

WORKPLACE RIGHTS LAW GROUP, LLP
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March 19, 2024

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator

Subject: Getachew Bayou v. World Oil Marketing Company et al.

Dear PAGA Administrator:

This office represents Getachew Bayou (“MR. BAYOU”) in connection with his claims under the California Labor Code. Mr. Bayou is/was an employee of World Oil Marketing Company, World Oil Corp., World Oil, LLC, Robert S. Roth (Co-CEO and Director), Steven F. Roth (Co-CEO and Director), Matthew Pakkala (CEO, Executive Vice President & Chief Financial Officer), Christopher Norton (Chief Legal Officer) referred to herein as “WORLD.”

WORLD may be contacted directly at the address below:

WORLD OIL MARKETING COMPANY
c/o CT CORPORATION (agent of service of process)
818 West Seventh Street
Suite 930
Los Angeles, CA 90017

WORLD OIL MARKETING COMPANY
9302 Garfield Ave.
South Gate, CA 90280

WORLD OIL CORP.
9302 Garfield Ave.
South Gate, CA 90280

WORLD OIL, LLC
c/o THE CORPORATION TRUST COMPANY
CORPORATION TRUST CENTER
1209 ORANGE ST

Wilmington, DE 19801

WORLD OIL, LLC
9302 Garfield Ave.
South Gate, CA 90280

In addition, the acts and violations of law described below were done with the approval of the following individuals, who acted on behalf of the employer and caused such laws to be violated: Robert S. Roth (Co-CEO, owner, and Director), Steven F. Roth (Co-CEO, owner, and Director), and Matthew Pakkala (Executive Vice President & Chief Financial Officer), Christopher Norton (Chief Legal Officer). All of these individuals can be contacted at the addresses above.

MR. BAYOU intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698 *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). MR. BAYOU seeks to hold the named-individuals liable under Labor Code Sec. 558, which states that "any employer *or other person acting on behalf of an employer who* violates" the law, must pay a civil penalty described in that Section. MR. BAYOU seeks relief on behalf of himself, the State of California, and other persons who were contracted to work by WORLD in California.

MR. BAYOU worked at WORLD gas station in Santa Barbara California.

During the time that MR. BAYOU worked for WORLD, WORLD intentionally, willfully and voluntarily misclassified him as an "independent contractor."

The issue of whether WORLD's workers were misclassified as "independent contractors" was compelled to arbitration in Selvarajah v. World Oil (Los Angeles Sup. Court Case. No. 20STCV15659). On August 15, 2023, Retired Superior Court Judge Franz Miller found that WORLD did misclassify its contracted-workers as "independent contractors." According to Judge Miller, whose decision is attached hereto as Exhibit A:

- "As to condition 'a,' worker control, the Selvarajahs' conduct relating to operation of the World Oil station was, as set forth above, controlled by World Oil down to the most minute details, from the hours the stations were open, to the appearance of the station, to their conduct in dealing with gas (and even convenience store) sales."
- "Concerning condition 'b,' whether the worker performs work outside the hirer's business, as noted above, World Oil is not in the business of leasing real estate – it is in the business of retailing gasoline. The Selvarajahs were hired – at least primarily – to sell World Oil's gas."

- “Anent the third condition, ‘c,’ whether the worker is customarily engaged in an independent trade, the evidence established beyond cavil the Selvarajahs were, and had been for years, operating gas stations.”
- “World Oil did not carry its burden under the ABC test to show the Selvarajahs were independent contractors.”
- Judge Miller further held that the Selvarajahs were misclassified even under the old standard of S.G. Borello & Sons v. Department of Industrial Relations (1989) 48 Cal.3d 341.
- Judge Miller further held: “It is apt to note at the outset World Oil styles itself as merely a real estate lessor that leased gas station property to Raj and Anoja [Selvarajah]. It staunchly eschewed any suggestion it is in business to sell gasoline. Charitably, that characterization severely strains credulity. As the facts presented at the arbitration hearing demonstrate, no mere landlord could, or in all likelihood would, control the actions of ‘renters’ as World Oil did under its agreements with the Selvarajahs. Put differently, if World Oil doesn’t sell gas, what does one call: they-buy-the-gas-from-the-suppliers, arrange-to-have-it-transported-to-the-stations-in-trucks-marked-“World Oil”, and then carefully-monitor-and-collect-exactly-what-the-consumer-pays-for-the-gas?” (Exhibit A.)

Judge Miller’s decision was confirmed by Order of the Los Angeles Superior Court on November 20, 2023, without objection by WORLD. Thus, as adjudicated by the California Courts, WORLD fails the three-part test under Dynamex Operations W. v Superior Court (2018) 4 Cal.5th 903 and Labor Code § 2775. Yet WORLD continues to misclassify its “contractors” in brazen violation of California.

Aggrieved employees

WORLD committed one or more of the following Labor Code violations against MR. BAYOU and the aggrieved employees, the facts and theories of which follows, making them an “aggrieved employee” pursuant to California Labor Code section 2699, subd. (c).

“Aggrieved employees” in this case includes all individuals who worked at a WORLD gas station at least one year prior to the filing of this Notice to the present.

Violation of Labor Code § 226.8

WORLD violated California Labor Code § 226.8. Under that section,

“(a) It is unlawful for any person or employer to engage in any of the following activities:

(1) Willful misclassification of an individual as an independent contractor.

(2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified.

(b) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.

(c) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.

(d)(1) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer that is a licensed contractor pursuant to the Contractors' State License Law has violated subdivision (a), the agency, in addition to any other remedy that has been ordered, shall transmit a certified copy of the order to the Contractors' State License Board.”

In addition to willfully misclassifying MR. BAYOU and other aggrieved employees as independent contractors, WORLD willfully deducted operating expenses of WORLD’s business from the “commissions” it paid to MR. BAYOU and the other aggrieved employees. These operating expenses include wages paid to workers that MR. BAYOU and other aggrieved employees would pay to workers at the gas stations. Aggrieved employees were essentially required to bear most of WORLD’s business expenses, in open disregard of the law.

MR. BAYOU seeks penalties under Labor Code § 226.8 for such violations.

Violation of Labor Code § 232

Under Labor Code § 232,

“No employer may do any of the following: (a) Require, as a condition of employment, that an employee refrain from disclosing the amount of his or her wages.

(b) Require an employee to sign a waiver or other document that purports to deny the employee the right to disclose the amount of his or her wages.

(c) Discharge, formally discipline, or otherwise discriminate against an employee who discloses the amount of his or her wages.”

WORLD prohibited MR. BAYOU from publicly discussing WORLD’s unlawful employment policies and practices including WORLD’s policy of refusing to pay minimum wages. WORLD required MR. BAYOU and other aggrieved employees to agree to confidentiality under threat of termination and denial of payment.

Violation of Labor Code § 232.5

Under Labor Code § 232.5,

“No employer may do any of the following:

(a) Require, as a condition of employment, that an employee refrain from disclosing information about the employer's working conditions.

(b) Require an employee to sign a waiver or other document that purports to deny the employee the right to disclose information about the employer's working conditions.

(c) Discharge, formally discipline, or otherwise discriminate against an employee who discloses information about the employer's working conditions.

(d) This section is not intended to permit an employee to disclose proprietary information, trade secret information, or information that is otherwise subject to a legal privilege without the consent of his or her employer.”

WORLD violated this section by requiring that MR. BAYOU and aggrieved employees from refraining from publicly speaking about their working conditions and requiring that MR. BAYOU and aggrieved employees sign a confidentiality agreement and threatening to discharge them and withhold payment if they disclose such working conditions. The confidentiality agreement constitutes an attempted “waiver” under Section 232.5 and it is unenforceable under the law.

Violation of California Labor Code §§ 510 and 1198

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the

rate of time-and-one-half (1 1/2) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including non-discretionary bonuses and incentive pay.

MR. BAYOU and other aggrieved employees often worked 18 hours per day. WORLD willfully failed to pay all overtime wages and other wages owed to aggrieved employees. During the relevant time period, aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

VIOLATION OF LABOR CODE SEC. 2802

WORLD violated Labor Code Sec. 2802. Under Labor Code Sec. 2802, “(a) An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

WORLD willfully failed to reimburse MR. BAYOU and other aggrieved employees for all business expenses incurred by them including but not limited to expenses for paying staffing members. In fact, under the AGREEMENT, WORLD *required* MR. BAYOU to pay for WORLD's business expenses in direct violation of Labor Code Sec. 2802. For example, WORLD required MR. BAYOU to pay WORLD rent and “certain other fees and costs.” WORLD also required MR. BAYOU to pay WORLD \$30,000 as a security deposit.

WORLD was knowingly and willfully violating Labor Code Sec. 2802 and stealing from the aggrieved employees by requiring the aggrieved employees to pay WORLD's business expenses. According to WORLD, it required the aggrieved employees to pay WORLD's business expenses and security deposit as a form of insurance for WORLD:

“World is holding this security deposit to protect itself in the event that rent, fees or costs are not paid, there is a shortage of cash or inventory, or there is any other breach of the Lease or of the Commission and Operating Agreement causing a loss to World.”

VIOLATION OF THE MINIMUM WAGE (San Jose Minimum Wage Ordinance, LABOR CODE SEC. 1194.2, 1197, AND CALIFORNIA WAGE ORDER NO. 7, 204, 204b), LABOR CODE SECS. 1182.12, 1194, 1197.1, 1198)

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined by the applicable wage order as "the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

WORLD failed to pay minimum wages for all of the aggrieved employees' work (including MR. BAYOU work) on a systemic basis. Aggrieved employees would log their hours in WORLD's time keeping system and WORLD would simply fail to pay aggrieved employees for all of their hours worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558, 1194, 1197.1 and/or 2699(a), (f)-(g).

WORLD violated Labor Code Sec. 1194. Under Labor Code Sec. 1194, "(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

WORLD violated Labor Code Sec. 1197. Under Labor Code Sec. 1197, "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."

WORLD violated Labor Code Sec. 1197.1. Under Labor Code Sec. 1197.1, "(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.”

WORLD also failed to pay MR. BAYOU and other aggrieved employees a minimum wage according to local ordinances and the local laws/ordinances setting minimum wages including the Santa Barbara County minimum wage.

MR. BAYOU is informed and believes and thereon alleged that WORLD required aggrieved employees to work in California during the relevant time period but paid aggrieved employees less than the minimum wage required by law during the relevant time period.

MR. BAYOU and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558, 1194, 1197.1 and/or 2699(a), (f)-(g).

VIOLATION OF CALIFORNIA LABOR CODE SEC. 226.7, 512(A) AND 1198

California Labor Code sections 226.7, 512(a) and 1198 and the applicable IWC Wage Order (including Wage Order No. 5) require employers to provide meal and rest breaks and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. Brinker Rest. Corp. v. Superior Court, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal break of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 1/2) hours. To comply with its obligation to provide rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time and relieve their employees of all duties - including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." Augustus, et al. v. ABM Security Services, Inc. (2016) 2 Cal. 5th 257, 269-270.

WORLD also has engaged in a company-wide practice and/or policy of not providing meal periods or rest breaks and paying meal and rest period premiums owed when compliant meal and rest periods are not provided. Because of this practice and/or policy, aggrieved employees have not received premium pay for missed meal and/or rest periods.

WORLD violated the statutes, rules and ordinances described above by failing to provide aggrieved employees compliant meal periods and by failing to authorize and permit aggrieved employees to take rest periods in violation of California Labor Code sections 226.7, 512(a) and 1198. MR. BAYOU and other aggrieved employees are therefore entitled to penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and 2699(t)-(g).

VIOLATION OF CALIFORNIA LABOR CODE SEC. 226, 226(A), 1174 AND 1198 AND WAGE ORDER NO. 7, SECTION 7

California Labor Code section 226(a) requires employers to furnish and maintain true, accurate and complete wage statements and employment records. WORLD has not provided MR. BAYOU and other aggrieved employees with compliant wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation,

for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

WORLD has knowingly and intentionally provided MR. BAYOU and other aggrieved employees with incomplete and inaccurate wage statements. The statements did not reflect the amounts aggrieved employees should have received as a result of meal periods that were not provided and rest breaks that were not authorized and permitted. The statements did not reflect the amounts aggrieved employees should have received as a result of the correct minimum wages. The statements did not reflect the amounts aggrieved employees should have received for wages for all worked performed. WORLD deducted time from other aggrieved employees' records for meal periods that were interrupted or missed (and therefore time for which they should have been paid) and did not record the time aggrieved employees worked. The statements did not accurately reflect the amount of overtime aggrieved employees worked. The statements otherwise violated Section 226. The statements did not reflect the correct hourly rate that aggrieved employees should have received under the law. The statements did not reflect the correct total hours worked.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall ... [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall ... [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments..." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), WORLD willfully failed to maintain accurate payroll records for aggrieved employees showing accurately the daily hours they worked, and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the

applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, WORLD failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for MR. BAYOU and other aggrieved employees in violation of section 1198.

Because WORLD failed to provide the accurate number of total hours worked on wage statements (as a result of not recording hours worked and during meal periods for example), MR. BAYOU and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, MR. BAYOU and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment and name of their employer, thereby causing them injury.

WORLD violated Wage Order No. 7, Section 7, which requires California employers like WORLD records that show information regarding employees, as well as “(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee(s). Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.”

MR. BAYOU and other aggrieved employees are therefore entitled to recover penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226(e), 226.3, 1174.5, and/or 2699(a), (f)-(g).

VIOLATION OF CALIFORNIA LABOR CODE § 204

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, WORLD failed to pay MR. BAYOU and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and meal and rest period premium wages, within any time period specified by California Labor Code section 204.

MR. BAYOU and other aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

VIOLATION OF CALIFORNIA LABOR CODE SECS. 201, 202 AND 203

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (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.

For example, when MR. BAYOU's employment ended with WORLD, WORLD failed to provide MR. BAYOU with all final wages within 72 hours of the end of his employment. Instead, WORLD failed to timely pay all of MR. BAYOU's owed wages within the requisite time limit in violation of Labor Code section 202.

In addition, WORLD willfully failed to pay the MR. BAYOU and other aggrieved employees who are no longer employed by WORLD all their earned wages, including, but not limited to, overtime wages, minimum wages, and meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving WORLD's employ in violation of California Labor Code sections 201, 202, and 203. Additionally, one or more aggrieved employees were terminated from employment but were not paid wages undisputedly owed on the day they were terminated.

MR. BAYOU and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

CALIFORNIA LABOR CODE § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the

Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages."

Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." WORLD, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated MR. BAYOU's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, MR. BAYOU seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees.

Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5 and 558, the MR. BAYOU's, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against the MR. BAYOU's for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198.

Therefore, on behalf of all aggrieved employees, MR. BAYOU seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Theodore Khachaturian
Workplace Rights Law Group, LLP
130 N. Brand Blvd., Suite 420
Glendale, CA 91203
Tel: (818) 844-5200
Email: theo@workplacelaw.com

Sincerely,


Theodore Khachaturian

Cc: World Oil Marketing Company
World Oil Corp.

World Oil, LLC
Robert S. Roth
Steven F. Roth
Matthew Pakkala
Christopher Norton

Exhibit A

JAMS ARBITRATION
No. 1220067661

Selvarajah, Sinnathamby Raj, et al.
Claimant,

and

World Oil Marketing Company, et al.
Respondent.

FINAL ARBITRATION AWARD

The arbitration in this matter was heard by the party-selected arbitrator Hon. Franz Miller, Ret., over five days in July 2022, at JAMS' Irvine Conference Center, with some parties and/or witnesses appearing virtually. After the evidence presentation concluded, the parties filed post-hearing briefs as their argument. The arbitrator issued an initial and a further interim arbitration award. The final award ensues.

In issuing this award, the arbitrator has considered any, and all objections raised by either or both parties. Except as may be indicated expressly otherwise below, the objections are overruled.

Facts

Claimants Sinnathamby Raj Selvarajah and Anoja S. Selvarajah (referred to respectively as "Raj" and "Anoja," and collectively as "the Selvarajahs" in this award, as they were during the hearing) contracted with respondent World Oil Marketing Company ("World Oil") to operate two World Oil gas stations in the greater Los Angeles/Orange County area.

In 2007, Raj and Anoja executed Commission and Operating agreements ("the agreements") with World Oil regarding the two gas stations. Under the agreements, the Selvarajahs were to receive a \$0.03 per gallon on gas sales.

Instead, however, they were paid a flat sum of \$4,500 per month, no matter how much gas they sold. Moreover, they were required to pay \$500 per month in rent to World Oil.

The Selvarajahs operated the convenience store at each station. They bought the products that were sold. They apparently controlled the pricing of those sales and kept the proceeds. World Oil, however, apparently controlled, at least to some extent, where products were placed and the arrangement of certain other things in the stores.

The Selvarajahs recruited certain "replacement workers" to staff the station at various times when they were present, and sometimes when they were absent. The Selvarajahs paid those workers.

World Oil controlled when the stations were open – generally, 24 hours per day, seven days per week, 365 days per year. It also controlled lighting, signage, uniforms, and other matters affecting the appearance of its stations, including the convenience stores.

World Oil controlled the sales price of the gasoline, and meticulously monitored sales and the amount of gasoline on hand. It had iron-fisted control over cash and credit card sales.

Around 2015, World Oil began to charge the Selvarajahs for various overhead expenses such as credit card fees, insurance, trash removal, security alarm services, etc. In late 2018, it accused the Selvarajahs of being in default and claimed they were indebted to it for \$15,291.

World Oil's assertions included claims of cash shortages, operating hours violations, and sale of stale food at the convenience stores. In 2019, World Oil terminated the agreements with the Selvarajahs. These proceedings ensued.

Analysis

The factual findings that follow are necessary to the award. They are derived from any admissions in the pleadings, and from the testimony and exhibits presented at the hearing.

To the extent these findings differ from any party's position, the difference results from the arbitrator's determinations as to credibility and relevance, burden of proof considerations, legal principles, and the weight of the evidence, both oral and written. All credibility and factual findings were made in favor of claimants, whether recited expressly or not, except as stated expressly to the contrary.

It is apt to note at the outset World Oil styles itself as merely a real estate lessor that leased gas station property to Raj and Anoja. It staunchly eschewed any suggestion it is in business to sell gasoline.

Charitably, that characterization severely strains credulity. As the facts presented at the arbitration hearing demonstrate, no mere landlord could, or in all likelihood would, control the actions of "renters" as World Oil did under its agreements with the Selvarajahs.

Put differently, if World Oil doesn't sell gas, what does one call: they-buy-the-gas-from-the-suppliers, arrange-to-have-it-transported-to-the-stations-in-trucks-marked- "World Oil", and then carefully-monitor-and-collect-exactly-what-the-consumer-pays-for-the-gas?

In any event, the *legal* question in this case is whether the Selvarajahs were employees of World Oil and were thus subject to the provisions of the California Labor Code, or whether they were independent contractors, who are not. As there may be some question whether the applicable standard is that enunciated in *Dynamex Operations W. Inc. v. Superior Court* (2018) 4 Cal.5th 903 or the standard promulgated in *S.G. Borello & Sons v. Department of Industrial Relations* (1989) 48 Cal.3d 341, the arbitrator will consider the facts as applied to each standard and conclude the result is the same under each standard.

The *Dynamex Court* stated its "ABC test" as: "The ABC test presumptively considers all workers to be employees, and permits workers to be classified as independent contractors only if

the hiring business demonstrates that the worker in question satisfies *each* of three conditions: (a) that the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of the work and in fact; *and* (b) that the worker performs work that is outside the usual course of the hiring entity's business; *and* (c) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.” (*Dynamex Operations W., Inc. v. Superior Court*, *supra*, 4 Cal.5th at pp. 955-56.)

As to condition “a,” worker control, the Selvarajahs’ conduct relating to operation of the World Oil station was, as set forth above, controlled by World Oil down to the most minute details, from the hours the stations were open, to the appearance of the station, to their conduct in dealing with gas (and even convenience store) sales.

The only areas where the Selvarajahs had some leeway appear to be regarding hiring personnel to assist them in carrying out their obligations, and in determining the hours they would be physically present at the station.

Concerning condition “b,” whether the worker performs work outside the hirer’s business, as noted above, World Oil is not in the business of leasing real estate – it is in the business of retailing gasoline. The Selvarajahs were hired – at least primarily – to sell World Oil’s gas.

Anent the third condition, “c,” whether the worker is customarily engaged in an independent trade, the evidence established beyond cavil the Selvarajahs were, and had been for years, operating gas stations.

World Oil did not carry its burden under the ABC test to show the Selvarajahs were independent contractors.

Turning to the *S.G. Borello & Sons* test, it has been enunciated as: ““whether the person to whom services is rendered has the right to control the manner and means of accomplishing the result desired”” as well as the following nine additional factors: ‘(1) right to discharge at will, without cause; (2) whether the one performing the services is engaged in a distinct occupation or business; (3) the kind of occupation, with reference to whether in the locality the work is usually done under the direction of the principal or by a specialist without supervision; (4) the skill required in the particular occupation; (5) whether the principal or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work; (6) the length of time for which the services are to be performed; (7) method of payment, whether by the time or by the job; (8) whether or not the work is part of the regular business of the principal; and (9) whether or not the parties believe they are creating the relationship of employer-employee.’ . . . “[T]he individual factors cannot be applied mechanically as separate tests; they are intertwined, and their weight depends often on particular combinations.”” (*Dynamex Operations W., Inc. v. Superior Court*, *supra*, 4 Cal.5th at pp. 921-922.)

As noted above, World Oil had the right under its agreement with the Selvarajahs to control in great detail the manner and means of the result desired – to run a World Oil Gas Station at a maximum profit to World Oil.

As to the other nine factors:

- (1) World oil had the right to discharge at will.
- (2) The Selvarajahs were engaged in World Oil's business – selling gas.
- (3) There was no specific evidence regarding this factor, but the Selvarajahs were highly supervised.
- (4) There was no specific evidence on this factor.
- (5) World Oil supplied all, or effectively all, of the supplies, etc. needed to do the job.
- (6) The Selvarajahs performed their services at the same stations for over 10 years.
- (7) Ultimately, the Selvarajahs were paid a flat amount monthly.
- (8) The work the Selvarajahs performed was World Oils' business – selling gas.
- (9) There was no specific evidence on this factor.

Taken together the factors in the analysis preponderate toward a finding the Selvarajahs were employees of World Oil.

The parties have given some attention to a line of cases including *People v. Uber Techs.* (2020) 56 Cal.App.5th 266 (*Uber*); *Curry v. Equilon Enterprises, LLC* (2018) 23 Cal.App.5th 289 (*Curry*); *Henderson v. Equilon Enterprises, LLC* (2019) 40 Cal.App.5th 1111 (*Henderson*); and *Medina v. Equilon Enterprises* (2021) 68 Cal.App.5th 868 (*Medina*).

Uber involved the rideshare companies Uber and Lyft. The Court of Appeal applied the ABC test to conclude the State had provided a sufficient showing that Uber and Lyft drivers were employees to justify the issuance of a preliminary injunction against the ride share companies. Nothing in the opinion suggests the finding in this case should be different, notwithstanding any differences in analytic paradigm in this case.

Curry, *Henderson*, and *Medina* were “joint employer” cases that considered whether Shell Oil Company was an employer of those persons hired by the entities with whom Shell contracted (analogous to the Selvarajahs’ “replacement workers” here).

The *Curry* and *Henderson* courts found the replacement workers were not employed by Shell; the *Medina* court, decided by the Fourth District, Division Three Court of Appeal, concluded they were.

Although the paradigms between the “gas station cases” and this one differ, the arbitrator observes: (1) the *Medina* court’s opinion is better reasoned than the other two cases; and (2) it supports, analytically, the arbitrator’s conclusion the Selvarajahs were employees of World Oil.

Damages

Having concluded the Selvarajahs were employees of World Oil, it becomes apt to consider their damages.

Regular Wages

The Selvarajahs presented evidence, via the testimony of Dr. Fractor, that they were damaged in the amount of \$3,371,599, if one does not offset the \$4,500 per month the Selvarajahs were paid, or \$2,295,470 if the offset is made.

The Selvarajahs argue no setoff should be made for the monthly payments, relying on *Barnhill v. Sanders* (1981) 125 Cal.App.3d 1. But *Barnhill* involved the setoff of a loan the employer had made to the employee, not, as here, payment of salary/wages. (See *Koehl v. Verio, Inc.* (2006) 142 Cal.App.4th 1313, 1336 [finding a setoff was proper when it related directly to payment/nonpayment of wages.]) Offsetting salary actually paid to the Selvarajahs is appropriate.

Further, the hourly payrate Dr. Fractor used to determine damages – that evidenced by the \$4,500 per month payments – was appropriate.

Dr. Fractor's use of the Selvarajahs' claimed hours worked, however, is problematic. True, when an employer cannot provide reliable pay records, a court *may* rely on the employee's testimony. (See *Hernandez v. Mendoza* (1998) 199 Cal.App.3d 721, 727.) But the Selvarajahs testimony regarding the hours they worked was not credible.

The arbitrator believes he may find it more likely than not the Selvarajahs worked 40-hour weeks during the time they operated the gas stations except, as to Anoja, the time she was away pursuing a medical education. It appears, however, the time Anoja was away at school was before the period Dr. Fractor used in his calculated damages.

In a supplemental report, issued at the arbitrator's behest, Dr. Fractor calculated the wage damages by assuming both Selvarajahs worked 40-hour weeks during the entire relevant time period at an hourly rate that equates with \$4,500 per month that was paid to both of them, and deducting that amount from what they should have been paid. The arbitrator has considered respondent's objections to those calculations and overrules them.

Thus, the arbitrator finds the Selvarajahs were owed \$372,578 in regular wages, less the amount actually paid of \$259,222, for a total of \$113,256, plus prejudgment interest of \$166,850, for a total of \$280,206.

Overtime

There was no credible evidence the Selvarajahs worked overtime.

Liquidated Damages

The Selvarajahs assert they are entitled to liquidated damages as part of their award under Labor Code section 1194.2. Not so.

Subdivision (b) of that section gives a court discretion to decline to award liquidated damages if it finds the employer's failure to pay proper wages was done in good faith and the employer had reasonable grounds to believe it was not violating the Labor Code. The arbitrator makes such findings here, especially given the state of the law regarding employee versus independent contractor law was in flux during much, if not almost all, of the time the Selvarajahs worked for World Oil. That World Oil made a very weak argument about the nature of its business after the fact, does not connote it acted in bad faith when it established its business model.

Wait Time Penalty

Under Labor Code section 203, it is apt to award the Selvarajahs an additional 30-day payment of wages, as they were not paid all wages due within 30 days of their termination. The arbitrator finds, per Dr. Fractor's calculations, that amount is \$12,461.

Meal and Rest Break Penalties

There was insufficient credible evidence the Selvarajahs were denied legally required, adequate meal and/or rest breaks. Indeed, the arbitrator finds it is more likely than not they took such breaks as they chose, and that the breaks were adequate under the law.

Sick Pay

Under Labor Code section 246, subdivision (g)(1), an employee is generally not entitled to sick pay compensation upon termination. The Selvarajahs have not established they fall under any exception to that provision.

Wage Statement Violations

It appears World Oil wrongfully failed to provide the Selvarajahs with wage statements under Labor Code section 226, subdivision (e)(1). Under that section, the Selvarahs are entitled to an award of \$4,000 each, as they indisputably worked more than the approximately 20 months required to accrue the maximum penalty. Those amounts total to \$8,000.

Business Expenses

The arbitrator understands the evidence to be World Oil deducted from the Selvarajahs' monthly payment certain amounts for various "expenses" (including cash shortages). Those deductions will reduce the amount the Selvarajahs are debited for the monthly payments to them when their unpaid wages are calculated, using only the amounts the Selvarajahs were actually paid. Thus, no ruling need be made on this claim.

Profit from Goods Sold

Part of the agreement between the parties was the Selvarajahs would be entitled to keep profits from their sale of goods in the convenience store area of the gas station. The arbitrator rejects any argument by World Oil it is entitled to any part of the Selvarajahs' profit from the operation of that store. Nothing in the law or equity requires it, and the arbitrator declines to exercise any discretion he has to award it.

PAGA Damages

Claimants have not established they are entitled to any damages under PAGA beyond what the arbitrator has awarded. To the extent they have, the arbitrator exercises his discretion not to do so.

Replacement Labor Costs

The Selvarajah's aptly note World Oil should bear the cost of the "replacement" workers who assisted them in performing their duties, especially since, without such workers, the Selvarajahs would have been unable to keep the hours required by World Oil. The arbitrator accepts Dr. Fractor's calculations in this regard as well. Thus, the arbitrator awards claimants \$269,167 for replacement costs, plus interest thereon in the amount of \$145,747, for a total of \$414,914.

Total Damages Award

The Selvarajahs are entitled to an award of damages in the amount of \$715,581, consisting of unpaid wages plus interest in the amount of \$280,206, wait time penalties in the amount of \$12,461, wage statement violation penalties in the amount of \$8,000, and replacement worker expenses of \$414,914, including interest thereon.

Fees and Costs

Claimants seek \$1,560,435 in attorney fees and \$62,776 for costs. With the greatest respect that is due to the experience and skill of claimants' attorneys, the amounts sought are unduly inflated.

The arbitrator has reviewed both parties' pleadings relating to the claim, and accepts respondent's amounts and reasoning as more reasonable, for all of the reasons stated in their pleading.

Thus, the arbitrator awards claimants \$580,216 as and for attorney fees, and \$20,106 in costs.

Award

Claimants are awarded the total sum of \$1,315,903.

Case manager to give notice.

Dated: August 15, 2023



Hon. Franz E. Miller, (Ret.)
Arbitrator