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Clerk of the Superior Court

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SOLANO

(UNLIMITED JURISDICTION) JUDGE

**ASSIGNED TO
STEPHEN GIZZI**

FOR ALL PURPOSES

ROSARIO PEREZ HERNANDEZ and
VANESSA HERNANDEZ, on behalf of
themselves and all others similarly situated,

Plaintiffs,

vs.

SAHAJANAND INVESTMENT, LLC, a
California Limited Liability Corporation;
AKSHAR HOSPITALITY, LLC, a California
Limited Liability Corporation; and DOES 1-50,
inclusive,

Defendants.

Case No. **CIM**

CU23-04949

CLASS ACTION

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF,
RESTITUTION, AND DAMAGES FOR
VIOLATIONS OF THE CALIFORNIA
LABOR CODE, WAGE ORDERS,
PRIVATE ATTORNEY GENERAL
ACT, AND BUSINESS AND
PROFESSIONS CODE**

TRIAL BY JURY DEMANDED

Complaint filed:

Plaintiffs Rosario Perez Hernandez and Vanessa Hernandez (collectively "Plaintiffs"), on
behalf of themselves and all others similarly situated hereby complain and allege as follows:

INTRODUCTION

1. Pursuant to California Code of Civil Procedure ("Code of Civil Procedure") section
382, Plaintiffs bring this class action lawsuit against Defendants SAHAJANAND INVESTMENT,

1 LLC, AKSHAR HOSPITALITY, LLC, and Does 1 through 50 (collectively “Defendants”) arising out
2 of Defendants’ failure to pay non-exempt hourly employees for all time worked, including overtime
3 and minimum wage violations, and failing to provide their non-exempt hourly employees with the
4 meal and rest periods to which they are entitled by law.

5 2. As a result of these violations, Defendants are also liable for various other penalties
6 under the Labor Code, and for violation of the Unfair Business Practices Act (“UCL”), Business and
7 Professions Code §§17200, *et seq.*

8 3. Plaintiffs seek full compensation on behalf of themselves and all others similarly
9 situated (the “Class”) for all unpaid wages, unpaid overtime, denied and non-compliant rest and meal
10 periods, and waiting time penalties. Plaintiffs further seek penalties on behalf of themselves and the
11 proposed Class for Defendants’ violations of the Labor Code and California Industrial Welfare
12 Commission (“IWC”) wage orders. Plaintiffs also seek declaratory and injunctive relief, including
13 restitution. Finally, Plaintiffs seek reasonable attorneys’ fees and costs under the Labor Code and
14 Code of Civil Procedure §1021.5.

15
16 **PARTIES**

17 4. Plaintiff Rosario Perez Hernandez (“Perez”) is a former employee of Defendants who
18 worked for Defendants as a non-exempt housekeeper between approximately September 2020 and
19 January 2023. Perez is a resident of Solano County, California. At all relevant times, she has been an
20 “employee” as that term is used in the California Labor Code and the IWC wage orders regulating
21 wages, hours and working conditions.

22 5. Plaintiff Vanessa Hernandez (“Hernandez”) is a former employee of Defendants who
23 worked for Defendants as a non-exempt housekeeper between approximately 2015 and September
24 2020. Hernandez is a resident of Solano County, California. At all relevant times, she has been an
25 “employee” as that term is used in the California Labor Code and the IWC wage orders regulating
26 wages, hours and working conditions.

27 6. Defendant Sahajanand Investment, LLC (Shajanand) is a California limited liability
28

1 company. On information and belief, Shajanand does business as Comfort Inn in Fairfield, California
2 (“Comfort Inn”). Sahajanand employed Plaintiffs and other Class Members during the relevant time
3 period commencing at least four (4) years prior to the filing of this action and continuing through the
4 present (the “Class Period”).

5 7. Defendant Akshar Hospitality, LLC (“Akshar”) is a California limited liability
6 company. On information and belief, Akshar does business as Quality Inn in Vallejo, California
7 (“Quality Inn”). Akshar employed Plaintiffs and other Class Members during the Class Period.

8 8. Defendants DOES 1 through 50 are persons or entities whose true names and capacities
9 are presently unknown to Plaintiffs, who therefore sue them by such fictitious names. Plaintiffs are
10 informed and believe, and on that basis allege, that each of the named Defendants perpetrated some or
11 all of the wrongful acts alleged herein, are responsible in some manner for the matters alleged herein
12 and are jointly and severally liable to Plaintiffs. Plaintiffs will amend this Complaint to allege the true
13 names and capacities of the DOE Defendants when ascertained.

14 9. Plaintiffs are informed and believe that Defendants are joint employers and/or
15 constitute an integrated enterprise for purposes of this action. At all relevant times, Defendants
16 Shajanand and Akshar have done business under the laws of California, have had places of business in
17 California, including in this judicial district, and have employed Class Members in this judicial
18 district. They are “persons” as defined in California Labor Code §18 and California Business and
19 Professions Code §17201. They are also “employers” as that term is used in the California Labor
20 Code and the IWC’s Orders regulating wages, hours and working conditions. As employers of
21 Plaintiffs and the Class throughout the relevant time period, Defendants, and each of them, are either
22 solely, or jointly and severally, liable for back pay and other economic damages, including statutory
23 penalties, owed to Plaintiffs and the Class under common law and by statute.

24 10. Plaintiffs are informed and believe and thereon allege that each of the Defendants acted
25 in concert with each and every other Defendant, intended to and did participate in the events, acts,
26 practices and courses of conduct alleged herein, and was a proximate cause of damage and injury
27 thereby to Plaintiffs and the Class as alleged herein. At all times herein mentioned, each Defendant
28

1 was the agent or employee of each of the other Defendants and was acting within the course and scope
2 of such agency or employment.

3
4 **JURISDICTION**

5 11. This Court has jurisdiction over Plaintiffs' and the Class's claims for unpaid straight-
6 time and overtime wages, for meal and rest period violations, and for applicable penalties pursuant to
7 the California Labor Code, including California Labor Code §§ 218 and 1194 and the applicable IWC
8 wage orders.

9 12. This Court has jurisdiction over Plaintiffs' and the Class Members' claims for
10 injunctive relief, including restitution of earned wages and benefits, which are the money and property
11 of Plaintiffs and the Class Members, arising from Defendants' unfair competition under Business &
12 Professions Code §§17203 and 17204.

13 13. Neither Plaintiffs' individual claims nor the claim of any individual Class member
14 exceeds \$75,000, exclusive of interest and costs.

15
16 **VENUE**

17 14. Venue as to Defendants is proper in Solano County pursuant to California Code of
18 Civil Procedure §395(a). Defendants conduct business, employ Class Members, and have facilities
19 and operations in that County. Furthermore, some of the events complained of occurred in this County
20 and obligations or liabilities arose in the County and venue is also proper under CCP § 395.5.

21
22 **FACTUAL ALLEGATIONS**

23 15. At all times relevant herein, Defendants owned and operated the Comfort Inn and the
24 Quality Inn. Defendants are, and at all times relevant to this Complaint were, employers covered by
25 the California Labor Code and Industrial Welfare Commission Wage Order 5 ("IWC Wage Order),
26 which regulates wages, hours and working conditions for the public housekeeping industry.

27 16. Plaintiffs each applied in person for housekeeping positions at the Quality Inn. Both
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1 were hired and assigned to work primarily at the Comfort Inn but on occasion were assigned to work
2 at the Quality Inn. When they worked at both locations, Defendants paid Plaintiffs with separate
3 checks from each location to avoid paying overtime even if they worked over eight hours in a day or
4 over forty hours in a week. On information and belief, other Class Members similarly were paid with
5 paychecks from Akshar/Quality Inn and Sahajanand/Comfort Inn so that Defendants could avoid
6 paying them overtime.

7 17. During the Class Period, Defendants failed to pay Plaintiffs, and on information and
8 belief, Class Members the minimum wage for all hours worked and at the overtime rate for all hours
9 over eight in one day or forty in one week. Specifically, Plaintiffs are informed and believe and
10 thereon allege that Defendants issued separate checks from Akshar/Quality Inn and/or
11 Sahajanand/Comfort Inn in order to avoid paying overtime wages due. In addition, Defendants
12 impermissibly rounded the hours that Plaintiffs and, on information and belief, other Class Members
13 worked, resulting in time worked but not paid. Through these policies and practices, Defendants failed
14 to pay Plaintiffs and Class Members the minimum wage for all hours worked and at the overtime rate
15 for all hours over eight in one day or forty in one week.

16 18. During Plaintiffs' entire employment, Defendants deducted 30-minutes for a meal
17 period from Plaintiffs' time for each shift of 6 hours or more, even though Plaintiffs were rarely able
18 to take a compliant, off duty, uninterrupted 30-minute meal break during their shifts. Plaintiffs were
19 also instructed to take only 10 or 15 minutes for a meal break when they worked shifts of less than 6
20 hours. On information and belief, other Class Members were likewise deprived of meal breaks to
21 which they were entitled. Defendants failed to provide Plaintiffs and Class Members with any
22 premium pay for Defendants' failure to provide a meal break or compliant meal break. Defendants
23 therefore owe Plaintiffs and Class Members premium pay for each missed meal break or non-
24 compliant meal period.

25 19. In addition, Plaintiffs were not afforded the opportunity to take any 10-minute rest
26 breaks during their shifts. Plaintiffs are informed and believe that other Class Members were likewise
27 deprived of rest breaks that they were entitled to take. Defendants therefore owe Plaintiffs and Class
28

Members premium pay for missed rest breaks or non-compliant rest breaks.

20. During the Class Period, Defendants failed to provide Plaintiffs and Class Members with itemized wage statements that properly reflected all hours that they worked. Furthermore, Defendants failed to keep accurate payroll records for Plaintiffs and Class Members because the records did not accurately reflect their actual hours worked nor the amount of wages due and owing.

21. During the Class Period, Defendants failed to pay Plaintiffs and Class Members all wages, including premium pay for missed or non-compliant meal and rest periods, due upon termination of employment.

ALLEGATIONS FOR CLASS ACTION

22. Plaintiffs bring this action on behalf of themselves, and all others similarly situated pursuant to California Code of Civil Procedure §382. The Class that Plaintiffs seek to represent is defined as follows:

All individuals who are currently employed, or formerly have been employed by Defendants as non-exempt hourly employees at Comfort Inn in Fairfield, California and/or Quality Inn in Vallejo, California, at any time within the period of four years prior to the filing of this complaint through the date of judgment in this action.

23. This action has been brought and may properly be maintained as a class action under California Code of Civil Procedure §382 because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable:

(a) Numerosity: The potential members of the Class as defined are so numerous that joinder of all the members of the Class is impracticable.

(b) Commonality: There are questions of law and fact common to Plaintiffs and the Class that predominate over any questions affecting only individual members of the Class. These common questions of law and fact include, without limitation:

(i) Whether Defendants have violated and continue to violate the California Labor Code and applicable IWC Wage Order [IWC Wage Order 5-2001];

- (ii) Whether Defendants have a policy and practice of not compensating the Class members at or above the minimum wage in violation of California Labor Code §§ 200, 204, 218.5, 218.6, 1194, 1194.2, 1197, and the applicable IWC Wage Order [IWC Wage Order 5-2001];
- (iii) Whether Defendants violated California Labor Code §§510 and 1194, and the IWC Wage Orders, by engaging in a continuing policy, pattern or practice of failing to pay Plaintiffs and the Class full compensation for the hours they worked, including straight-time and overtime compensation in violation of Labor Code §§ 218.5, 218.6, 510, 1194; and the applicable Wage Order [IWC Wage Order 5-2001];
- (iv) Whether Defendants' time keeping policies and practices have violated the California Labor Code and/or the California Unfair Competition Law by failing to accurately record the actual hours, including the start and end time for each workday, meal periods, split shifts intervals, and total daily hours worked by Plaintiffs and the Class in violation of California Labor Code §§ 226 and 1174, and the IWC Wage Orders, [IWC Wage Order 5-2001].
- (v) Whether Defendants' policy and practice of failing to pay Plaintiffs and the Class all wages earned is an unlawful, unfair, or fraudulent business act or practice in violation of the California Unfair Competition Law Violation of Business & Professions Code § 17200 *et seq.*; Labor Code § 90.5;
- (vi) Whether Defendants have engaged in a continuing policy, pattern, or practice of denying their non-exempt hourly employees the bona fide off-duty meal and rest periods to which they are entitled in violation of California Labor Code §§ 226.7 and 512 and applicable IWC Wage Order; [IWC Wage Order 5-2001]

- (vii) Whether Defendants have engaged in a continuing policy, pattern, or practice of requiring their non-exempt, hourly employees to remain on-duty throughout meal and rest periods in violation of California Labor Code §§ 226.7 and 512 and applicable IWC Wage Order [IWC Wage Order 5-2001];
- (viii) Whether Defendants have violated California Labor Code §§ 201-203, 204, by failing to pay their non-exempt, hourly employees the wages owed to them upon termination or quitting;
- (ix) Whether Defendants' payroll policies and practices have violated the California Labor Code, applicable Wage Orders, and/or the California Unfair Competition Law by resulting in the provision of wage statements that do not accurately reflect employee earnings and/or other items listed in California Labor Code § 226(a) and applicable Wage Orders;
- (x) Whether Defendants' policies and practices have constituted unlawful, unfair, or fraudulent business practices in violation of California Unfair Competition Law (Violation of Business & Professions Code § 17200 *et seq.*; Labor Code § 90.5);
- (xi) Whether Defendants' violated the California Private Attorneys General Act of 2004 (Labor Code § 2698, *et seq.*) based on the same or similar facts and/or claims alleged in the PAGA letter sent to the LWDA by Plaintiffs prior to the Action, as well as any claims that could have been pled under the California Labor Code and California Industrial Welfare Commission Wage Orders;
- (xii) The proper formula for calculating restitution, damages, and waiting time penalties owed to Plaintiffs and the Class as alleged herein.
- (c) Typicality: Plaintiffs' claims are typical of the claims of the Class. Defendants' common policies, practices, and course of conduct are in violation of

1 the law as alleged herein and have caused Plaintiffs and the Class to sustain the
2 same or similar injuries and damages. Plaintiffs' claims are thereby
3 representative of and co-extensive with the claims of the Class.

4 (d) Adequacy: Plaintiffs are members of the Class, do not have conflicts of
5 interest with other Class Members, and will prosecute the case vigorously on
6 behalf of the Class. Plaintiffs will fairly and adequately represent and protect the
7 interests of the members of the Class. Plaintiffs have retained counsel competent
8 and experienced in complex employment class action litigation.

9 (e) Superiority: The nature of this action and the nature of laws available to
10 Plaintiffs make use of the class action format the superior and appropriate
11 procedure to afford relief for the wrongs alleged herein. Individual joinder of all
12 the members of the Class is not practicable, and questions of law and fact
13 common to the Class predominate over any questions affecting only individual
14 members of the Class. Each member of the Class has been damaged and is
15 entitled to recovery by reason of Defendants' illegal policies and/or practices.
16 Class action treatment will allow those similarly situated persons to litigate their
17 claims in the manner that is most efficient and economical for those parties and
18 the judicial system.

19
20 **FIRST CAUSE OF ACTION**

21 **Failure to Compensate for All Hours Worked in Violation of**
22 **California Labor Code §§ 200, 204, 218.5, 218.6, 1194, 1994.2, 1197, and 1197.1**
(Against All Defendants)

23 24. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth
24 herein.

25 25. California Labor Code §204 provides that wages for all work performed must be paid
26 "twice during each calendar month, on days designated in advance by the employer as the regular
27 paydays."
28

26. California Labor Code §218.5(a) provides as follows:

In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action. However, if the prevailing party in the court action is not an employee, attorney's fees and costs shall be awarded pursuant to this section only if the court finds that the employee brought the court action in bad faith. This section shall not apply to an action brought by the Labor Commissioner....

27. California Labor Code §218.6 provides as follows:

In any action brought for the nonpayment of wages, the court shall award interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2.

28. California Labor Code §1194(a) provides as follows:

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 attorneys' fees, and costs of suit.

29. California Labor Code §1194.2(a) provides as follows:

In any action under Section 1193.6 or Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. Nothing in this subdivision shall be construed to authorize the recovery of liquidated damages for failure to pay overtime compensation.

30. California Labor Code §1197 provides as follows:

The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.

31. California Labor Code §1197.1 provides as follows:

(a) Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission, shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed

pursuant to Section 203 as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be 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.

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be 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.

(3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.

32. California Labor Code §200 defines wages as “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis or other method of calculation.”

33. Defendants’ time keeping policies, including automatically deducting 30 minutes from each shift of 6 hours or more for missed, short, or otherwise non-compliant meal breaks, and impermissibly rounding hours down resulted in non-exempt employees not being paid for all hours worked. As a result, Defendants denied Plaintiffs and the Class compensation for all hours worked.

34. Defendants’ time keeping policies and practices obstructed Plaintiffs and the Class from accurately recording all hours worked. As a result, Plaintiffs and the Class were regularly compensated at a rate less than the minimum wage mandated by California law.

35. Defendants have knowingly and willfully refused to perform their obligations to provide Plaintiffs and the Class with compensation for all time worked as required by California law. Defendants committed the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention of injuring Plaintiffs and the Class, with improper motives amounting to malice, and in conscious disregard of the rights of Plaintiffs and the Class. Plaintiffs and the Class are thus entitled to recover nominal, actual and compensatory damages in amounts according to proof at time of trial.

36. As a proximate result of the aforementioned violations, Defendants have damaged Plaintiffs and the Class in amounts to be determined according to proof at the time of trial, but in an amount in excess of the jurisdictional requirements of this Court. Defendants are liable to Plaintiffs and the Class for the unpaid compensation with interest thereon, as well as liquidated damages in an amount equal to the unpaid compensation with interest thereon. Furthermore, Plaintiffs are entitled to an award of attorneys' fees and costs as set forth below.

37. Wherefore, Plaintiffs and the Class request relief as hereinafter provided.

SECOND CAUSE OF ACTION
Failure to Pay Overtime Wages in Violation of
California Labor Code §§ 218.5, 218.6, 510 and 1194; IWC Wage Order 5-2001
(Against All Defendants)

38. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

39. California Labor Code §218.5(a) provides as follows:

In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action. However, if the prevailing party in the court action is not an employee, attorney's fees and costs shall be awarded pursuant to this section only if the court finds that the employee brought the court action in bad faith. This section shall not apply to an action brought by the Labor Commissioner....

40. California Labor Code §218.6 provides as follows:

In any action brought for the nonpayment of wages, the court shall award interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2.

41. California Labor Code §510(a) provides as follows:

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.

42. Wage Order 5 “Public Housekeeping” applies to “all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis ...”

43. IWC Wage Order 5-2001(3)(A)(1) 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 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; and

(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.

44. California Labor Code §1194(a) provides as follows:

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 attorneys’ fees, and costs of suit.

45. California Labor Code §200 defines wages as “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis or other method of calculation.” All such wages are subject to California’s overtime requirements, including those set forth above.

46. Plaintiffs and members of the Class have worked overtime hours for Defendants without being paid overtime premiums in violation of the California Labor Code, Wage Order 5, and other applicable law.

47. Defendants' policy of issuing separate checks for work performed at multiple location on the same workday or pay period in order to avoid paying overtime premium pay has been unlawful. Likewise, Defendants' policy of automatically deducting 30 minutes from Plaintiffs and Class Members' hours worked for untaken or short meal breaks has been unlawful. As a result of these unlawful policies, Plaintiffs and Class Members have worked overtime hours for Defendants without being paid overtime premiums in violation of the California Labor Code, IWC Wage Orders and other applicable law.

48. Defendants have knowingly and willfully refused to perform their obligations to provide Plaintiffs and the Class with compensation for all premium wages for overtime work as required by California law. Defendants committed the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention of injuring Plaintiffs and the Class, with improper motives amounting to malice, and in conscious disregard of the rights of Plaintiffs and the Class. Plaintiffs and the Class are thus entitled to recover nominal, actual and compensatory damages in amounts according to proof at time of trial.

49. As a proximate result of the aforementioned violations, Defendants have damaged Plaintiffs and the Class in amounts to be determined according to proof at the time of trial, but in an amount in excess of the jurisdictional requirements of this Court. Defendants are therefore liable to Plaintiffs, on behalf of the Class, for the unpaid overtime compensation with interest thereon. Furthermore, Plaintiffs are entitled to an award of attorneys' fees and costs as set forth below.

50. Wherefore, Plaintiffs and the Class request relief as hereinafter provided.

THIRD CAUSE OF ACTION
Failure to Provide, Authorize, Permit, and/or Make Available
Meal and Rest Periods in Violation of California
Labor Code §§ 226.7 and 512; IWC Wage Order 5-2001
(Against All Defendants)

51. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

52. At all times relevant herein California Labor Code §226.7 and IWC Wage Order 5-2001 have required Defendants to provide, authorize, permit, and/or make available, meal and rest

1 periods to their employees. Labor Code §§ 226.7 and 512 and the applicable IWC Wage Orders
2 prohibit employers from employing an employee for more than five hours without providing,
3 authorizing, permitting, and/or making available a meal period of not less than thirty minutes in which
4 the employee is completely relieved of all duties, and from employing an employee for more than ten
5 hours per day without providing, authorizing, permitting, and/or making available a second meal
6 period of not less than thirty minutes in which the employee is completely relieved of all duties.
7 Unless the employee is relieved of all duties during the 30-minute meal period, the employee is
8 considered “on duty,” and the meal period is counted as time worked under Wage Order 5.

9 53. Labor Code Section 226.7 and Wage Order 5 also require employers to provide and/or
10 to make available and/or to authorize or permit employees ten (10) minutes of net rest time per four
11 (4) hours or major fraction thereof of work and to pay employees their full wages during those rest
12 periods. Unless the employer relieves the employee of all duty during the ten-minute rest period, the
13 employee is considered “on duty” and the rest period is counted as time worked under Wage Order 5.

14 54. Under California Labor Code §226.7(b) and Wage Order 5-2001, an employer that fails
15 to provide, authorize, permit, and/or make available a required off-duty meal period must pay the
16 employee one additional hour of pay at the employee’s regular rate of compensation for each workday
17 that the meal period was not provided. Similarly, an employer must pay an employee denied a
18 required rest period one hour of pay at the employee’s regular rate of compensation for each workday
19 that the rest period was not provided.

20 55. Defendants failed to provide, authorize, permit, and/or make available bona fide off-
21 duty meal and rest periods to Plaintiffs and the Class. As a result, Plaintiffs and Class Members are
22 entitled to the relief provided by California Labor Code §226.7(b). Furthermore, Defendants required
23 Plaintiffs and the Class to perform work-related activities during their meal and rest periods.
24 Consequently, Defendants have knowingly and willfully refused to perform their obligations to
25 provide, authorize, permit, and/or make available to Plaintiffs and the Class the full meal and rest
26 periods to which they are entitled under California law. Defendants committed the acts alleged herein
27 with the wrongful and deliberate intention of injuring Plaintiffs and the Class, with improper motives
28

amounting to malice, and in conscious disregard of the rights of Plaintiffs and the Class. As a proximate result of the aforementioned violations, Defendants have damaged Plaintiffs and the Class in amounts to be determined according to proof at the time of trial, but in an amount in excess of the jurisdictional requirements of this Court. Plaintiffs and the Class are thus entitled to recover nominal, actual, and compensatory damages in amounts according to proof at time of trial.

56. Defendants' conduct described herein violates California Labor Code §§226.7 and 512, and Wage Order 5-2001. Therefore, Plaintiffs and the Class are entitled to the relief provided in California Labor Code §226.7(b) and Wage Order 5-2001, damages, restitution for the failure to provide meal and rest periods, plus interest, applicable civil penalties, attorneys' fees, expenses and costs of suit.

57. Wherefore, Plaintiffs and the Class request relief as hereinafter provided.

FOURTH CAUSE OF ACTION
Unpaid Wages and Waiting Time Penalties Pursuant to
California Labor Code §§201-203, 204, 218.5, and 218.6
(Against All Defendants)

58. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

59. California Labor Code §201 provides:

If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

60. California Labor Code §202 Provides:

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.

61. Plaintiffs and Class Members have left Defendants' employment within the Class Period, at which time Defendants owed Plaintiffs and Class Members their earned wages. As a result of Defendants' failure to pay members of the Class for all hours worked, including overtime time hours, and due to Defendants' failure to provide compliant meal and rest periods, Defendants

1 willfully refused and continue to refuse to pay Plaintiffs and Class Members all the wages that were
2 due and owing to them upon termination of employment. As a result of Defendants' actions, Plaintiffs
3 and the Class have suffered and continue to suffer substantial losses, including lost earnings and interest.

4 62. Defendants' willful failure to pay Plaintiffs and Class Members the wages due and
5 owing them constitutes a violation of California Labor Code §§201 and 202. As a result, Defendants
6 are liable to Plaintiffs and Class Members for all unpaid wages that should have been paid pursuant to
7 California Labor Code §§201 and 202, plus interest thereon.

8 63. In addition, §203 provides that an employee's wages will continue as a penalty up to
9 thirty (30) days from the time the wages were due. Therefore, Plaintiffs and Class Members who left
10 Defendants' employment during the Class Period are entitled to waiting time penalties, plus interest
11 thereon, pursuant to California Labor Code §203.

12 64. Plaintiffs and the Class are also entitled to an award of attorneys' fees and costs as set
13 forth below.

14 65. Wherefore, Plaintiffs and the Class request relief as hereinafter provided.

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16
17 **FIFTH CAUSE OF ACTION**
18 **Failure to Provide Itemized Wage Statements**
19 **in Violation of California Labor Code §226**
20 **(Against All Defendants)**

21 66. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth
22 herein.

23 67. California Labor Code §226(a) provides:

24 Every employer shall, semimonthly or at the time of each payment of
25 wages, furnish each of his or her employees, either as a detachable part of
26 the check, draft, or voucher paying the employee's wages, or separately
27 when wages are paid by personal check or cash, an accurate itemized
28 statement in writing showing (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, (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. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least four years at the place of employment or at a central location within the State of California.

68. California Labor Code §226(e) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

69. Defendants have failed and continue to fail to provide timely, accurate itemized wage statements to Plaintiffs and the Class in accordance with California Labor Code §226(a) and the applicable IWC Wage Order. Furthermore, the wage statements Defendants have provided to their employees, including to Plaintiffs and the Class, do not accurately reflect the actual hours worked and wages earned.

70. Defendants are liable to Plaintiffs and the Class as alleged herein for the amounts described above, in addition to damages and civil penalties, with interest thereon. Furthermore, Plaintiffs and the Class are entitled to an award of attorneys' fees and costs as set forth below.

71. Wherefore, Plaintiffs and the Class request relief as hereinafter provided.

SIXTH CAUSE OF ACTION
Failure to Maintain Accurate Time and Payroll Records
(Labor Code §§ 1174, 1174.5; Wage Order 5
(Against all Defendants)

72. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

1 73. Labor Code § 1174 requires all employers to maintain accurate payroll records showing
2 the hours worked daily and wages paid to employees. Labor Code § 1174.5 subjects an employer who
3 willfully fails to maintain the accurate and complete records to a civil penalty of five hundred dollars
4 (\$500).

5 74. Section 6(A) of Wage Order 5 requires employers to keep accurate records for each
6 employee in regard to total hours worked in the payroll period, applicable rates of pay, and total wages
7 paid each payroll period, as well as time records showing when employees begin and end each work
8 period, including meal periods, split shift intervals, and total daily hours.

9 75. Defendants have violated Labor Code § 1174(d) by willfully failing to keep accurate
10 payroll records showing the actual hours worked each day by Plaintiffs and the Class.

11 76. Defendants have violated Wage Order 5 § 6(A) by willfully failing to keep accurate
12 required payroll records for each employee in regard to total hours worked in the payroll period,
13 applicable rates of pay, and total wages paid each payroll period, as well as time records showing
14 when employees begin and end each work period, including meal periods and total daily hours worked
15 each day by Plaintiffs and the Class.
16

17 77. As a result of Defendants' failure to maintain accurate payroll records, Plaintiffs and
18 the Class have suffered actual economic harm as they have been precluded from accurately monitoring
19 their number of hours worked and thus prevented from seeking all wages owed, including minimum
20 wage for all hours worked and earned overtime pay.

21 78. Plaintiffs and the Class are entitled to recover a civil penalty of \$500 for Defendants'
22 violation of Labor Code § 1174.5.

23 79. Wherefore, Plaintiffs and the Class request relief as hereinafter provided.
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SEVENTH CAUSE OF ACTION

**Unfair Competition in Violation of California Business and
Professions Code §§ 90.5 and 17200, *et seq.*
(Against All Defendants)**

80. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

81. California Business and Professions Code §§17200 *et. seq.* (also referred to herein as the “Unfair Competition Law” or “UCL”), prohibits unfair competition in the form of any unlawful, unfair, or fraudulent business act or practice.

82. California Business and Professions Code §17204 allows a person injured by unfair business acts or practices to prosecute a civil action for violation of the UCL.

83. California Labor Code §90.5(a) states it is the public policy of California to vigorously enforce minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

84. Beginning at an exact date unknown to Plaintiffs, but at least since the date four (4) years prior to the filing of the Complaint in this action, Defendants have committed acts of unfair competition as defined by the UCL, by engaging in the unlawful, unfair and fraudulent business practices and acts described herein, including, but not limited violations of Labor Code §§ 200, 201-203, 221-223, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, and Wage Order 5-2001 sections 3, 4, 7, 11 and 12.

85. The violations of these laws and regulations, as well as of the fundamental California public policies protecting workers and requiring payment of wages for all work performed, providing workers with adequate meal and rest periods, and discouraging unfair labor practices, serve as unlawful predicate acts and practices for purposes of the UCL.

86. Defendants’ violations of these statutes and regulations independently and separately

1 constitute an unlawful business practice within the meaning of the UCL.

2 87. Defendants have obtained a significant unfair competitive advantage over law-abiding
3 employers and competitors and engaged in unfair competition, through its acts and practices alleged
4 herein.

5 88. As a result of the aforementioned acts, Plaintiffs and Class Members have lost and
6 continue to lose money or property and suffered and continue to suffer injury in fact. Defendants
7 continue to hold unpaid wages and other funds legally belonging to Plaintiffs and the Class.

8 89. Plaintiffs and the Class are entitled to restitution pursuant to Business and Professions
9 Code §§17203 and 17208 for, among other things, unpaid wages, including overtime, missed meal and
10 rest period premiums, and interest since four (4) years prior to filing of the Complaint.

11 90. Pursuant to Business and Professions Code §17203, Plaintiffs and similarly situated the
12 Class are entitled to and seek injunctive relief against Defendants' continuation of the unlawful and
13 unfair business practices described herein.

14 91. Plaintiffs' success in this action will enforce important rights affecting the public
15 interest, and in that regard, Plaintiffs sue on behalf of themselves as well as others similarly situated.
16 Plaintiffs take upon themselves the enforcement of the aforementioned laws and lawful claims.

17 92. Plaintiffs and the Class are entitled to restitution in the amounts unlawfully withheld by
18 Defendants, with interest; injunctive relief; and an award of attorneys' fees and costs as provided by
19 Code of Civil Procedure §1021.5.

20 93. Wherefore, Plaintiffs request relief as hereinafter provided.

21
22 **CAUSE OF ACTION**
23 **Private Attorneys General Act,**
24 **California Labor Code § 2998 *et seq.***
(Against All Defendants)

25 94. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth
26 herein.

27 95. Plaintiffs are Aggrieved Employee as defined in Labor Code § 2699(a). Plaintiffs bring
28

1 this cause of action on behalf of herself, and other current or former employees affected by the Labor
2 Code and Wage Order violations alleged herein.

3 96. Defendants, at all relevant times, were employers or persons acting on behalf of an
4 employer who violated Plaintiffs' and other Class Members' rights by violating California laws.

5 97. On a representative basis, Plaintiffs seek recovery of penalties under the Private
6 Attorneys General Act of 2004 ("PAGA"), Labor Code sections 2698 *et seq.*

7 98. Labor Code section 2699(a) provides:

8
9 Notwithstanding any other provision of law, any provision of this code
10 that provides for a civil penalty to be assessed and collected by the Labor
11 and Workforce Development Agency or any of its departments, divisions,
12 commissions, boards, agencies or employees, for a violation of this code,
may, as an alternative, be recovered through a civil action brought by an
aggrieved employee on behalf of himself or herself and other current or
former employees pursuant to the procedures specified in Section 2699.3.

13 99. PAGA permits "aggrieved employees" to recover penalties on behalf themselves and
14 other current or former employees as a result of an employer's violations of the Labor Code, including
15 but not limited to violations alleged herein, including Labor Code §§ 200, 201-203, 221-223, 226,
16 226.3, 226.7, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, and Wage Order 5-2001 sections
17 3, 4, 7, 11 and 12.

18 100. Plaintiffs are informed and believe and thereon allege that Defendants and Does 1-50
19 committed the following violations of the California Labor Code against Plaintiffs and against other
20 current or former employees while employed by Defendants:

21 (a) Defendants violated Labor Code § 226.7(b), 512, and Wage Order 5-2001 by
22 failing to provide compliant rest and meal periods to Plaintiffs and the Aggrieved Employees;

23 (b) Defendants violated Labor Code sections 221-223, 510, 512, and Wage Order 5-
24 2001 by failing to pay premium overtime wages;

25 (c) Defendants violated Labor Code § 226(a) by failing to provide properly itemized
26 wage information to Plaintiffs and the Aggrieved Employees;

27 (d) Defendants failed to maintain accurate payroll records showing the hours worked
28

1 daily by and the wages paid to Plaintiffs and other Aggrieved Employees as required under Labor
2 Code §1174, 1174.5 and Wage Order 5-2001; and

3 101. Labor Code section 226.3 provides:

4 Any employer who violates subdivision (a) of Section 226 shall be
5 subject to a civil penalty in the amount of two hundred fifty dollars
6 (\$250) per employee per violation in an initial citation and one thousand
7 dollars (\$1,000) per employee for each violation in a subsequent citation,
8 for which the employer fails to provide the employee a wage deduction
9 statement or fails to keep the records required in subdivision (a) of
10 Section 226. The civil penalties provided for in this section are **in
addition to** any other penalty provided by law. In enforcing this section,
the Labor Commissioner shall take into consideration whether the
violation was inadvertent, and in his or her discretion, may decide not to
penalize an employer for a first violation when that violation was due to a
clerical error or inadvertent mistake.
(emphasis added).

11 102. Labor Code § 558 provides:

12 (a) Any employer or other person acting on behalf of an employer
13 who violates, or causes to be violated, a section of this chapter or any
14 provision regulating hours and days of work in any order of the
Industrial Welfare Commission shall be subject to a civil penalty as
follows:

15 (1) For any initial violation, fifty dollars (\$50) for each underpaid
16 employee for each pay period for which the employee was underpaid
in addition to an amount sufficient to recover underpaid wages.

17 (2) For each subsequent violation, one hundred dollars (\$100) for
18 each underpaid employee for each pay period for which the employee
19 was underpaid **in addition to an amount sufficient to recover
underpaid wages.**

20 (3) Wages recovered pursuant to this section shall be paid to the
21 affected employee.

22 (b) If upon inspection or investigation the Labor Commissioner
23 determines that a person had paid or caused to be paid a wage for
24 overtime work in violation of any provision of this chapter, or any
25 provision regulating hours and days of work in any order of the
Industrial Welfare Commission, the Labor Commissioner may issue a
citation. The procedures for issuing, contesting, and enforcing
26 judgments for citations or civil penalties issued by the Labor
Commissioner for a violation of this chapter shall be the same as
those set out in Section 1197.1.

27 (c) The civil penalties provided for in this section are in addition to
28

any other civil or criminal penalty provided by law. (emphasis added).

103. Labor Code § 2699(f) provides in pertinent part:

For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: . . . (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

104. To the extent than any violation alleged herein does not carry penalties under Labor Code § 2699(a), Plaintiffs seek civil penalties pursuant to Labor Code § 2699(f) for Plaintiffs and similarly situated Aggrieved Employees for each pay period in which he or she was aggrieved, in the amounts established by California Labor Codes § 2699(f)(2).

105. Plaintiffs seek the aforementioned penalties on behalf of the State, other similarly situated aggrieved employees and themselves as set forth in Labor Code § 2699(h).

106. Plaintiffs complied with the PAGA notice provision set forth in Labor Code § 2699.3(a)(1) by providing written notice on March 22, 2023, to the Labor and Workforce Development Agency (“LWDA”). Likewise, Plaintiffs complied with the PAGA notice provision by also giving notice to the employer by certified mail on March 22, 2023, of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Defendants acknowledged receipt by signing the return receipt on March 30, 2023.

107. More than (65) sixty-five calendar days have passed since the postmark date of the notice Plaintiffs provided to the LWDA and Plaintiffs have not received a response from the agency.

108. Defendants are liable to Plaintiffs, Aggrieved Employees, and the State of California for the civil penalties as alleged herein, with interest thereon, plus attorneys’ fees and costs, in an amount according to proof.

109. Wherefore, Plaintiffs request relief as hereinafter provided.

///

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs request a judgment against Defendants as follows:

1. For an order certifying this case as a class action, appointing Plaintiffs as the representatives of the Class, and appointing Plaintiffs' attorneys, The Villegas Law Firm, APC, as Class Counsel;
2. For a declaratory judgment that Defendants have violated the California Labor Code, IWC Wage Order 5-2001 and public policy as alleged herein;
3. For a declaratory judgment that Defendants have violated Business and Professions Code §§17200, *et seq.*, as a result of the aforementioned violations of the California Labor Code, IWC Wage Order and of California public policy protecting workers and prohibiting work without full and proper compensation for work performed, adequate meal and rest periods, and failing to properly maintain accurate time and payroll records;
4. For preliminary, permanent, and mandatory injunctive relief prohibiting Defendants, their officers, agents and all those acting in concert with them, from committing in the future those violations of law herein alleged;
5. For an order awarding Plaintiffs and the Class compensatory and liquidated damages, including unpaid wages, overtime premiums, meal and rest premiums, applicable penalties, and all other sums of money owed to Plaintiffs and the Class, together with interest on these amounts, according to proof;
6. For an equitable accounting to identify, locate and restore to all current and former employees the restitution they are due under California Business and Professions Code §§17202-17203, with interest thereon;
7. For an award of restitution, according to proof, under the California Labor Code and under California Business and Professions Code §§17200-17205;
8. For an order imposing all statutory and/or civil penalties provided by law, including but not limited to, penalties under California Labor Code §§201-203, 226(e), 226.3, 226.7, 558, 2699(a) and (f), together with interest on these amounts;

1 9. Pre-judgment and post-judgment interest, as provided by law;

2 10. For an award of reasonable attorneys' fees as provided by California Labor Code
3 §§218.5, 226(e), 2699 (g)(1) and 1194; California Code of Civil Procedure §1021.5; and/or other
4 applicable law;

5 11. For all costs of suit; and

6 12. For such other and further legal and equitable relief as this Court deems necessary, just
7 and proper.

8
9 Respectfully submitted,

10 Dated: October 24, 2023

11 THE VILLEGAS LAW FIRM, APC

12
13 By:



14 VIRGINIA VILLEGAS
15 FELICIA GOLDSTEIN
16 PAUL GRANT-VILLEGAS
17 Attorneys for Plaintiffs and the Putative Class

DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of themselves and the Class, hereby demand a jury trial on all claims and issues raised in the Complaint for which Plaintiffs and the Class are entitled to a jury.

Respectfully submitted,

Dated: October 24, 2023

THE VILLEGAS LAW FIRM, APC

By:



VIRGINIA VILLEGAS
FELICIA GOLDSTEIN
PAUL GRANT-VILLEGAS
Attorneys for Plaintiffs and the Putative Class