrial Welfare Commission (“IWC”) Wage Orders. Defendants willfully failed to
15 pay all mandated overtime, failed to provide meal and rest periods and failed to pay them meal
16 and rest period premiums, failed to reimburse business expenditures, and failed to provide and
17 maintain proper employee records to their employees.

18 1. This lawsuit is brought in response to the Defendants’ refusal to pay Plaintiff and
19 the other aggrieved employees all wages and premium wages that they earned during their
20 employment with Defendants, failed to reimburse them for business expenditures, failed to
21 provide them with proper records, among other Labor Code violations, and harassed and
22 terminated Plaintiff in retaliation for reporting that she and the other employees were not being
23 fully relieved of their duties during their meal and rest periods.

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

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

5. Plaintiff NELIDA VILLALVA GOMEZ is an individual over the age of eighteen (18) and was an employee of Defendants during the last 4 years.

7. Plaintiff is informed and believes that Defendant RAZAK NAMOU is an individual who during the relevant time period has owned, managed and operated and continues to own, manage and operate R NAMOU, CORP, and who at all times mentioned in this Complaint herein resided within the jurisdiction of this Court. RAZAK NAMOU was and remains a person acting on behalf of R NAMOU, CORP, on information and belief as the chief executive officer, managing agent, and director of R NAMOU, CORP, who violated and/or who caused to violate various Labor Code sections and other provisions regulating hours and days of

1 work established by the Industrial Welfare Commission of the State of California rendering him
2 individually liable pursuant to Labor Code Sections 558, 558.1, 98.6, 1102.5, 1197.1, and 2699
3 et. seq. In addition, RAZAK NAMOU is an officer, director, and person acting either
4 individually or as a managing agent, who paid or caused to be paid the Plaintiff and the other
5 aggrieved employees a wage less than the minimum, regular, and/or overtime rate of pay under
6 the law, failed to relieve them of duties during their meal and rest periods, failed to reimburse,
7 and failed to provide accurate records, or by an order of the commission and is therefore subject
8 to a civil penalty, restitution of wages payable to the employee, and any applicable wages,
9 damages and penalties plus fees and costs imposed pursuant to Labor Sections 203, 558, 558.1,
10 and 2699 et. seq. Further, RAZAK NAMOU is a person who retaliated against Plaintiff for
11 disclosing a violation of state statute, or a violation of or noncompliance with a local or state rule
12 or regulation, in violation of Labor Code §§ 98.6 and 1102.5.

15 8. Plaintiff is informed and believes that Defendant MAHIR NAMOU is an
16 individual who during the relevant time period has owned, managed and operated and continues
17 to own, manage and operate R NAMOU, CORP, and who at all times mentioned in this
18 Complaint herein resided within the jurisdiction of this Court. MAHIR NAMOU was and
19 remains a person acting on behalf of R NAMOU, CORP, on information and belief as the chief
20 financial officer, managing agent, and director of R NAMOU, CORP, who violated and/or who
21 caused to violate various Labor Code sections and other provisions regulating hours and days of
22 work established by the Industrial Welfare Commission of the State of California rendering him
23 individually liable pursuant to Labor Code Sections 558, 558.1, 98.6, 1102.5, 1197.1, and 2699
24 et. seq. In addition, MAHIR NAMOU is an officer, director, and person acting either
25 individually or as a managing agent, who paid or caused to be paid the Plaintiff and the other
26 aggrieved employees a wage less than the minimum, regular, and/or overtime rate of pay under
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1 the law, failed to relieve them of duties during their meal and rest periods, failed to reimburse,
2 and failed to provide accurate records, or by an order of the commission and is therefore subject
3 to a civil penalty, restitution of wages payable to the employee, and any applicable wages,
4 damages and penalties plus fees and costs imposed pursuant to Labor Sections 203, 558, 558.1,
5 and 2699 et. seq. Further, MAHIR NAMOU is a person who retaliated against Plaintiff for
6 disclosing a violation of state or federal statute, or a violation of or noncompliance with a local
7 or state rule or regulation, in violation of Labor Code §§ 98.6 and 1102.5.

9 9. Plaintiff is informed and believes that Defendant RANI SAFA is an individual
10 who during the relevant time period has acted as managing agent and continues to act as a
11 managing agent of R NAMOU, CORP, and who at all times mentioned in this Complaint herein
12 resided within the jurisdiction of this Court. RANI SAFA was and remains a person acting on
13 behalf of R NAMOU, CORP, on information and belief as the managing agent of R NAMOU,
14 CORP, who violated and/or who caused to violate various Labor Code sections and other
15 provisions regulating hours and days of work established by the Industrial Welfare Commission
16 of the State of California rendering him individually liable pursuant to Labor Code Sections 558,
17 558.1, 98.6, 1102.5, 1197.1, and 2699 et. seq. In addition, RANI SAFA is an officer, director,
18 and person acting either individually or as a managing agent, who paid or caused to be paid the
19 Plaintiff and the other aggrieved employees a wage less than the minimum, regular, and/or
20 overtime rate of pay under the law, failed to relieve them of duties during their meal and rest
21 periods, failed to reimburse, and failed to provide accurate records, or by an order of the
22 commission and is therefore subject to a civil penalty, restitution of wages payable to the
23 employee, and any applicable wages, damages and penalties plus fees and costs imposed
24 pursuant to Labor Sections 203, 558, 558.1, and 2699 et. seq. Further, RANI SAFA is a person
25 who retaliated against Plaintiff for disclosing a violation of state or federal statute, or a violation
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1 of or noncompliance with a local or state rule or regulation, in violation of Labor Code §§ 98.6
2 and 1102.5.

3 10. DOES 1 to 50, inclusive are now, and/or at all times mentioned in this Complaint
4 were licensed to do business and/or actually doing business in the State of California. Plaintiff
5 does not know the true names or capacities, whether individual, partner or corporate, of DOES 1
6 to 50, inclusive and for that reason, DOES 1 to 50 are sued under such fictitious names pursuant
7 to California Code of Civil Procedure (“CCP”) §474. Plaintiff will amend this Complaint to
8 allege such names and capacities as soon as they are ascertained.
9

10 11. Plaintiff is informed and believes and thereon alleges that DOES 1 to 50,
11 inclusive, are former co-employers and/or joint employers of Plaintiff.
12

13 12. Plaintiff is informed and believes and thereon alleges that DOES 1 to 50,
14 inclusive, are successors in interest to Defendants or are otherwise obligated to pay Plaintiff the
15 wages due and owing to them, e.g. by way of statute, common law, quantum meruit, express
16 written contract, implied in fact contract, or by way of common counts such as money had and
17 received. Plaintiff reserves the right to augment the foregoing allegations to more clearly set
18 forth this Defendant’s liability as discovery progresses and reveals the same.
19

20 13. Plaintiff is informed and believes, and based upon such information and belief
21 alleges that the Defendants, and each of them, are now and/or at all times mentioned in this
22 Complaint were in some manner legally responsible for the events, happenings and
23 circumstances alleged in this Complaint.

24 14. Plaintiff is further informed and believes, and based upon such information and
25 belief alleges, that at all times herein mentioned, all Defendants, and each of them, were and are
26 the agents, servants, employees, joint venturers, and/or partners of each of the other Defendants,
27 and were, at all such times, acting within the course and scope of said employment and/or
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1 agency; furthermore, that each and every Defendant herein, while acting as a high corporate
2 officer, director and/or managing agent, principal and/or employer, expressly directed, consented
3 to, approved, affirmed and ratified each and every action taken by the other co-Defendants, as
4 herein alleged and was responsible in whole or in part for the matters referred to herein.

5
6 15. Plaintiff is further informed and believes, and based upon such information and
7 belief alleges, that at all times herein mentioned, Defendant, and each of them, proximately
8 caused Plaintiff to be subjected to the unlawful practices, wrongs, complaints, injuries and/or
9 damages alleged in this Complaint.

10 16. Plaintiff is further informed and believes, and based upon such information and
11 belief alleges, that at all times herein mentioned, Defendants, and each of them were co-
12 employers and/or joint employers of Plaintiff.

13
14 17. Defendants, and each of them, are now and/or at all times mentioned in this
15 Complaint were members of and/or engaged in a joint venture, partnership and common
16 enterprise, and were acting within the course and scope of, and in pursuit of said joint venture,
17 partnership and common enterprise and, as such were co-employers and/or joint employers of
18 Plaintiff.

19
20 18. Defendants, and each of them, at all times mentioned in this Complaint concurred
21 with, contributed to, approved of, aided and abetted, condoned and/or otherwise ratified the
22 various acts and omissions of each and every one of the other Defendants in proximately causing
23 the complaints, injuries and/or damages alleged in this Complaint.

24 19. Plaintiff is informed and believes and thereon alleges that at all times herein
25 mentioned, some of the Defendants DOES 1 through 50, Inclusive, were the *alter egos* of the
26 named Defendants. Plaintiff is informed and believes and thereon alleges that there exists such a
27 unity of interest and ownership between the named Defendants and DOES 1 through 50, that the
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1 individuality and separateness of the named Defendants and DOES 1 through 50 has ceased to
2 exist. The business affairs of named Defendants and DOES 1 through 50, are, and at all times
3 relevant hereto were, so mixed and intermingled that the same cannot reasonably be segregated,
4 and the same are in inextricable confusion. Defendants, and at all times relevant hereto, used
5 each other as a mere shell and conduit for the conduct of certain of Defendants' affairs. The
6 recognition of the separate existence of Defendants would not promote justice, in that it would
7 permit Defendants to insulate themselves from liability to Plaintiff. Accordingly, the named
8 Defendants constitute the *alter ego* of Defendants DOES 1 through 50, and the fiction of their
9 separate existence must be disregarded.
10

11 **FIRST CAUSE OF ACTION**

12 **FAILURE TO PAY WAGES**

13 **(Against all Defendants)**

14
15 20. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this
16 section as though fully set forth herein.

17 21. Plaintiff was an "employee" of Defendants (as defined by section 350 of the
18 Labor Code) but Defendants failed to pay Plaintiff and the other aggrieved employees all wages
19 earned for all hours worked. Plaintiff and the other aggrieved employees were employed as store
20 clerks, cashiers, carwash workers, and compliance managers.
21

22 22. Pursuant to Labor Code section 1197, payment of less than the minimum wage
23 fixed by the commission is unlawful.

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

4 24. Defendants regularly failed to pay Plaintiff and the other aggrieved employees all
5 of the wages that they earned. Specifically, Defendants have intentionally failed to pay Plaintiff
6 and the other aggrieved employees for all hours worked (“wage theft”), where Defendants
7 clocked out the employees for a meal period but the employees would have to work off the clock
8 during the clocked out meal period, causing them to not receive at least the minimum, regular,
9 and/or overtime wage for all of their hours worked.

10
11 25. In violation of state law, Defendants have knowingly and willfully refused to
12 perform their obligations to compensate Plaintiff and the other aggrieved employees for
13 minimum and regular wages earned and all hours worked. As a direct result, Plaintiff and the
14 other aggrieved employees have suffered, and continue to suffer, substantial losses related to the
15 use and enjoyment of such unpaid wages, lost interest on such wages, costs and attorneys’ fees in
16 seeking to compel Defendants to fully perform its obligation under state law, all to their damage
17 in amounts according to proof at the time of trial, but in amounts in excess of the minimum
18 jurisdiction requirement of this Court. Defendants committed the acts alleged herein knowingly
19 and willfully, with wrongful and deliberate intent.

20
21 26. Defendants’ conduct described herein violates Labor Code sections 200, 226, 500,
22 510, 558, 558.1, 1194, 1194.2, 1197, and 1197.1. As a proximate result of the aforementioned
23 violations, Plaintiff and the other aggrieved employees have been damaged in an amount
24 according to proof at the time of trial, but in an amount in excess of the minimum jurisdiction
25 requirement of this Court. Therefore, pursuant to Labor Code sections 200, 203, 226, 558,
26 558.1, 1194, 1194.2, 1197, and 1197.1, Plaintiff is therefore entitled to recover the unpaid
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1 balance of minimum wages and damages for minimum wage violations, including but not limited
2 to LC 1194.2 liquidated damages in an amount to be proven at trial, plus interest, penalties,
3 attorneys' fees, expenses, and costs of suit.

4 27. Pursuant to Labor Code §200, "wages" includes all amounts for labor performed
5 by employees of every description, whether the amount is fixed or ascertained by the standard of
6 time, task, piece, commission basis, or other method of calculation.

7 28. Plaintiff 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 29. 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 Plaintiff 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.

16 30. Throughout their employment with Defendants, Plaintiff and the other aggrieved
17 employees several times worked at least 12 hours per day and/or 7 consecutive days or more in a
18 week. Plaintiff and the other aggrieved employees are or were non-exempt employees entitled to
19 overtime pay under California law, including but not limited to Labor Code sections 200, 226,
20 500, 510, 558, 558.1, 1194 and 1198. Throughout Plaintiff's employment, Defendants failed to
21 pay Plaintiff and the other aggrieved employees at the overtime rate of pay for the first 8 hours
22 on the 7th or more consecutive work days, and they were also not paid double the regular wage
23 rate for more than 8 hours worked on the 7th or more consecutive work days, instead paying them
24 at the regular rate of pay for the first 8 hours and at the overtime rate of pay for over 8 hours.
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1 Further, Defendants failed to pay Plaintiff and the other employees at double the regular rate of
2 pay for hours worked over 12 hours in a day, instead paying them at the overtime rate of pay.

3 31. Under the applicable wage orders, statutes and regulations, Plaintiff and the other
4 aggrieved employees are entitled to one and one-half (1.5) times and double their regular rate of
5 pay for overtime work performed during the entire course of their employment with Defendants.
6

7 32. As a direct result, Plaintiff and the other aggrieved employees have suffered
8 substantial losses related to the use and enjoyment of such wages, lost interest on such wages,
9 and expenses and attorneys' fees in seeking to compel Defendants to fully perform its obligation
10 under state law, all to their respective damage in amounts according to proof at the time of trial,
11 but in amounts in excess of the jurisdiction of this Court. Defendants committed the acts alleged
12 herein knowingly and willfully, with the wrongful and deliberate intention of injuring Plaintiff,
13 from improper motives amounting to malice, and in conscious disregard of Plaintiff's rights.
14 Plaintiff is thus entitled to recover nominal, actual, compensatory damages in amounts according
15 to proof at the time of trial, but in amounts in excess of the jurisdiction of this Court.
16

17 33. Defendants' conduct described herein violates Labor Code sections 200, 226, 500,
18 510, 558, 558.1, 1194, 1198, and 1197.1. As a proximate result of the aforementioned
19 violations, Plaintiff has been damaged in an amount according to proof at the time of trial, but in
20 an amount in excess of the jurisdiction of this Court. Therefore, pursuant to Labor Code sections
21 200, 203, 226, 558, 558.1, 1198, and 1194, Plaintiff is entitled to recover the unpaid balance of
22 overtime compensation Defendants owe to Plaintiff in an amount to be proven at trial, plus
23 interest, penalties, attorneys' fees, expenses, and costs of suit.
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34. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this section as though fully set forth herein.

35. Plaintiff is informed and believes and thereon alleges that Defendants, in violation of Labor Code §226(a), engaged in a practice with respect to Plaintiff and the other aggrieved employees of regularly failing to furnish them with accurate, itemized statements in writing showing (1) all gross wages earned, (2) all deductions, (3) net wages earned, (4) accurate rate of pay during each respective pay period for which wages and premium wages have been and continue to be due and owing, (8) the name and address of the legal entity that is the employer, and/or (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, as well as all other information required by section 226 of the Labor Code. Specifically, Defendants failed to provide wage statements to Plaintiff and the other aggrieved employees showing the above required information to the employees' damage.

36. Plaintiff seeks 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, plus attorneys' fees and costs. In addition, Plaintiff seeks preliminary and permanent injunctive relief pursuant to Labor Code §226(h).

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1 in irreparable injury to members of the general public, including, but not limited to Plaintiff and
2 the other aggrieved employees, who are current and former employees of the Defendants, and for
3 which there is no adequate remedy at law. Thus, Plaintiff requests that the Court issue a
4 preliminary and permanent injunction prohibiting Defendants from engaging in the foregoing
5 conduct.
6

7 **FOURTH CAUSE OF ACTION**

8 **FAILURE TO PAY WAGES UPON SEPARATION OF EMPLOYMENT**

9 **WAITING TIME PENALTIES PURSUANT TO LABOR CODE §203**

10 **(Against all Defendants)**

11 43. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this
12 section as though fully set forth herein.
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14 44. Defendants failed to pay Plaintiff and the other aggrieved employees all earned
15 wages upon the separation of their employment with Defendants in violation of Labor Code
16 sections 201 and 202, including but not limited to, overtime, minimum, regular, and meal and
17 rest period premium wages.

18 45. Defendants' failure to pay Plaintiff and the other aggrieved employees all wages
19 due was willful and done with malice. Plaintiff and the other aggrieved employees are therefore
20 entitled to penalties pursuant to Labor Code §203, and pursuant to §§ 558, 558.1, plus attorneys'
21 fees and costs.
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1 **FIFTH CAUSE OF ACTION**

2 **MEAL AND REST PERIOD VIOLATIONS**

3 **LABOR CODE §§ 226.7 and 512**

4 **(Against all Defendants)**

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6 46. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this
7 section as though fully set forth herein.

8 47. Under California Labor Code sections 226.7, 512 and California Wage Orders,
9 Off Duty Meal Periods of 30 minutes are required for all non-exempt employees who work at
10 least 5 hours in a shift, except that when a work period of not more than 6 hours will complete
11 the day's work then the meal period may be waived by mutual consent of the employer and
12 employee. Time records of meal periods must be kept except that meal periods during which
13 operations cease need not be recorded. Employers must provide non-exempt employees 2 Off
14 Duty Rest Periods of 10 minutes each in a normal 8 hour shift. Rest Periods need not be
15 recorded. The Meal Periods are unpaid unless the employee is not fully relieved of all duties.
16 Rest Periods must be paid. An employer who fails to provide off duty meal and rest periods
17 (breaks) must pay the employee an additional 1 hour regular pay for each category of break not
18 provided in a work day.
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21 48. At all times mentioned herein, Defendants violated Labor Code sections 226.7
22 and 512 by refusing to allow Plaintiff and the other aggrieved employees to be fully relieved of
23 their duties during their meal and rest periods. Defendants did not allow Plaintiff and the
24 aggrieved employees to be fully relieved of their duties during their meal and rest periods, and
25 were required to work through them since, for instance, there was no one to cover them at the
26 store locations, and thus had to remain working at the store location. Some employees also had to
27 work through their meal periods even though they were clocked out for the meal periods or had
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1 to take their meal periods after 5 hours of work. Further, even if they were allowed to take meal
2 and rest periods, there was no time given the duties they had to complete by specified deadlines.

3
4 49. Accordingly, Plaintiff seeks damages available pursuant to the Labor Code,
5 including but not limited to Labor Code sections 226.7, 512, 558, and 558.1 in an amount proven
6 at trial, plus interest, penalties, fees, and costs.

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8 **SIXTH CAUSE OF ACTION**

9 **FAILURE TO REIMBURSE**

10 **(Against All Defendants)**

11 50. Plaintiff incorporates by reference and re-alleges each and every one of the
12 allegations contained in this Complaint as though fully set forth herein.

13 51. Pursuant to Labor Code §2802(a), an employer shall indemnify his or her
14 employee for all necessary expenditures or losses incurred by the employee in direct
15 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
16 the employer.

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18 52. Defendants required Plaintiff and the other aggrieved employees to incur
19 expenditures for the benefit of the Defendants including but not limited to use of personal
20 vehicle and personal cellular phone and service, and expenses for “shopping” stores for services
21 such as car washes, incurred in the discharge of their daily duties. Defendants, however, failed to
22 reimburse Plaintiff and the other aggrieved employees for such expenditures.

23
24 53. Therefore, pursuant to Labor Code §§ 2802(c) and 558.1, Plaintiff and the other
25 aggrieved employees are entitled to recover reimbursement for all necessary expenditures for use
26 of personal vehicle and personal cellular phone and service and for “shopping” stores for
27 services such as car washes, and other business expenditures incurred in discharge of their daily
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1 duties for Defendants in an amount to be proven at trial, plus interest, plus penalties, attorneys'
2 fees, expenses, and costs of suit.

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4 **SEVENTH CAUSE OF ACTION**

5 **EMPLOYEE FILE & PAYROLL RECORDS VIOLATION**

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

7 **(Against all Defendants)**

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9 54. Plaintiff incorporates by reference and re-alleges each and every one of the
10 allegations contained in this Complaint as though fully set forth herein.

11 55. On or about December 15, 2022, Plaintiff, through her counsel, requested in
12 writing that Defendants provide Plaintiff with a copy of certain documents in her employee file
13 and payroll and time records. Defendants failed to timely furnish Plaintiff with a copy of her
14 employee file and payroll and time records in violation of Labor Code §§432, and 226(b),(c), (f),
15 and 1198.5; IWC Orders 1 through 15, Section 7, and IWC Order 16, Section 6. Plaintiff is
16 entitled to recover any and all penalties and compensation provided by the Labor Code,
17 including the above mentioned sections and sections 558 and 558.1, for Defendant's failure to
18 furnish the requested personnel and payroll and time records including at least \$750.00 in
19 penalties pursuant to LC §§226(f) and 1198.5, plus attorneys' fees and costs.
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22 **EIGHTH CAUSE OF ACTION**

23 **PRIVATE ATTORNEYS GENERAL ACT OF 2004 ("PAGA")**

24 **PER LABOR CODE §2699, et seq.**

25 **(Against All Defendants)**

26
27 56. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this
28 section as though fully set forth herein.

1 57. On or about January 23, 2023, pursuant Labor Code sections 2699(a) and 2699.3,
2 Plaintiff, through her counsel, provided notice in writing by online submission to the California
3 Labor Workforce Development Agency (“LWDA”) and via certified US Mail to Defendants and
4 each of them, that Plaintiff intended to assert a PAGA claim pursuant to section 2699(a) on her
5 own behalf, and in a representative capacity on behalf of other aggrieved employees of
6 Defendants, for Defendants’ violations of specified provisions of the California Labor Code. See
7 Exhibit 1 attached to this Complaint. The LWDA did not respond within 65 days.
8

9 58. As a result, Plaintiff has perfected her right to sue Defendants in a civil action,
10 and to collect statutory penalties, pursuant to Labor Code section 2699.3(a)(2)(A)(1) on behalf of
11 all aggrieved employees (PAGA Employees).
12

13 59. As a result of the acts alleged throughout this Complaint, Plaintiff brings this
14 action on her own behalf, and in a representative capacity on behalf of other current or former
15 aggrieved employees (PAGA Employees), for penalties pursuant to California Labor Code
16 section 2699 for Defendants’ violations of the enumerated Labor Code sections, including, but
17 not limited to sections 200, 201, 202, 203, 210, 216, 220, 221, 222, 223, 224, 225.5, 226, 226.3,
18 226.7, 227, 227.3, 246, 510, 512, 558, 558.1, 98.6, 1102.5, 1174, 1174.5, 1175, 1194, 1194.2,
19 1197.1, 1198, 1198.5, 1199, 1770-1781, and 2802.
20

21 60. Pursuant to California Labor Code section 2699, Plaintiff and PAGA Employees
22 are entitled to be awarded twenty-five (25%) percent of all penalties due under California law, in
23 addition to interest, attorney’s fees and costs.
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25 61. The Court should award seventy-five (75%) percent of all penalties due under
26 California law to the State of California.
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1 62. Plaintiff, on behalf of the State of California and the aggrieved employees,
2 therefore seeks to recover from Defendants, and each of them, allowable damages and civil
3 penalties for the violations claimed above regarding Plaintiff's claims, plus interest, costs, and
4 attorneys' fees, plus civil penalties regarding the other aggrieved employees' claims in an
5 amount according to proof at trial, in accordance with Labor Code sections 2699, *et seq.*
6

7 63. Labor Code Section 558 states that "[a]ny employer or *other person* acting on
8 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
9 provision regulating hours and days of work in any order of the Industrial Welfare Commission
10 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
11 each underpaid employee for each pay period for which the employee was underpaid in addition
12 to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one
13 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
14 was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages
15 recovered pursuant to this section shall be paid to the affected employee. The Section goes on to
16 state that "[t]he civil penalties provided for in this section are in addition to any other civil or
17 criminal penalty provided by law."
18
19

20 64. Labor Code Section 558.1(a) provides in pertinent part: "Any employer or other
21 person acting on behalf of an employer, who violates, or causes to be violated, any provision
22 regulating minimum wages or hours and days of work in any order of the Industrial Welfare
23 Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or
24 2802, may be held liable as the employer for such violation."
25

26 65. Defendants violated/violate, or caused/causes to be violated, multiple sections of
27 the Labor Code as well as provisions regulating hours and days of work in any order of the
28 Industrial Welfare Commission including those requiring payment of minimum and regular

1 wages and payment of overtime wages, meal and rest periods, records violations, as set forth in
2 detail throughout this Complaint.

3
4 66. Accordingly, Plaintiff is also entitled to recovery of wages, premium wages,
5 damages, and penalties pursuant to Labor Code Sections 558 and 558.1.

6 **EIGHTH CAUSE OF ACTION**

7
8 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

9 **(Against All Defendants)**

10 67. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this
11 section as though fully set forth herein.

12 68. California Labor Code §§ 98.6, 1102.5 generally prohibit employers from
13 retaliating against and terminating employees that complain regarding unfair labor practices
14 and/or who report illegal activity.

15
16 69. Plaintiff believes and alleges that Defendants terminated Plaintiff's employment
17 because she complained to Defendants that she and the other employees were not able to take
18 their lawful rest periods. After Plaintiff's complaints to Defendants, manager Defendant RANI
19 SAFA verbally harassed Plaintiff and caused a hostile environment. Plaintiff filed an incident
20 report regarding Defendant SAFA's harassment, however, Defendant SAFA continued to harass
21 Plaintiff and continued to interrupt Plaintiff's rest periods. Plaintiff reported Defendant SAFA's
22 harassment and interruption of her rest periods to Defendants. On October 28, 2022, Plaintiff
23 also reported to Defendants' district manager that Defendants need to hire more employees to
24 cover her and the other employees so they are able to take their rest periods since she and the
25 other employees were by themselves at the stores. Three days later, on October 31, 2022,
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27
28

1 Defendants terminated Plaintiff's employment and paid her \$5.50 for a "10 min break" despite
2 Plaintiff having an exemplary record and work ethic with the company.

3
4 70. Based on the misconduct alleged in this Complaint, Plaintiff believes and alleges
5 that Plaintiff's termination was wrongful because it was in violation of the public policy of the
6 State of California in that Plaintiff's termination was based on Defendants' violations of the
7 above-mentioned laws.

8
9 71. In terminating Plaintiff for these reasons and under the circumstances alleged
10 herein, Defendants' discharge of Plaintiff violated the public policy of the State of California, as
11 expressed in provisions of the above-mentioned laws.

12 72. As a direct, foreseeable, and proximate result of Defendants' wrongful
13 termination of Plaintiff in violation of the public policy of the State of California, Plaintiff
14 sustained damages in the form of lost and continued loss of income and benefits, loss of
15 professional advancement and reputation, and has suffered and continues to suffer humiliation,
16 embarrassment, mental and emotional distress, and discomfort all to Plaintiff's damage in an
17 amount to be proven at trial, but in excess of the jurisdictional amount.

18
19 73. In doing the things herein alleged, Defendants are guilty of oppression, fraud and
20 malice, and, insofar as the things alleged were attributable to employees of Defendants, said
21 employees were employed by Defendants with advance knowledge of the unfitness of the
22 employees and they were employed with a conscious disregard for the rights of others; or
23 Defendants authorized or ratified the wrongful conduct; or there was advance knowledge,
24 conscious disregard, authorization, ratification or act of oppression, fraud or malice on the part of
25 an officer, director or managing agent of defendants all entitling Plaintiff to the recovery of
26 exemplary and punitive damages.
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1 rights pursuant to the California Labor Code and Wage Orders and which violated state laws and
2 regulations regarding rest periods. In retaliation for Plaintiff reporting Defendants' violation of
3 the California Labor Code and Wage Orders, Defendants harassed Plaintiff and eventually
4 terminated her in retaliation for reporting the illegal conduct.
5

6 79. As a proximate result of Defendants' actions, Plaintiff has suffered and continues
7 to suffer general and special damages such as lost and continued loss of income and benefits,
8 loss of professional advancement and reputation, and has suffered and continues to suffer
9 humiliation, embarrassment, mental and emotional distress, and discomfort, all to her damage in
10 an amount according to proof, but in excess of the jurisdictional amounts, plus penalties of at
11 least \$10,000 per incident pursuant to LC §98.6 and of at least \$10,000 per incident pursuant to
12 LC §1102.5, plus other damages and penalties.
13

14 80. In doing the things herein alleged, Defendants were guilty of oppression, fraud
15 and malice, and, insofar as the things alleged were attributable to employees of Defendants, said
16 employees were employed by Defendants with advance knowledge of the unfitness of the
17 employees and they were employed with a conscious disregard for the rights of others; or
18 Defendants authorized or ratified the wrongful conduct; or there was advance knowledge,
19 conscious disregard, authorization, ratification or act of oppression, fraud or malice on the part of
20 an officer, director or managing agent of Defendants all entitling Plaintiff to the recovery of
21 exemplary and punitive damages.
22
23

24 **PRAYER FOR RELIEF**

25 **WHEREFORE**, Plaintiff prays for judgment against Defendants, as follows:

26 1. For compensatory damages, including but not limited to, those pursuant to Labor Code
27 §§ 200, 201, 203, 218, 221, 222, 223, 224, 225.5, 226, 226.3, 226.7, 246, 350-356, 500, 510,
28

1 512, 558, 558.1, 98.6, 1102.5, 1174, 1174.5, 1194, 1194.2, 1194.3, 1197.1, 1198, 1198.5, 1770-
2 1781, 2802, 2699, et seq., California Wage Orders, and other statutes and laws;

3 2. For special damages according to proof;

4 3. For general damages according to proof;

5 4. For pre-judgment interest pursuant to all applicable statutes including but not limited to,
6 Labor Code §§218.6, et seq., loss of earnings damages, and pursuant to Civil Code §§ 3287(b)
7 and 3289;

8 5. For penalties pursuant to Labor Code §§ 203, 225.5, 226, 226(f) and 1198.5, 226.3,
9 226.7, 246, 350-356, 98.6, 1102.5, 512, 558, 558.1, 1174.5, 1194.2, 1197.1, 2802, civil penalties
10 pursuant to section 2699, et seq., 1102.5, and other statutes and laws;

11 6. For all damages available pursuant to all applicable sections of the Labor Code;

12 7. For injunctive relief pursuant to Labor Code §226(h);

13 8. For an award of reasonable attorneys' fees and costs;

14 9. For restitution of all monies due to Plaintiff and disgorged profits from the unlawful
15 business practices of Defendants;

16 10. For all remedies available pursuant to Business and Professions Code section 17200 et
17 seq.;

18 11. For punitive and exemplary damages;

19 12. For all other appropriate injunctive, declaratory and equitable relief;

20 13. For interest to the extent permitted by law; and

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

22 Dated: April 5, 2023

23
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25
26 
27 Rodolfo Ruiz-Velasco, Esq.
28 Attorneys for Plaintiff,
Nelida Villalva Gomez

EXHIBIT 1

RUIZ-VELASCO LAW FIRM

January 23, 2023

Via Electronic Submission

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

By Certified Mail

Mr. Mahir Namou
Mr. Razak Namou
Mr. Rani Saffa
R Namou, Corp
450 W. El Norte Parkway
Escondido, CA 92026

Re: **Villalva Gomez v. R Namou, Corp, et al.**

To Whom It May Concern:

We represent Nelida Villalva Gomez individually and on behalf of all other individuals (collectively “Plaintiffs”) who are either former or current employees of R Namou, Corp, a California Corporation doing business as El Norte Arco and as Mr. Foamy’s Express Car Wash, and its owners, officers, and managing agents Mahir Namou, Razak Namou, and Rani Saffa (collectively “Defendants”). Pursuant to Labor Code section 2699.3, this letter constitutes written notice of Defendant’s Labor Code violations and of our client’s 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.

Plaintiffs were employed by Defendants as compliance managers, assistant, managers, cashiers, and store clerks for R Namou, Corp’s several businesses. Defendants fail to fully relieve Plaintiffs from meal and rest periods and regularly require Plaintiffs to work through their rest periods and some meal periods but fail to pay them any premiums for their on-duty meal and rest periods. Specifically, Plaintiffs are not fully relieved of their duties during their meal and rest periods because Defendants require them to work through their rest periods and some meal periods, and even if they were allowed, they are not able to because they would not be able to complete their required tasks and no one

would be able to cover them at the store. As a result, Plaintiffs are owed meal and rest period premium wages, plus interest and penalties.

Defendants have failed to provide paycheck statements with accurate meal and rest period premium gross wages earned, all deductions, all net premium wages earned, and the name and address of the legal entity of the employer as required by Labor Code Section 226. Further, on or about December 15, 2022, Ms. Villalva Gomez requested in writing through her attorneys a copy of her 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. To date, they have not provided any records.

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

Defendants have required Plaintiffs to use their personal vehicles and cellular phone service in performance of their duties, however, they did not reimburse Plaintiffs for said expenditures in violation of LC §2802. Defendants also failed to reimburse Plaintiffs for business expenditures regarding shopping for the competition. For instance, Defendants required Ms. Villalva Gomez to get a service at a car wash competitor to see what they were missing, wherein Ms. Villalva Gomez spent at least \$40.00 but was not reimbursed despite promises from Defendants to do so.

Defendants also terminated and retaliated against Ms. Villalva Gomez because she complained several times to Defendants about not being able to be fully relieved of her duties during her rest periods. Defendants terminated Ms. Villalva Gomez despite her having an exemplary record at the company. This is in violation of LC §§ 98.6, 1102.5, and therefore Defendants owe Ms. Villalva Gomez penalties, damages, fees and costs pursuant to LC §§ 98.6, 1102.5.

Mahir Namou, Razak Namou, and Rani Saffa, as the owners, officers, directors, and/or managing agents of R Namou, Corp are jointly and severally liable for the above violations pursuant to LC Sections 558, 558.1, 98.6, 1102.5, 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 expenses 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. 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. Retaliation and threats for requesting his or her rights and reporting illegal behavior is a violation of Labor Code Sections 98.6, 1102.5, among other laws and statutes. 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, 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 flourish at the end.

Rodolfo Ruiz-Velasco, Esq.