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ARLENE APODACA, and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE
(UNLIMITED JURISDICTION)**

ARLENE APODACA, on behalf of herself and
all others similarly situated, and the general
public, and as an "Aggrieved Employee" on
behalf of other "Aggrieved Employees" and the
State of California under the Private Attorneys
General Act of 2004,

Plaintiff(s),

vs.

R AND T OIL INCORPORATED, a California
corporation; RAFI BARTANIYAN, an
individual; THOMAS VARTANIAN, an
individual; and DOES 1–50, inclusive,

Defendant(s).

Case No.: ~~CVRI2402196~~ CVRI2402196

FIRST AMENDED CLASS ACTION

COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
2. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
3. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
4. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
5. Wage Statement Penalties (Lab. Code § 226);
6. Waiting Time Penalties (Lab. Code §§ 201, 202, and 203);
7. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.; and
8. Civil Penalties (Lab Code §§2698, et seq.)

JURY TRIAL DEMANDED



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1 Plaintiff, Arlene Apodaca (hereafter “Plaintiff” or “Apodaca”), on behalf of herself and
2 all others similarly situated, the general public, and as an “aggrieved employee” on behalf of
3 other “aggrieved employees” and the State of California under the Labor Code Private
4 Attorneys General Act of 2004, complains and alleges as follows:

5 **I. INTRODUCTION**

6 1. Plaintiff brings this class and representative action for alleged violations of the
7 California Labor Code, Industrial Welfare Commission Order No. 7-2001 (hereafter “the Wage
8 Order”), and the California Business and Professions Code against Defendants R And T Oil
9 Incorporated, a California corporation, Rafi Bartaniyan, Thomas Vartanian, and Does 1 through
10 50, inclusive (collectively “Defendants”).

11 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her
12 and other similarly situated workers for unpaid wages, statutory penalties, interest, and related
13 relief. These claims are based on Defendants’ failures to:

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

16 (B) Provide all meal periods;

17 (C) Authorize and permit all rest breaks;

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

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

20 (F) Indemnify for necessary work-related expenditures;

21 (G) Issue only accurate and complete itemized wage statements;

22 (H) Issue statements of sick leave available;

23 (I) Timely pay wages during and upon termination of employment;

24 Accordingly, Plaintiff now seeks to recover unpaid wages, interest, liquidated damages,
25 restitution, statutory and civil penalties, attorneys’ fees, costs, and related relief through this class
26 action.

27 **II. THE PARTIES**

28 3. Plaintiff Arlene Apodaca is a resident of California. At all relevant times, Plaintiff



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1 was an “employee” within the meaning of Title 8 California Code of Regulations Section 11070,
2 and an “aggrieved employee” within the meaning of California Labor Code § 2699(c).

3 3. Defendant R And T Oil Incorporated is a corporation organized and existing under
4 the laws of California and also a citizen of California based on Plaintiff’s information and belief.

5 4. Defendant Rafi Bartaniyan is an individual and a citizen of California based on
6 Plaintiff’s information and belief.

7 5. Defendant Thomas Vartanian is an individual and a citizen of California based on
8 Plaintiff’s information and belief.

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

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

20 8. At all relevant times, in perpetrating the acts and omissions alleged herein,
21 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
22 of a practice which resulted in Defendants not compensating Plaintiff and the other Class
23 Members or otherwise complying with their rights in accordance with applicable California labor
24 laws as alleged herein.

25 9. At all relevant times, in perpetrating the acts and omissions alleged herein,
26 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
27 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-
28 described class in accordance with applicable laws as alleged herein.



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1 **III. CLASS ALLEGATIONS**

2 10. This action has been brought and may be maintained as a class action pursuant to
3 California Code of Civil Procedure section 382 because there is a well-defined community of
4 interest among the persons who comprise the readily ascertainable class defined below and
5 because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as
6 a class action.

7 11. **Class Definition:** The Class is defined as follows: All persons Defendants
8 employed or otherwise contracted with in California as non-exempt, hourly employees, including,
9 but not limited to cashiers, individuals performing work comparable to the aforementioned,
10 compensated comparably to the aforementioned, and individuals in similar positions, at any time
11 during the period beginning four years prior to the filing of this action and ending on the date that
12 final judgment is entered in this action (“Class” or “Class Members”).

13 12. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
14 right to amend or modify the class definition with greater specificity, by further division into
15 subclasses and/or by limitation to particular issues.

16 13. **Numerosity:** The Class Members are so numerous that the individual joinder of
17 each individual Class Member is impractical. While Plaintiff does not currently know the exact
18 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
19 minimum required for numerosity under California laws.

20 14. **Commonality and Predominance:** Common questions of law and fact exist as to
21 all Class Members and predominate over any questions which affect only individual Class
22 Members. These questions include, but are not limited to:

23 A. Whether Defendants failed to pay all wages earned to Class Members for
24 all hours worked at the correct rates of pay, including minimum, regular, overtime, doubletime,
25 meal period premium, and rest period premium;

26 B. Whether Defendants failed to provide the Class Members with all meal
27 periods in compliance with California law;

28 C. Whether Defendants failed to authorize and permit the Class Members to



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1 take all rest periods in compliance with California law;

2 D. Whether Defendants failed to indemnify the Class Members for the
3 reasonable expenses they incurred during the course of performing their duties;

4 E. Whether Defendants knowingly and intentionally failed to provide the
5 class with accurate and complete itemized wage statements;

6 F. Whether Defendants willfully failed to provide the class with timely final
7 wages;

8 G. Whether Defendants engaged in unfair competition within the meaning of
9 Business and Professions Code sections 17200, et seq., with respect to the Class; and

10 H. Whether Class Members are entitled to restitution of money or property
11 that Defendants may have acquired from them through alleged Labor Code violations.

12 15. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
13 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
14 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
15 Code, the Wage Order, and the Business and Professions Code.

16 16. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
17 in that she has no interests that are adverse to, or otherwise in conflict with, the interests of absent
18 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
19 Members. Plaintiff will fairly and adequately represent and protect the interests of Class
20 Members.

21 17. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
22 they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced
23 in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of
24 Plaintiff and absent Class Members.

25 18. **Superiority:** A class action is vastly superior to other available means for fair and
26 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
27 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
28 and efficiently prosecute their common claims in a single forum without the unnecessary



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1 duplication of effort and expense that numerous individual actions would entail. In addition, the
2 monetary amounts due to many individual Class Members are likely to be relatively small and
3 would thus make it difficult, if not impossible, for individual Class Members to both seek and
4 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
5 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
6 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

7 **IV. STATEMENT OF FACTS**

8 19. The Wage Order applies to “all persons employed in the mercantile industry
9 whether paid on a time, piece rate, commission, or other basis...” Wage Order, § 1. The Wage
10 Order defines “Mercantile Industry” to mean “any industry, business, or establishment operated
11 for the purpose of purchasing, selling, or distributing goods are commodities at wholesale or
12 retail; or for the purpose of renting goods or commodities.” Wage Order, § 2(H). At all relevant
13 times during the applicable limitations period, Defendants, Plaintiff, and all of the Class Members
14 were covered by the Wage Order because Defendants operated, and Plaintiff, and all of the Class
15 Members worked for, one or more gas stations and convenience stores. Accordingly, Plaintiff and
16 all of the other Class Members are entitled to the protections the Wage Order provides.

17 20. On approximately October 14, 2023, Defendants began to employ Plaintiff in
18 Riverside, California in the position of hourly, non-exempt cashier. Defendants continuously
19 employed her in that capacity until on or about December 10, 2023 when her employment ended.

20 21. At all relevant times, the Defendants issued wages to Plaintiff and all of the other
21 Class Members on a weekly (52 paychecks/year) basis and paid them by the hour. At all relevant
22 times, the Defendants classified Plaintiff and all of the other Class Members as non-exempt
23 employees entitled to the protections of the Labor Code and the Wage Order.

24 22. At all relevant times, the Defendants failed to compensate Apodaca and all of the
25 other Class Members for all hours worked at the applicable minimum or regular rates of pay.
26 Defendants only compensated Plaintiff and Class Members for their scheduled hours and failed
27 to compensate them for all hours worked including the work Defendants required Plaintiff and all
28 of the other Class Members to perform after their scheduled end time, including, but not limited



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1 to, closing duties, counting lottery tickets, and preparing and sending closing shift report to their
2 managers. Defendants required Plaintiff and all of the other Class Members to complete these
3 tasks after the scheduled end time without compensation. As a result, Defendants also failed to
4 compensate Plaintiff and all of the other Class Members at the correct rates of pay for all hours
5 worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of
6 the workweek. Defendants also failed to compensate Plaintiff and all of the other Class Members
7 at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the
8 seventh day of the workweek.

9 23. At all relevant times, Defendants failed to provide Plaintiff and all of the other
10 Class Members with all timely 30-minute, off-duty meal periods. Defendants scheduled Plaintiff
11 and the other Class Members to work alone at their stores. Defendants prohibited Plaintiff and
12 the Class Members from leaving their work premises during meal and/or rest breaks, required
13 them to monitor their cellphones and respond to their managers' communications and to attend to
14 the customers at all times. Defendants also failed to pay premium wages for days on which they
15 failed to provide Plaintiff and all of the other Class Members with meal periods as required by
16 law.

17 24. At all relevant times, Defendants failed to authorize and permit Plaintiff and all of
18 the other Class Members to take any ten-minute, off-duty, paid rest breaks every four hours
19 worked or major portion thereof. Defendants also failed to pay premium wages for days on which
20 they failed to authorize and permit Plaintiff and all of the other Class Members to take rest breaks
21 as required by law.

22 25. At all relevant times, Defendants failed to provide paid sick leave to Plaintiff and
23 all of the other Class Members.

24 26. At all relevant times, Defendants required Plaintiff and all of the other Class
25 Members to incur certain business expenses in the course of performing their duties. Defendants
26 required Plaintiff and all of the other Class Members to supply their personal mobile phones to
27 perform their job duties including but not limited to, communicating with their managers and
28 sending them closing shift reports and to update them and confirm their locations. However,



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1 Defendants did not provide these items and did not reimburse Plaintiff and the other Class
2 Members for these items.

3 27. At all relevant times, Defendants failed to issue to Plaintiff and all of the other
4 Class Members complete and accurate wage statements that state all hours worked at the correct
5 rates of pay, and all wages earned. Defendants knowingly and intentionally failed to state on the
6 wage statements they issued to Plaintiff and all of the other Class Members the unpaid wages
7 discussed above. The wage statements fail to state all minimum wages earned, all regular wages
8 earned, all overtime wages earned, all meal period premium wages earned, all doubletime wages
9 earned, all rest break premium wages earned, all earned sick pay, net wages earned, gross wages
10 earned, the correct address of employer, all hours work at each rate of pay, sick pay hours, and
11 related information.

12 28. At all relevant times, the Defendants failed to provide Plaintiff and all of the other
13 Class Members with statements of sick leave available, or paid time off in lieu of sick leave.

14 29. At all relevant times, Defendants also failed to timely pay Plaintiff and all of the
15 other Class Members all earned wages as described above during and at the conclusion of
16 employment. Plaintiff and the Class Members also had to wait weeks to receive their payment for
17 their training period.

18 30. Defendants failed to provide Plaintiff and all of the other Class Members with
19 suitable seats. Defendants provided Plaintiff and all of the other Class Members seats that caused
20 them unnecessary strain and discomfort.

21 31. At all relevant times, the Defendants failed to maintain accurate employee records
22 of Plaintiff and all of the other Class Members.

23 32. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
24 unlawful practices and policies, Plaintiff and the Class Members were:

- 25 A. Not provided with all off duty meal periods;
26 B. Not authorized and permitted to take all rest break periods;
27 C. Not paid one hour's pay for each workday in which Defendants failed to
28 authorize and permit them to take one or more timely rest periods;



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

3 E. Not paid all wages earned, including, but not limited to, minimum, regular,
4 overtime, and doubletime wages for all hours worked at the correct rates of pay;

5 F. Not indemnified for all necessary business expenditures incurred during
6 the discharge of their duties;

7 G. Not provided with accurate and complete wage statements; and

8 H. Not timely paid all earned and unpaid wages at the time their employment
9 ended.

10 **FIRST CAUSE OF ACTION**

11 **FAILURE TO PAY, DEDUCTING, OR WITHHOLDING ALL WAGES AT THE**
12 **CORRECT RATES**

13 **Lab. Code §§ 510, 1194, 1197, and 1198**

14 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

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

16 34. At all relevant times, Plaintiff and the Class Members have been non-exempt
17 employees entitled to the protections of both the Labor Code and the Wage Order.

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

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

23 36. Section 3 of the Wage Order states:

24
25 The following overtime provisions are applicable to employees 18 years of age or
26 over and to employees 16 or 17 years of age who are not required by law to attend
27 school and are not otherwise prohibited by law from engaging in the subject work.

28 Such employees shall not be employed more than eight (8) hours in any workday



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1 or more than 40 in a workweek unless the employee receives one and one half
2 (1½) times such employee's regular rate of pay for all hours worked over 40 hours
3 in the workweek. Eight (8) hours of labor constitutes a day's work. Employment
4 beyond eight (8) hours in any workday or more than six (6) days in any workweek
5 is permissible provided the employee is compensated for such overtime at not less
6 than:

7
8 (a) One and one-half (1½) times the employee's regular rate of pay for all
9 hours worked in excess of eight (8) hours up to and including twelve (12)
10 hours in any workday, and for the first eight (8) hours worked on the
11 seventh (7th) consecutive day of work in a workweek;

12
13 (b) Double the employee's regular rate of pay for all hours worked in excess
14 of 12 hours in any workday and for all hours worked in excess of eight (8)
15 hours on the seventh (7th) consecutive day of work in a workweek. The
16 overtime rate of compensation required to be paid to a nonexempt full-
17 time salaried employee shall be computed by using the employee's regular
18 hourly salary as one fortieth (1/40) of the employee's weekly salary.
19

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

23 38. Labor Code section 510 states:

24
25 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
26 in one workday and any work in excess of 40 hours in any one workweek and the
27 first eight hours worked on the seventh day of work in any one workweek shall be
28 compensated at the rate of no less than one and one-half times the regular rate of



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1 pay for an employee. Any work in excess of 12 hours in one day shall be
2 compensated at the rate of no less than twice the regular rate of pay for an
3 employee. In addition, any work in excess of eight hours on any seventh day of a
4 workweek shall be compensated at the rate of no less than twice the regular rate of
5 pay of an employee. Nothing in this section requires an employer to combine more
6 than one rate of overtime compensation in order to calculate the amount to be paid
7 to an employee for any hour of overtime work.

8
9 39. Labor Code section 1194 invalidates any agreement between an employer and an
10 employee to work for less than the minimum wage required under the applicable Wage Order.

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

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

16 42. In conjunction, these provisions of the Labor Code require employers to pay non-
17 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
18 worked, including unrecorded hours when the employer knew or reasonably should have known
19 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
20 Cal.4th 575, 585.)

21 43. As discussed above, at all relevant times during the applicable limitations period,
22 Defendants failed to compensate Plaintiff and the Class Members for all hours worked, including,
23 but not limited to minimum, regular, overtime and doubletime wages for all minimum, regular,
24 overtime and doubletime hours, respectively, that they worked at the correct rates of pay.

25 44. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
26 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
27 failure to compensate Plaintiff and the other Class Members for all hours worked at the correct
28 rates of pay as required by California law.



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1 45. Pursuant to Labor Code section 1194, Plaintiff, on behalf of herself and Class
2 Members, seek to recover unpaid wages, liquidated damages in amounts equal to the amounts of
3 unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts
4 subject to proof.

5 46. Additionally, with respect to this cause of action, on behalf of herself and the class,
6 Plaintiff prays for an award of reasonable costs and attorneys' fees, including interest thereon, as
7 permitted by law, all in amounts subject to proof.

8 **B. FAILURE TO PROVIDE SICK LEAVE**

9 47. Labor Code section 233 states

10
11 Any employer who provides sick leave for employees shall permit an
12 employee to use in any calendar year the employee's accrued and available
13 sick leave entitlement, in an amount not less than the sick leave that would
14 be accrued during six months at the employee's then current rate of
15 entitlement, for the reasons specified in subdivision (a) of Section 246.5.

16
17 48. Labor Code section 246(a)(1) states

18
19 An employee who, on or after July 1, 2015, works in California for the
20 same employer for 30 or more days within a year from the commencement
21 of employment is entitled to paid sick days as specified in this section.

22
23 49. Labor Code section 246.5 states

24
25 (a) Upon the oral or written request of an employee, an employer shall
26 provide paid sick days for the following purposes:

27
28 (1) Diagnosis, care, or treatment of an existing health



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condition of, or preventive care for, an employee or an employee's family member.

...

(c) (1) An employer shall not deny an employee the right to use accrued sick days ...

50. The Defendants failed to provide Plaintiff and all of the other Class Members with paid sick leave.

51. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to pay Plaintiff and the other Class Members sick leave as required by California law.

C. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE LABOR CODE

52. In relevant part, Labor Code section 558.1 states:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.



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At all relevant times, Rafi Bartaniyan and Thomas Vartanian were employers of Plaintiff and all of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the Defendants and the other employers identified above. Rafi Bartaniyan and Thomas Vartanian directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Class Members, and caused the violations to the Labor Code and the Wage Order described above. On behalf of herself and all of the other Class Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related relief against Rafi Bartaniyan and Thomas Vartanian that is the same as the award against the other Defendants on the same grounds for which Plaintiff seeks against the other Defendants.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

Lab. Code §§ 226.7 and 512

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

53. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

54. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

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

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

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



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1 An employer shall not employ an employee for a work period of
2 more than five hours per day without providing the employee with
3 a meal period of not less than 30 minutes, except that if the total
4 work period per day of the employee is no more than six hours, the
5 meal period may be waived by mutual consent of both the
6 employer and employee.

7
8 An employer shall not employ an employee for a work period of
9 more than 10 hours per day without providing the employee with
10 a second meal period of not less than 30 minutes, except that if the
11 total hours worked is no more than 12 hours, the second meal
12 period may be waived by mutual consent of the employer and the
13 employee only if the first meal period was not waived.

14
15 57. In relevant part, Section 11 of the Wage Order states:

16
17 Meal Periods:

18
19 (A) No employer shall employ any person for a work period of more
20 than five (5) hours without a meal period of not less than 30
21 minutes, except that when a work period of not more than six (6)
22 hours will complete the day's work the meal period may be waived
23 by mutual consent of the employer and the employee.

24
25 (B) An employer may not employ an employee for a work period of
26 more than ten (10) hours per day without providing the employee
27 with a second meal period of not less than 30 minutes, except that
28 if the total hours worked is no more than 12 hours, the second meal



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period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

(C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

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

(E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

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

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety



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1 and Health Standards Board, or the Division of
2 Occupational Safety and Health.

3
4 (c) If an employer fails to provide an employee a meal period
5 or rest period in accordance with a state law, including, but
6 not limited to, an applicable statute or applicable
7 regulation, standard, or order of the Industrial Welfare
8 Commission, the Occupational Safety and Health
9 Standards Board, or the Division of Occupational Safety
10 and Health, the employer shall pay the employee one
11 additional hour of pay at the employee's regular rate of
12 compensation for each work day that the meal or rest
13 period is not provided.
14

15 59. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
16 Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day
17 they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled
18 to a second 30-minute meal period when they worked more than 10 hours in a workday.

19 60. Defendants intentionally failed to provide Plaintiff and the Class Members with
20 all required 30-minute duty free meal periods in accordance with the Wage Order.

21 61. As discussed above, at all relevant times, Defendants failed to provide Plaintiff
22 and the Class Members with all timely, duty-free meal periods. Furthermore, Defendants failed
23 to pay premium wages for days on which they failed to provide Plaintiff and the other Class
24 Members with timely meal periods.

25 62. Plaintiff is informed and believes and thereon alleges that, at all relevant times
26 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
27 which resulted in Defendants not providing the and the Class Members with all off-duty meal
28 periods required by California law.



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63. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have suffered damages in amounts subject to proof to the extent they were not paid additional wages owed for all meal periods not provided to them.

64. By reason of the above, Plaintiff and the Class Members are entitled to premium wages for workdays in which one or more meal periods were not provided to them pursuant to California Labor Code § 226.7.

A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE LABOR CODE

65. In relevant part, Labor Code section 558.1 states:

(c) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(d) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, Rafi Bartaniyan and Thomas Vartanian were employers of Plaintiff and all of the other Class Members, and/or "owner," "managing agent," and/or "officer" of the Defendants and the other employers identified above. Rafi Bartaniyan and Thomas Vartanian directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Class Members, and caused the violations to



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1 the Labor Code and the Wage Order described above. On behalf of herself and all of the other
2 Class Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory penalties,
3 liquidated damages, attorneys' fees, costs, and related relief against Rafi Bartaniyan and Thomas
4 Vartanian that is the same as the award against the other Defendants on the same grounds for
5 which Plaintiff seeks against the other Defendants.

6 **THIRD CAUSE OF ACTION**

7 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

8 **Lab. Code §§ 226.7 and 1198**

9 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

10 66. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

11 67. At all relevant times during the applicable limitations period, Plaintiff and the
12 Class Members have been employees of Defendants and entitled to the benefits and protections
13 of California Labor Code §§ 226.7 and 1198, and the Wage Order.

14 68. In relevant part, California Labor Code § 1198 states:

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

21
22 69. In relevant part, Section 12 of the Wage Order states:

23
24 Rest Periods:

25
26 (A) Every employer shall authorize and permit all employees to take
27 rest periods, which insofar as practicable shall be in the middle of
28 each work period. The authorized rest period time shall be based



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1 on the total hours worked daily at the rate of ten (10) minutes net
2 rest time per four (4) hours or major fraction thereof. However, a
3 rest period need not be authorized for employees whose total daily
4 work time is less than three and one-half (3 ½) hours. Authorized
5 rest period time shall be counted as hours worked for which there
6 shall be no deduction from wages.

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

13
14 70. In relevant part, California Labor Code § 226.7 states:

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

22
23 (c) If an employer fails to provide an employee a meal period
24 or rest period in accordance with a state law, including, but
25 not limited to, an applicable statute or applicable
26 regulation, standard, or order of the Industrial Welfare
27 Commission, the Occupational Safety and Health
28 Standards Board, or the Division of Occupational Safety



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1 and Health, the employer shall pay the employee one
2 additional hour of pay at the employee's regular rate of
3 compensation for each work day that the meal or rest
4 period is not provided.
5

6 71. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be
7 authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period
8 of work, or major fraction thereof.

9 72. As discussed above, Defendants intentionally failed to authorize and permit
10 Plaintiff and the Class Members to take all 10-minute rest periods free from any work duties in
11 accordance with the Wage Order.

12 73. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
13 Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium
14 wages to Plaintiff and the Class Members for days on which they failed to authorize and permit
15 Plaintiff and the other Class Members to take timely rest periods.

16 74. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
17 Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major
18 fraction thereof. Defendants did not seek an exemption from the rest period protections of the
19 Wage Order from the California Division of Labor Standards Enforcement. Moreover,
20 Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed
21 to authorize and permit them to take 10-minute rest periods every four hours worked or major
22 fraction thereof.

23 75. Plaintiff is informed and believes and thereon alleges that, at all relevant times
24 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
25 which resulted in Defendants not authorizing and permitting Plaintiff and the Class Members to
26 take all rest breaks required by California law.

27 76. Defendants failed to provide Plaintiff with all required rest breaks in accordance
28 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times



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1 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
2 which resulted in Defendants not providing the Class Members with all rest breaks required by
3 California law.

4 77. Defendants failed to pay Plaintiff the additional wages required by California
5 Labor Code § 226.7 for all rest breaks not provided to her. Plaintiff is informed and believes and
6 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
7 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
8 Class Members with additional wages for all rest breaks not provided to them as required by
9 California Labor Code § 226.7.

10 78. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
11 suffered damages in amounts subject to proof to the extent they were not paid additional wages
12 owed for all rest breaks not provided to them.

13 79. By reason of the above, Plaintiff and the Class Members are entitled to premium
14 wages for workdays in which one or more rest breaks were not provided to them pursuant to
15 California Labor Code § 226.7.

16 **A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
17 **LABOR CODE**

18 80. In relevant part, Labor Code section 558.1 states:

19
20 (a) Any employer or other person acting on behalf of an employer,
21 who violates, or causes to be violated, any provision regulating
22 minimum wages or hours and days of work in any order of the
23 Industrial Welfare Commission, or violates, or causes to be
24 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
25 held liable as the employer for such violation.

26
27 (b) For purposes of this section, the term "other person acting on
28 behalf of an employer" is limited to a natural person who is an



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owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, Rafi Bartaniyan and Thomas Vartanian were employers of Plaintiff and all of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the Defendants and the other employers identified above. Rafi Bartaniyan and Thomas Vartanian directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Class Members, and caused the violations to the Labor Code and the Wage Order described above. On behalf of herself and all of the other Class Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related relief against Rafi Bartaniyan and Thomas Vartanian that is the same as the award against the other Defendants on the same grounds for which Plaintiff seeks against the other Defendants.

FOURTH CAUSE OF ACTION

FAILURE TO INDEMNIFY

Lab. Code §§ 1198 and 2802

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

81. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

82. In pertinent part, California Labor Code § 2802(a) states: “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

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

84. At all relevant times, Defendants required Plaintiff and the Class Members to incur certain business expenses in the course of performing their duties.

85. As described above, the Defendants required Plaintiff and all of the other Class Members to incur certain business expenses in the course of performing their duties. The



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1 However, the Defendants did not provide these items and did not reimburse Plaintiff and the other
2 Class members for these items.

3 86. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
4 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
5 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred
6 during the course of performing their duties.

7 87. By reason of the above, Plaintiff and the members of the class are entitled to
8 reimbursement for all necessary expenditures and losses and interest due and owing to them
9 within four years (4) of the date of the filing of the Complaint until the date of entry of judgment
10 pursuant to California Labor Code section 2802(b). Further, Plaintiff, on behalf of herself and the
11 class, prays for reasonable attorney's fees pursuant to Labor Code section 2802(c).

12 88. Additionally, with respect to this cause of action, on behalf of herself and the class,
13 Plaintiff prays for an award of reasonable attorney fees and costs, including interest thereon, as
14 permitted by law, all in amounts subject to proof.

15 **A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
16 **LABOR CODE**

17 89. In relevant part, Labor Code section 558.1 states:

18
19 (a) Any employer or other person acting on behalf of an employer,
20 who violates, or causes to be violated, any provision regulating
21 minimum wages or hours and days of work in any order of the
22 Industrial Welfare Commission, or violates, or causes to be
23 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
24 held liable as the employer for such violation.

25
26 (b) For purposes of this section, the term "other person acting on
27 behalf of an employer" is limited to a natural person who is an
28 owner, director, officer, or managing agent of the employer, and



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the term “managing agent” has the same meaning as in subdivision
(b) of Section 3294 of the Civil Code.

At all relevant times, Rafi Bartaniyan and Thomas Vartanian were employers of Plaintiff and all of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the Defendants and the other employers identified above. Rafi Bartaniyan and Thomas Vartanian directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Class Members, and caused the violations to the Labor Code and the Wage Order described above. On behalf of herself and all of the other Class Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related relief against Rafi Bartaniyan and Thomas Vartanian that is the same as the award against the other Defendants on the same grounds for which Plaintiff seeks against the other Defendants.

FIFTH CAUSE OF ACTION

FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS

Lab. Code § 226

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

A. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE STATEMENTS

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

91. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized statement showing:

A. Gross wages earned;

B. 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;

C. The number of piece rate units earned and any applicable piece rate if the



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1 employee is paid on a piece-rate basis;

2 D. All deductions, provided that all deductions made on written orders of the
3 Employee may be aggregated and shown as one item;

4 E. Net wages earned;

5 F. The inclusive dates of the period for which the employee is paid;

6 G. The name of the employee and his or her social security number, except
7 that by January 1, 2008, only the last four digits of his or her social security number or an
8 employee identification number other than a social security number may be shown on the itemized
9 statement;

10 H. The name and address of the legal entity that is the employer; and

11 I. All applicable hourly rates in effect during the pay period and the
12 corresponding number of hours worked at each hourly rate by the employee.

13 92. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
14 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
15 the employer fails to provide accurate and complete information as required by California Labor
16 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
17 alone one or more of the following:

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

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

23 C. The name and address of the employer and, if the employer is a farm labor
24 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
25 and address of the legal entity that secured the services of the employer during the pay period;

26 D. The name of the employee and only the last four digits of his or her
27 social security number or an employee identification number other than a social security number;
28 and



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

2 93. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
3 means a reasonable person would be able to readily ascertain the information without reference
4 to other documents or information.

5 94. As alleged herein, at all relevant times during the applicable limitations period,
6 Defendants violated California Labor Code section 226 because they did not properly and
7 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,
8 the corresponding number of hours worked at each rate by the employee and other requirements
9 of California Labor Code section 226. Defendants failed to state in the wage statements they
10 issued to Plaintiff and the other Class Members all their hours worked and wages earned,
11 including, but not limited to, regular and overtime wages for work they performed off-the-clock
12 after clocking-out (as described above). Defendants knowingly and intentionally did not issue
13 either as a detachable part of the check, draft, or voucher paying the employee’s wages, or
14 separately if wages are paid by personal check or cash, statements to Plaintiff and the Class
15 Members that state all minimum wages earned, all regular wages earned, all overtime wages
16 earned, all meal period premium wages earned, all doubletime wages earned, all rest break
17 premium wages earned; all earned sick pay, net wages earned, gross wages earned, the correct
18 address of employer, all hours worked at each correct rate of pay, and other required information.

19 95. Defendants’ failure to provide Plaintiff and the other Class Members with accurate
20 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
21 the other Class Members with accurate wage statements but intentionally provided wage
22 statements that Defendants knew were not accurate.

23 96. As a result of being provided with inaccurate wage statements by Defendants,
24 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
25 wage statements were violated and they were misled about the amount of wages they had actually
26 earned and were owed. In addition, the absence of accurate information on their wage statements
27 prevented immediate challenges to Defendants’ unlawful pay practices, has required discovery
28 and mathematical computations to determine the amounts of wages owed, has caused difficulty



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1 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
2 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
3 and the other Class Members were not able to ascertain from the wage statements whether
4 Defendants complied with their obligations under California Labor Code section 226(a).

5 **B. FAILURE TO PROVIDE NOTICE OF AVAILABLE SICK LEAVE**

6 97. Labor Code § 246 states

7
8 An employer shall provide an employee with written notice that sets forth the
9 amount of paid sick leave available, or paid time off leave an employer provides
10 in lieu of sick leave, for use on either the employee's itemized wage statement
11 described in Section 226 or in a separate writing provided on the designated pay
12 date with the employee's payment of wages.

13
14 Lab.Code § 246(h) (effective July 1, 2015). As a matter of policy and practice, the Defendants
15 failed to provide Plaintiff and all of the other Class Members with an itemized wage statement or
16 separate writing that set forth the amount of paid sick leave available.

17 98. Pursuant to California Labor Code § 226(e), Plaintiff and the other Class Members
18 are entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50) for the
19 initial pay period in which a violation of California Labor Code § 226(a) occurred and one
20 hundred dollars for each violation of California Labor Code § 226(a) in a subsequent pay period,
21 not to exceed an aggregate penalty of four thousand dollars (\$4,000) per Class Member, and are
22 also entitled to an award of costs and reasonable attorneys' fees.

23 **C. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
24 **LABOR CODE**

25 99. In relevant part, Labor Code section 558.1 states:

26
27 (a) Any employer or other person acting on behalf of an employer,
28 who violates, or causes to be violated, any provision regulating



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1 minimum wages or hours and days of work in any order of the
2 Industrial Welfare Commission, or violates, or causes to be
3 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
4 held liable as the employer for such violation.

5
6 (b) For purposes of this section, the term “other person acting on
7 behalf of an employer” is limited to a natural person who is an
8 owner, director, officer, or managing agent of the employer, and
9 the term “managing agent” has the same meaning as in subdivision
10 (b) of Section 3294 of the Civil Code.

11
12 At all relevant times, Rafi Bartaniyan and Thomas Vartanian were employers of Plaintiff and all
13 of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the
14 Defendants and the other employers identified above. Rafi Bartaniyan and Thomas Vartanian
15 directly or indirectly, or through an agent or other person, employed and exercised control over
16 the wages, hours, and/or working conditions of the Class Members, and caused the violations to
17 the Labor Code and the Wage Order described above. On behalf of herself and all of the other
18 Class Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory penalties,
19 liquidated damages, attorneys’ fees, costs, and related relief against Rafi Bartaniyan and Thomas
20 Vartanian that is the same as the award against the other Defendants on the same grounds for
21 which Plaintiff seeks against the other Defendants.

22 **SIXTH CAUSE OF ACTION**

23 **WILLFUL FAILURE TO TIMELY PAY FINAL WAGES**

24 **(Lab. Code §§ 201, 202, and 203)**

25 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

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

27 101. At all relevant times during the applicable limitations period, Plaintiff and the

28 Class have been non-exempt employees of Defendants and entitled to the benefits and protections



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of California Labor Code §§ 201, 202, and 203, and the Wage Order.

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

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

104. The Defendants failed to pay Apodaca and all of the other Class Members whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Plaintiff, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, and other compensation. Additionally, the Defendants failed to issue to Plaintiff and all of the other Class members whose employment ended their final paychecks until several days after their termination.

105. By failing to pay such earned wages to Plaintiff and the Class Members, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

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

107. Pursuant to Labor Code § 203, Plaintiff seeks waiting time penalties on behalf of themselves and the Class, in amounts subject to proof not to exceed 30 days of waiting time penalties for each Class Member.

A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE LABOR CODE

108. In relevant part, Labor Code section 558.1 states:



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- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, Rafi Bartaniyan and Thomas Vartanian were employers of Plaintiff and all of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the Defendants and the other employers identified above. Rafi Bartaniyan and Thomas Vartanian directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Class Members, and caused the violations to the Labor Code and the Wage Order described above. On behalf of herself and all of the other Class Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related relief against Rafi Bartaniyan and Thomas Vartanian that is the same as the award against the other Defendants on the same grounds for which Plaintiff seeks against the other Defendants.

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1 **SEVENTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

4 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

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

6 110. At all relevant times during the applicable limitations period, Plaintiff and the
7 Class Members have been employees of Defendants and entitled to the benefits and protections
8 of the Business and Professions Code §§ 17200, *et seq.*

9 111. The unlawful conduct of Defendants alleged herein amount to and constitutes
10 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
11 *seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly
12 gained a competitive advantage over other comparable companies doing business in California
13 that comply with their legal obligations to compensate employees for all earned wages.

14 112. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
15 Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class
16 Members were deprived of regular wages, minimum wages, overtime wages, doubletime wages,
17 missed meal period premium wages, missed rest period premium wages, sick leave pay, phone
18 expenses, and comparable money and property.

19 113. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
20 Class Members are entitled to restitution of all monies rightfully belonging to them that
21 Defendants did not pay them or otherwise retained by means of their unlawful and unfair business
22 practices.

23 114. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in
24 connection with their unfair competition claims pursuant to California Code of Civil Procedure §
25 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

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EIGHTH CAUSE OF ACTION

CIVIL PENALTIES

Lab Code §§2698, et seq.)

(By Plaintiff and the Aggrieved Employees against all Defendants)

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

116. The “Aggrieved Employees” are all members of the Class defined above who Defendants employed during the period beginning April 19, 2023 and ending on the date that final judgment is entered in this action.

117. Labor Code § 204 states

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, 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.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

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

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

Every person employing labor in this state shall



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...

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

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

120. Labor Code section 1174.5 states:

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

121. Section 7 of Wage Order states,

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

(1) Full name, home address, occupation and social security number.

(2) Birth date, if under 18 years, and designation as a minor.

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which, operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.



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(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

...

(E) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three (3) years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

122. Defendants failed to compensate Plaintiff and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, and the employer's name and address. As a result, Defendants have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Plaintiff and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period.

137. Section 14 of the Wage Order states as follows:

Seats.

(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

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

123. The nature of the work Defendants expected Plaintiff and all of the other Aggrieved Employees to perform reasonably permits the use of seats. However, Defendants, in violation of the Wage Order and Labor Code § 1198, did not provide Plaintiffs and all of the other Aggrieved Employees with suitable seats.

124. During the applicable time period, Defendants violated California Labor Code §§



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201, 202, 203, 204, 226, 226.7, 233, 246, 246.5, 510, 512, 558.1, 1174, 1194, 1197, 1198, and 2802.

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

126. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 233, 246, 246.5, 510, 512, 558.1, 1174, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following amounts:

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

B. For violations of California Labor Code § 226(a), two hundred fifty dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

C. For violations of California Labor Code §§ 510 and 512, fifty dollars (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts established by California Labor Code § 558).

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

E. For violations of California Labor Code § 1174, \$500 for Each Aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5).

F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 233, 246, 246.5, 1194, 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per



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1 pay period for each initial violation and two hundred dollars (\$200.00) for each Aggrieved
2 Employee per pay period for each subsequent violation (penalty amounts established by
3 California Labor Code § 2699(f)(2)).

4 127. In relevant part, Labor Code section 558.1 states:

5 (c) Any employer or other person acting on behalf of an employer,
6 who violates, or causes to be violated, any provision regulating
7 minimum wages or hours and days of work in any order of the
8 Industrial Welfare Commission, or violates, or causes to be
9 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
held liable as the employer for such violation.

10 (d) For purposes of this section, the term “other person acting on
11 behalf of an employer” is limited to a natural person who is an
12 owner, director, officer, or managing agent of the employer, and
13 the term “managing agent” has the same meaning as in subdivision
14 (b) of Section 3294 of the Civil Code.

15 128. At all relevant times, Rafi Bartaniyan and Thomas Vartanian were employers of
16 Plaintiff and all of the other Aggrieved Employees, and/or “owner,” “managing agent,” and/or
17 “officer” of the Defendants and the other employers identified above. Rafi Bartaniyan and
18 Thomas Vartanian directly or indirectly, or through an agent or other person, employed and
19 exercised control over the wages, hours, and/or working conditions of the Aggrieved Employees,
20 and caused the violations to the Labor Code and the Wage Order described above. On behalf of
21 herself and all of the other Aggrieved Employees, Plaintiff seeks same civil penalties against Rafi
Bartaniyan and Thomas Vartanian that is the same as the award against the other Defendants on
the same grounds for which Plaintiff seeks against the other Defendants.

22 129. Plaintiff has complied with the procedures for bringing suit specified in California
23 Labor Code § 2699.3. By a letter dated April 19, 2024, Plaintiff filed a written notice online with
24 the Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified
25 mail to Defendants of the specific provisions of the California Labor Code alleged to have been
26 violated, including the facts and theories to support the alleged violations. A true and correct copy
27 of the notice to the LWDA dated April 19, 2024 is attached as **Exhibit A**. Plaintiff accompanied
28 her LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in
response within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff anticipates that the



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1 LWDA will provide written notice to Plaintiff informing her that it does not intend to investigate
2 these allegations.

3 130. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
4 Employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in
5 connection with their claims for civil penalties.

6 **V. PRAYER FOR RELIEF**

7 131. WHEREFORE, Plaintiff, on behalf of herself and the Class Members, prays for
8 relief and judgment against Defendants as follows:

9 A. An order that the action be certified as a class action with respect to
10 Plaintiff's claims for violations of California law;

11 B. An order that Plaintiff be appointed class representative;

12 C. An order that counsel for Plaintiff be appointed class counsel;

13 D. Unpaid wages, including minimum, regular, overtime, double-time, split
14 shift, vacation, missed meal period, and missed rest period;

15 E. Liquidated damages;

16 F. Statutory penalties, including waiting time penalties;

17 G. Civil penalties;

18 H. Restitution;

19 I. Declaratory relief;

20 J. Actual damages;

21 K. Pre-judgment interest;

22 L. Costs of suit;

23 M. Reasonable attorneys' fees; and

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N. Such other relief as the Court deems just and proper.

VI. DEMAND FOR JURY TRIAL

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: 06 / 25 / 2024

By: 
DAVID G. SPIVAK,
CAROLINE TAHMASSIAN,
Attorneys for Plaintiff(s), ARLENE
APODACA, and all others similarly
situated



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EXHIBIT A



THE SPIVAK LAW FIRM
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SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

April 19, 2024

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

Re: Arlene Apodaca / R And T Oil Incorporated

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Arlene Apodaca (hereafter “Apodaca” or “Complainant”) provides notice that Rafi Bartaniyan, Thomas Vartanian, R And T Oil Incorporated, a California corporation, and related entities (collectively “the R&T Oil Employers” or “the Employers”) violated her rights and those of all other individuals the R&T Oil Employers have employed or otherwise contracted with in California as non-exempt, hourly employees, including, but not limited to cashiers, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 1174, 1194, 1197, 1198, 2802, and related employee protections. On behalf of herself and all other Aggrieved Employees, Apodaca hereby provides this notice to the Labor & Workforce Development Agency and the R&T Oil Employers and their agents and representatives.

At all relevant times, the R&T Oil Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Apodaca and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 7-2001 (hereafter “the Wage Order”) section 2, subdivision (E) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately October 14, 2023, the R&T Oil Employers began to employ Apodaca in Riverside, California in the position of hourly, non-exempt cashier. The R&T Oil Employers continuously employed her in that capacity until on or about December 10, 2023 when her employment ended.

At all relevant times, the R&T Oil Employers issued wages to Apodaca and all of the other Aggrieved Employees on a weekly (52 paychecks/year) basis and paid them by the hour. At all relevant times, the R&T Oil Employers classified Apodaca and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The R&T Oil Employers failed to compensate Apodaca and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The R&T Oil Employers only compensated Apodaca and Aggrieved Employees for their scheduled hours and failed to compensate them for all hours worked including the work. The R&T Oil Employers required Apodaca and all of the other Aggrieved Employees to perform after their scheduled end time, including, but not limited to, closing duties, counting lottery tickets, and preparing and sending closing shift report to their managers. The R&T Oil Employers required Apodaca and all of the other Aggrieved Employees to complete these tasks after the scheduled end time without compensation. As a result, the R&T Oil Employers also failed to compensate Apodaca and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The R&T Oil Employers also failed to compensate Apodaca and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek.

At all relevant times, the R&T Oil Employers failed to provide Apodaca and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The R&T Oil Employers scheduled Apodaca and the other Aggrieved Employees to work alone at their stores. The R&T Employers prohibited Apodaca and the Aggrieved Employees from leaving their work premises during meal and/or rest breaks, required them to monitor their cellphones and respond to their managers' communications and to attend to the customers at all times. The R&T Oil Employers also failed to pay premium

wages for days on which they failed to provide Apodaca and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the R&T Oil Employers failed to authorize and permit Apodaca and all of the other Aggrieved Employees to take any ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The R&T Oil Employers also failed to pay premium wages for days on which they failed to authorize and permit Apodaca and all of the other Aggrieved Employees to take rest breaks as required by law.

The R&T Oil Employers failed to provide paid sick leave to Apodaca and all of the other Aggrieved Employees.

At all relevant times, the R&T Oil Employers required Apodaca and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The R&T Oil Employers required Apodaca and all of the other Aggrieved Employees to supply their personal mobile phones to perform their job duties including but not limited to, communicating with their managers and sending them closing shift reports and to update them and confirm their locations. However, the R&T Oil Employers did not provide these items and did not reimburse Apodaca and the other Aggrieved Employees for these items.

At all relevant times, the R&T Oil Employers failed to issue to Apodaca and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The R&T Oil Employers knowingly and intentionally failed to state on the wage statements they issued to Apodaca and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all doubletime wages earned, all rest break premium wages earned, all earned sick pay, net wages earned, gross wages earned, the correct address of employer, all hours work at each rate of pay, sick pay hours, and related compensation.

The R&T Oil Employers failed to provide Apodaca and all of the other Aggrieved Employees with statements of sick leave available, or paid time off in lieu of sick leave.

The R&T Oil Employers also failed to timely pay Apodaca and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment. Apodaca and the Aggrieved Employees also had to wait weeks to receive their payment for their training period.

The R&T Oil Employers failed to provide Apodaca and all of the other Aggrieved Employees with suitable seats. The R&T Oil Employers provided Apodaca and all of the other Aggrieved Employees seats that caused them unnecessary strain and discomfort.

The R&T Oil Employers failed to maintain accurate employee records of Apodaca and all of the other Aggrieved Employees.

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

- (a) The R&T Oil Employers failed to pay Apodaca and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;
- (b) The R&T Oil Employers failed to provide paid sick leave to Apodaca and all of the other Aggrieved Employees;
- (c) The R&T Oil Employers failed to provide Apodaca and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (d) The R&T Oil Employers failed to authorize and permit Apodaca and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (e) The R&T Oil Employers failed to compensate Apodaca and all of the other Aggrieved Employees at one hour's pay for each day in which the R&T Oil Employers failed to provide them with one or more meal periods as required by law;

- (f) The R&T Oil Employers failed to compensate Apodaca and all of the other Aggrieved Employees at one hour's pay for each day in which the R&T Oil Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (g) The R&T Oil Employers failed to indemnify Apodaca and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (h) The R&T Oil Employers knowingly and intentionally failed to issue to Apodaca and all of the other Aggrieved Employees accurate and complete wage statements;
- (i) The R&T Oil Employers failed to provide Apodaca and all of the other Aggrieved Employees with statements of sick leave available, or paid time off in lieu of sick leave;
- (j) The R&T Oil Employers willfully failed to timely pay Apodaca and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the R&T Oil Employers and when their employment ended;
- (k) The R&T Oil Employers failed to provide Apodaca and all of the other Aggrieved Employees with suitable seats; and
- (l) The R&T Oil Employers failed to maintain accurate employment records pertaining to Apodaca and all of the other Aggrieved Employees.

Accordingly, Apodaca now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees based on the R&T Oil Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the mercantile industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Mercantile Industry" to mean, "any industry, business, or establishment

operated for the purpose of purchasing, selling, or distributing goods are commodities at wholesale or retail; or for the purpose of renting goods or commodities.” Wage Order, § 2(H). At all relevant times during the applicable limitations period, the “Employers, Apodaca, and all of the Aggrieved Employees were covered by the Wage Order because the R&T Oil Employers operated, and Apodaca, and all of the Aggrieved Employees worked for, one or more gas stations and convenience stores. Accordingly, Apodaca and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay
(Lab. Code §§ 510, 1194, 1197, and 1198)

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

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

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

In relevant part, Labor Code section 1194 states:

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

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than

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

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

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

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek. The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

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

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching

out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

As discussed above, at all relevant times during the applicable limitations period, the R&T Oil Employers failed to compensate Apodaca and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, overtime, and doubletime wages for all hours they worked at the correct rates of pay. Accordingly, Apodaca now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

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

Failure To Provide Sick Leave
(Labor Code §§ 233, 246, and 246.5)

Labor Code section 233 states,

Any employer who provides sick leave for employees shall permit an employee to use in any calendar year the employee's accrued and available sick leave entitlement, in an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement, for the reasons specified in subdivision (a) of Section 246.5.

Labor Code section 246(a)(1) states,

An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.

Labor Code section 246.5 states,

- (a) Upon the oral or written request of an employee, an employer shall provide paid sick days for the following purposes:
 - (1) Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member.
 - ...
- (c) (1) An employer shall not deny an employee the right to use accrued sick days ...

The R&T Oil Employers failed to provide Apodaca and all of the other Aggrieved Employees with paid sick leave. Accordingly, Apodaca now seeks civil penalties for these Labor Code violations that the R&T Oil Employers have committed against her and all of the other Aggrieved Employees as follows:

1. For violations of Labor Code section 233, \$100 per aggrieved employee for each of the pay periods in which initial violations of section 233 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of section 233 occurred (penalties set by Labor Code section 2699(f)(2));

2. For violations of Labor Code section 246, \$100 per aggrieved employee for each of the pay periods in which initial violations of section 246 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of section 246 occurred (penalties set by Labor Code section 2699(f)(2)); and
3. For violations of Labor Code section 246.5, \$100 per aggrieved employee for each of the pay periods in which initial violations of section 246.5 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of section 246.5 occurred (penalties set by Labor Code section 2699(f)(2)).

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

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

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

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

In relevant part, Labor Code section 512 states:

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

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

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.
- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

In addition, Labor Code section 226.7 states:

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

As discussed above, at all relevant times, the R&T Oil Employers failed to provide Apodaca and all of the other Aggrieved Employees with all timely and duty-free, 30-minute meal periods, including, but not limited to, a second meal period when they worked more than 10 hours in a workday. Furthermore, the R&T Oil Employers failed to pay premium wages for days on which they failed to provide Apodaca and all of the other Aggrieved Employees with meal periods in accordance with California law. Accordingly, Apodaca now seeks civil penalties for these Labor Code violations that the R&T Oil Employers have committed against her and all of the other Aggrieved Employees as follows:

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

3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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

Section 2(G) of the Wage Order states,

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

In relevant part, Labor Code section 1198 states,

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

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

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

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

As discussed above, at all relevant times, the R&T Oil Employers failed to authorize and permit Apodaca and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The R&T Oil Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Moreover, the R&T Oil Employers failed to pay Apodaca and all of the other Aggrieved Employees premium wages on workdays the R&T Oil Employers failed to provide Apodaca and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Apodaca now seeks civil penalties for these Labor Code violations that the R&T Oil Employers have committed against her and all of the other Aggrieved Employees as follows:

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

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

Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

In pertinent part, Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.

...

- (B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

Wage Order, §§ 9(A) and (B).

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, the R&T Oil Employers required Apodaca and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The R&T Oil Employers required Apodaca and all of the other Aggrieved Employees to supply personal mobile phones to perform their job duties. However, the R&T Oil Employers did not provide these items and did not reimburse Apodaca and the other Aggrieved Employees for these items. Accordingly, Apodaca seeks civil

penalties for these Labor Code violations that the R&T Oil Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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

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

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

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

At all relevant times during the applicable limitations period, the R&T Oil Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The R&T Oil Employers failed to state in the wage statements they issued to Apodaca and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed without compensation (as described above). The R&T Oil Employers knowingly and intentionally failed to state on the wage statements they issued to Apodaca and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all doubletime wages earned, all rest break premium wages earned, all earned sick pay, net wages earned, gross wages earned, the correct address of employer, all hours work at each rate of pay, and related compensation. Accordingly, Apodaca seeks civil penalties for the Labor Code violations that the R&T Oil Employers have committed against her and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

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Failure To Provide Notice of Available Sick Leave
(Labor Code § 246)

Labor Code § 246 states,

An employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages.

Lab.Code § 246(h) (effective July 1, 2015). The R&T Oil Employers failed to provide Apodaca and all of the other Aggrieved Employees with an itemized wage statement or separate writing that set forth the amount of paid sick leave available. Accordingly, Apodaca seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows: For violations of Labor Code § 246, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 246 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 246 occurred (penalties set by Labor Code § 2699(f)(2)).

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

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The R&T Oil Employers failed to compensate Apodaca and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, training pay, and related compensation, at the intervals stated above.

As a result, the R&T Oil Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Apodaca now seeks civil penalties for the Labor Code violations that the R&T Oil Employers have committed against her and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

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

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

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The R&T Oil Employers failed to pay Apodaca and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Apodaca, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, and related compensation. Additionally, the R&T Oil Employers failed to issue to Apodaca and all of the other Aggrieved Employees whose employment ended their final paychecks until several days after the

termination or resignation. By failing to pay Apodaca and all of the other Aggrieved Employees as set forth above at the end of employment, the R&T Oil Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all of the other Aggrieved Employees, Apodaca seeks civil penalties from the R&T Oil Employers as follows:

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

Failure to Provide Suitable Seats
(Lab. Code § 1198)

Section 14 of the Wage Order states as follows:

Seats.

- (A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.
- (B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

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

The nature of the work the R&T Oil Employers expected Apodaca and all of the other Aggrieved Employees to perform reasonably permits the use of seats. However, the R&T Oil Employers, in violation of the Wage Order and Labor Code § 1198, did not provide Apodaca and all of the other Aggrieved Employees with suitable seats.

Pursuant to Labor Code Sections 2699(a) and (f), Apodaca, on behalf of herself and all of the other Aggrieved Employees, seeks \$100.00 for each employee per pay period for each initial violation of § 1198 and \$200.00 for each employee per pay period for each subsequent violation of § 1198 (penalty amounts established by Labor Code Section 2699(f)(2)).

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

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

Every person employing labor in this state shall:

...

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

of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

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

Section 7 of Wage Order states,

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

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

- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

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

The R&T Oil Employers failed to compensate Apodaca and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all doubletime wages earned, all rest break premium wages earned, all earned sick pay, net wages earned, gross wages earned, address of employer, all hours work at each rate of pay, and related compensation. As a result, the R&T Oil Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Apodaca and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Apodaca seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

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

Person Acting on Behalf of Employers who Violates Labor Code
(Labor Code § 558.1)

In relevant part, Labor Code section 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be

violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, Rafi Bartaniyan and Thomas Vartanian were employers of Apodaca and all of the other Aggrieved Employees, and/or “owner,” “managing agent,” and/or “officer” of the R&T Oil Employers and the other employers identified above. Rafi Bartaniyan and Thomas Vartanian directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Aggrieved Employees, and caused the violations to the Labor Code and the Wage Order described above. On behalf of herself and all of the other Aggrieved Employees, Apodaca seeks the same civil penalties against Rafi Bartaniyan and Thomas Vartanian on the same grounds for which she seeks civil penalties against the R&T Oil Employers.

Conclusion

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

Sincerely,



David Glenn Spivak Esq.

david@spivaklaw.com

cc: Arlene Apodaca

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LWDA / The R&T Oil Employers

Re: Arlene Apodaca

4/19/2024

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