



CITY ATTORNEY DENNIS HERRERA NEWS RELEASE

FOR IMMEDIATE RELEASE
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Herrera, La Raza seek to recover \$3 million for workers of Tower Car Wash for wage theft

Employees are required to endure hours of unpaid waiting during scheduled shifts—losing wages, overtime pay, other labor rights

SAN FRANCISCO (Aug. 17, 2011)—City Attorney Dennis Herrera and lawyers from La Raza Centro Legal today filed suit against the owners and operators of Tower Car Wash for longstanding business practices that denied full compensation to their employees in violation of state and local wage and hour laws, and California’s Unfair Competition Law. The litigation filed in San Francisco Superior Court this morning seeks to recover compensation, penalties and interest for the cheated workers, which could exceed \$3 million. Beverly Hills, Calif.-based owners Igor Pashover and Vladimir and Lisa Syelsky, together with corporate executive Steve Matijevich, could additionally be liable for hundreds of thousands of dollars in civil penalties, attorneys’ fees, and costs to San Francisco taxpayers.

According to the civil complaint jointly filed by the City and La Raza, operators of the car wash at the corner of Mission Street and South Van Ness Avenue require their employees to arrive at prescheduled times and wait in a small, windowless room while management decides whether the car wash is sufficiently busy to allow them to begin working. Only then are employees allowed to “clock in” to be paid for their work. Tower Car Wash does not compensate employees for waiting time—which typically averages at least four to six hours per week per worker—despite the company’s strict requirement that employees arrive at scheduled reporting times or face termination. During periods of poor weather, when business is slower, employees are usually made to wait for far longer periods, and are sometimes sent home with no earnings whatsoever. The car wash’s failure to fully compensate workers for their time in employment violates numerous local and state laws, including provisions intended to guarantee minimum wages, overtime pay, adequate and accurate payroll records, and payment of wages owed upon discharge.

“Tower Car Wash demonstrates a clever but no less illegal way of robbing their employees of wages,” said City Attorney Dennis Herrera. “Forcing workers to endure hours of unpaid waiting before being allowed to work for minimum wage violates the law, and exploits working men and women San Francisco needs to protect. I’m grateful for the opportunity to serve as co-counsel on this important case with Kate Hegé and her colleagues at La Raza Centro Legal, which has been instrumental for its community outreach to develop this litigation. I am also appreciative, as always, for the efforts of the Office of Labor Standards Enforcement for their investigation, financial auditing and excellent work.

[MORE]

Supervisor David Campos deserves enormous credit for his longstanding leadership on this issue at the Board of Supervisors. Perhaps most important, we all owe a debt of gratitude to the Tower Car Wash employees whose courage is enabling us to challenge this illegal and unfair business practice.”

“What you see here today is a powerful alliance in the struggle for wage justice—the City of San Francisco and its workers,” said Kate Hegé of La Raza Centro Legal. “On the one hand, Latino immigrant carwash workers are standing up for basic labor standards, casting off the misconception that they are exploitable labor. And on the other, City Attorney Dennis Herrera and the Office of Labor Standard Enforcement, have joined the workers and thrown down the gauntlet against wage theft. But none of us could have done this alone. This case was possible only because of the extraordinary courage of workers whose sense of dignity transcended threatened retaliation. And, these workers needed the City’s support against an employer who has willfully continued to break the law for years, despite repeated worker complaints.”

“Wage theft like the kind uncovered at Tower Car Wash disproportionately victimizes the lowest wage workers, devastating their ability to make a living and survive in these tough economic times,” said Supervisor David Campos. “We cannot allow any worker in San Francisco to be exploited, and fighting wage theft is essential to protect responsible business owners who are also victimized by unlawful competition. I am committed to doing everything I can in the legislative arena to improve San Francisco’s ability to enforce our wage laws in an effective and timely manner. I commend City Attorney Dennis Herrera, La Raza Centro Legal, the Office of Labor Standards Enforcement, and, especially, the workers of Tower Car Wash for this important civil action today.”

“Workers must be paid at least minimum wage for every hour that they’re required to be at work, but Tower Car Wash workers were systematically forced to wait in a small, windowless room while managers decided whether or when they could clock in,” said Donna Levitt, division manager of the Office of Labor Standards Enforcement. “OLSE is here to vigorously investigate and enforce our City’s minimum wage law and create a level playing field for law abiding businesses. I commend City Attorney Herrera and La Raza Centro Legal for bringing this important case. And I applaud Supervisor David Campos for his leadership to enhance our ability to protect the working men and women of San Francisco.”

In November 2003, San Francisco voters passed the Minimum Wage Ordinance (S.F. Admin. Code, Ch. 12R) to provide for annual rate adjustments based on the previous year’s Consumer Price Index for urban wage earners in the San Francisco-Oakland-San Jose metropolitan area. The current MWO Wage Rate for 2011 is \$9.92 per hour. For more information about San Francisco’s Minimum Wage Ordinance, members of the public may call the City’s multi-lingual hotline at (415) 554-6292, or email MWO@sfgov.org. Wage theft victims may also seek confidential assistance from La Raza Centro Legal at (415) 575-3500.

The case is: *City and County of San Francisco v. Vladigor Investments, Inc., dba Tower Car Wash et al.*, San Francisco Superior Court, filed Aug. 17, 2011.

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CITY AND COUNTY OF SAN FRANCISCO,
12 PEOPLE OF THE STATE OF CALIFORNIA,
and DENNIS HERRERA, City Attorney
13

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SAN FRANCISCO
16 UNLIMITED JURISDICTION
17

18 CITY AND COUNTY OF SAN
FRANCISCO, a municipal corporation, and
19 THE PEOPLE OF THE STATE OF
CALIFORNIA, by and through DENNIS J.
20 HERRERA, CITY ATTORNEY FOR THE
CITY AND COUNTY OF SAN
21 FRANCISCO,

22 Plaintiffs,

23 vs.

24 VLADIGOR INVESTMENTS, INC., dba
TOWER CAR WASH; IGOR PASKHOVER;
25 VLADIMIR SYELSKY; LISA SYELSKY;
STEVE MATIJEVICH; and does 1 through
26 10, inclusive,

27 Defendants.
28

Case No.

**COMPLAINT FOR UNPAID WAGES AND
BENEFITS, RESTITUTION, PENALTIES,
AND INJUNCTIVE AND OTHER RELIEF;**

DEMAND FOR JURY TRIAL

Trial Date: None set

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1 The CITY AND COUNTY OF SAN FRANCISCO (the "CITY") and the PEOPLE OF THE
2 STATE OF CALIFORNIA (the "PEOPLE"), by and through DENNIS J. HERRERA, City Attorney
3 for the City and County of San Francisco (collectively "Plaintiffs"), for their Complaint against
4 VLADIGOR INVESTMENTS, INC., dba TOWER CAR WASH; IGOR PASKHOVER; VLADIMIR
5 SYELSKY; LISA SYELSKY; STEVE MATIJEVICH, and DOES 1-10 (collectively "Defendants"),
6 hereby allege as set forth below:

7 INTRODUCTION

8 1. Defendants own and operate Tower Car Wash ("Tower"), located at the corner of
9 Mission Street and South Van Ness Avenue in San Francisco, California. Throughout their tenure as
10 owners and operators of Tower, Defendants have engaged in a pattern and practice of failing to pay
11 their employees for work performed at the car wash, in violation of state and local wage and hour
12 laws, and in violation of California law prohibiting unfair business practices.

13 2. Specifically, Defendants require their employees to arrive at prescheduled times, and
14 inform their employees that they will suffer adverse consequences if they do not arrive at those times.
15 But rather than allowing their employees to "clock in" for work upon arrival, Defendants frequently
16 require the employees to wait in a small, windowless room until management determines that the car
17 wash is sufficiently busy to allow them to begin working. Defendants do not pay their employees for
18 the time they spend waiting in this windowless room, even though they require the employees to be
19 there. Therefore, although it appears on the surface that Defendants pay their employees the minimum
20 wage (because the employees are paid minimum wage for the hours during which they are clocked in),
21 in reality Defendants fail to pay the minimum wage, because the employees are not paid for the many
22 hours they spend waiting to clock in. This is a clear violation of state and local minimum wages laws.
23 On average, employees at Tower lose at least four to six hours' worth of pay per week as a result of
24 this unlawful practice. During periods of bad weather, the amount of lost wages for Tower employees
25 increases dramatically – they are required to wait longer to clock in on those days because business is
26 slower.

1 3. Tower employees also lose overtime pay as a result of the above-described practice.
2 For example, if an employee arrives on schedule at 8:00 a.m., is required to wait in the windowless
3 room until 11:00 a.m., and then works until 7:00 p.m., she has spent a total of roughly 11 hours
4 working (minus any meal breaks). However, because Defendants treat this employee for payroll
5 purposes as not having begun work until 11:00 a.m., she is treated as having worked only eight hours
6 (minus any meal breaks). This is a clear violation of state and local law, which requires that
7 employees be paid overtime for any work performed beyond an eight-hour shift in one day, or beyond
8 a 40-hour week.

9 4. In addition, on days when business is slow because the weather is cold or rainy, Tower
10 employees are sometimes not paid at all, despite being required to arrive at work and wait in the
11 windowless room. Defendants sometimes simply instruct employees to leave, without allowing them
12 to "clock in" and earn any of their wages. Moreover, even when employees are permitted to clock in,
13 on days when business is slow Defendants sometimes send employees home long before expected.
14 This is a clear violation of state and local law, which guarantees at least one-half day's compensation
15 for employees who report to their jobs but are deprived of their regularly scheduled work.

16 5. These unlawful wage and hour practices impose a tremendous hardship on Tower
17 employees, low-wage workers who undertake great effort and expense to arrive at their job on time.
18 Employees incur expenses commuting to work. They pay for child care. And they forego other work
19 opportunities, only to be denied the ability to earn a lawful wage – and sometimes any wage at all – at
20 Tower Car Wash.

21 6. These unlawful wage and hour practices do not merely harm Tower's employees; they
22 provide Defendants with an unfair competitive advantage over law-abiding car washes that do not
23 steal wages from their workers.

24 7. Defendants' unlawful practices are ongoing. They violate the San Francisco Minimum
25 Wage Ordinance ("MWO"), the California Labor Code, and California Industrial Welfare Commission
26 Order No. 9-2001. In addition, these actions constitute unfair and unlawful business practices in
27 violation of California Business and Professions Code Section 17200, *et seq.*

8. Defendants also are under contract with the City and County of San Francisco to wash City-owned vehicles. Their unlawful practices constitute a material breach of their contract with the City, because the contract requires them to abide by the City's legal requirements pertaining to minimum compensation.

9. Plaintiffs seek a court order requiring Defendants to: (i) pay all current and former Tower employees their unpaid wages over the past four years; (ii) pay the full amount of penalties contemplated by the MWO and the California Labor Code for these violations; (iii) pay all reasonable costs and attorneys' fees incurred by the City in connection with this lawsuit; and (iv) cease and desist from engaging in these unlawful wage and hour practices in the future. In addition, the City has notified Defendants of their breach of contract with the City, and will exercise its right to terminate the contract with Defendants in the event they do not promptly cure the breach.

PARTIES

10. This action is brought on behalf of the People of the State of California by and through Dennis J. Herrera, City Attorney for the City and County of San Francisco, and by the City and County of San Francisco.

11. The City and County of San Francisco brings this action pursuant to San Francisco Administrative Code Sections 12R.7(c) and 12R.14, and the California Labor Code. The People of the State of California bring this action pursuant to Business and Professions Code Section 17204.

12. Plaintiffs are informed and believe, and on that basis allege, that Defendant VLADIGOR INVESTMENTS, INC., is, and at all relevant times was, a corporation organized under the laws of the State of California, and is, and at all relevant times was, engaged in the car wash business within the boundaries of the City and County of San Francisco.

13. Plaintiffs are informed and believe, and on that basis allege, that Tower Car Wash, which operates at 1601 Mission Street, San Francisco, CA 94103, is owned and operated in whole or in part by Defendant VLADIGOR INVESTMENTS, INC.

14. Plaintiffs are informed and believe, and on that basis allege, that Defendant IGOR PASKHOVER is an owner, shareholder, officer and/or executive of VLADIGOR INVESTMENTS,

1 INC. who employs or exercises control over the wages, hours or working conditions of employees at
2 Tower Car Wash.

3 15. Plaintiffs are informed and believe, and on that basis allege, that Defendant
4 VLADIMIR SYELSKY is an owner, shareholder, officer and/or executive of VLADIGOR
5 INVESTMENTS, INC. who employs or exercises control over the wages, hours or working conditions
6 of employees at Tower Car Wash.

7 16. Plaintiffs are informed and believe, and on that basis allege, that Defendant LISA
8 SYELSKY is an owner, shareholder, officer and/or executive of VLADIGOR INVESTMENTS, INC.
9 who employs or exercises control over the wages, hours or working conditions of employees at Tower
10 Car Wash.

11 17. Plaintiffs are informed and believe, and on that basis allege, that Defendant STEVE
12 MATIJEVICH is an executive of VLADIGOR INVESTMENTS, INC. who employs or exercises
13 control over the wages, hours or working conditions of employees at Tower Car Wash.

14 18. Plaintiffs are ignorant of the true names and capacities of defendants DOES 1-10
15 inclusive, and sue said defendants by such fictitious names. Plaintiffs will amend this Complaint to
16 allege their true names and capacities when ascertained.

17 19. Plaintiffs are informed and believe, and on that basis allege, that in addition to acting on
18 his or her own behalf as an individual, all of the acts and omissions described in this Complaint by any
19 defendant were duly performed by, and attributable to, all defendants, each acting as agent, employee,
20 alter ego and/or under the direction and control of the others, and such acts and omissions were within
21 the scope of such agency, employment, alter ego, direction, and/or control. Any reference in this
22 complaint to any acts of defendants shall be deemed to be the acts of each defendant acting
23 individually, jointly, or severally. At all relevant times, each defendant had knowledge of and agreed
24 to both the objectives and the courses of action, and took the acts described in this complaint pursuant
25 to such agreements, resulting in the unlawful, unfair, and fraudulent business practices and damages to
26 victims as described in this Complaint.

1 20. At all times relevant herein, the events and occurrences that give rise to this Complaint
2 took place in the City and County of San Francisco.

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5 **GENERAL ALLEGATIONS**

6 21. Sections 12R.4(a) and (b) of the MWO require Employers to pay their Employees no
7 less than the minimum wage established in the MWO.

8 22. In 2007 the minimum wage under the MWO was \$9.14 per hour.

9 23. In 2008 the minimum wage under the MWO was \$9.36 per hour.

10 24. In 2009 and 2010 the minimum wage under the MWO was \$9.79 per hour.

11 25. In 2011 the minimum wage under the MWO is \$9.92 per hour.

12 26. Section 12R.3 of the MWO defines an "Employer" as "any person, as defined in
13 Section 18 of the California Labor Code, including corporate officers or executives, who directly or
14 indirectly or through an agent [or] any other person, including through the services of a temporary
15 services or staffing agency or similar entity, employs or exercises control over the wages, hours or
16 working conditions of any Employee."

17 27. Pursuant to Section 12R.3, "Employee" is defined as "any person who: (a) In a
18 particular week performs at least two (2) hours of work for an Employer within the geographic
19 boundaries of the City; and (b) Qualifies as an employee entitled to payment of a minimum wage from
20 any employer under the California minimum wage law, as provided under Section 1197 of the
21 California Labor Code and wage orders published by the California Industrial Welfare Commission, or
22 is a participant in a Welfare-to-Work Program."

23 28. At all times relevant herein, Defendants were subject to the provisions of the MWO in
24 that Defendants are persons, as defined in California Labor Code Section 18, or corporate officers or
25 executives, who directly or indirectly, or through an agent or any other person, employed, or exercised
26 control over the wages, hours or working conditions of Tower's employees.

1 29. California Labor Code Section 1197 provides that "[t]he minimum wage for employees
2 fixed by the [Industrial Welfare Commission ("IWC")] is the minimum wage to be paid to employees,
3 and the payment of a less wage than the minimum so fixed is unlawful."

4 30. IWC Wage Order 9-2001 applies to all persons employed in "the transportation
5 industry."

6 31. Under Section 2(P) of Wage Order 9-2001, the transportation industry includes "any
7 industry, business, or establishment operated for the purpose of conveying persons or property from
8 one place to another whether by rail, highway, air, or water, and all operations and services in
9 connection therewith; and also includes storing or warehousing of goods or property, and the
10 repairing, parking, rental, maintenance, or cleaning of vehicles."

11 32. California Labor Code Section 510, and Section 3 of Wage Order 9-2001 require each
12 employer to pay each employee one and one-half times the employee's regular rate of pay for all hours
13 worked in excess of eight hours in any workday, more than 40 hours in any workweek, or the first
14 eight hours on the seventh consecutive day of work. Those sections further provide that for any hours
15 an employee works more than twelve hours in one day, or more than eight hours on the seventh
16 consecutive day, the employee must be compensated at double the employee's regular rate of pay.

17 33. Section 5 of Wage Order 9-2001 provides that each workday an employee is required to
18 report for work and does report, but is not put to work or is furnished less than half the employee's
19 usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work,
20 at the employee's regular rate of pay, which shall not be less than the minimum wage.

21 34. California Labor Code section 203 provides that if an employer willfully fails to pay,
22 without abatement or reduction, in accordance with California Labor Code sections 201 and 202, any
23 wages of an employee who is discharged or who resigns, the wages of the employee shall continue as
24 a penalty from the date due thereof at the same rate until paid up to a maximum of 30 days.

25 35. California Labor Code Section 226 requires that employers shall provide their
26 employees with accurate itemized pay statements reflecting, among other things, gross wages earned,
27 total hours worked, hourly rates in effect, or number of hours worked at each hourly rate

1 36. California Business and Professions Code Sections 17200, *et seq*, prohibit unfair,
2 unlawful or fraudulent business acts or practices.

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7 **WAGE THEFT ALLEGATIONS**

8 37. During the past four years, Defendants have employed approximately 50 to 70 people
9 at any given time at Tower Car Wash.

10 38. The large majority of Tower employees perform one or more of the following
11 functions: washing towels, vacuuming cars, driving cars through the automated car wash, drying cars,
12 and detailing cars.

13 39. Defendants keep a schedule setting forth the times that employees are required to report
14 for work. Reporting times for most employees are: 8:00 a.m., 9:00 a.m., 10:00 a.m. and 11:00 a.m.

15 40. Defendants instruct Tower employees that they must arrive to work at their scheduled
16 reporting times. Specifically, the "Tower Car Wash Employee Policies and Rules" provide:
17 "Employees arriving for work after their regularly scheduled starting time shall be considered
18 tardy . . . Continued tardiness will result in **TERMINATION**." (Caps and bold in original.)

19 41. Notwithstanding the strict arrival schedule Defendants impose, Tower employees are
20 frequently not paid for the first part of the day they spend at the car wash.

21 42. Although occasionally employees are permitted to clock in immediately upon arriving
22 for work, the large majority of employees are not permitted to clock in upon arrival.

23 43. Rather, Defendants require that most employees wait in a small, windowless room after
24 arriving at their regularly-scheduled times. Management monitors the number of customers coming to
25 the car wash, and only allows employees to exit the room and clock in upon determining that there is
26 sufficient business.

1 44. Defendants do not pay their employees for the time they spend waiting in this
2 windowless room, even though they require the employees to be there, and require them to be in
3 uniform and ready to work.

4 45. Therefore, although it appears on the surface that Defendants pay their employees the
5 minimum wage (because the employees are paid minimum wage for the hours during which they are
6 clocked in), in reality Defendants pay their employees far less than the minimum wage, because the
7 employees are not paid at all for some of the hours they are required to be at work.

8 46. On average, employees at Tower lose at least four to six hours' worth of pay per week
9 as a result of this unlawful practice. And during periods of bad weather, employees are often required
10 to wait much longer to clock in, because business is slower on those days. Accordingly, during
11 periods of bad weather the amount of lost wages for Tower employees increases dramatically.

12 47. Tower employees also lose overtime pay as a result of the above-described practice.
13 Employees who are "clocked in" for fewer than eight hours often actually work for longer than eight
14 hours, when their time spent in the windowless room is included.

15 48. In addition, on days when business is slow because the weather is cold or rainy,
16 Defendants sometimes fail to pay their employees at all, despite being required to arrive at work and
17 wait in the windowless room. Defendants sometimes simply instruct employees to leave, without
18 allowing them to "clock in" and earn their wage at all. At a minimum, employees at Tower lose five to
19 six days' worth of work per year because of this unlawful practice, with many employees losing far
20 more.

21 49. Also on days when business is slow, employees arrive for their shifts but are sent home
22 after only having clocked in for a fraction of the shift they were expecting to work.

23 50. Defendants do not keep accurate time records to show when employees begin each
24 work period. Rather, their time records only reflect when employees clock in.

25 51. Defendants' payroll records do not accurately reflect the hours worked by their
26 employees, and do not accurately reflect the wages they owe their employees.

1 52. Defendants provide employees with itemized statements that reflect only a portion of
2 the hours worked and wages earned, and which therefore state a false hourly wage.

3 53. Defendants are aware, and at all relevant times have been aware, that the above-
4 described practices violate the legal rights of their employees.

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8 **FIRST CAUSE OF ACTION**

9 **VIOLATION OF SAN FRANCISCO MINIMUM**
10 **WAGE ORDINANCE – FAILURE TO PAY MINIMUM WAGE**
11 **San Francisco Administrative Code Section 12R.4, 12R.7**

12 **(Brought by Plaintiff City and County of San Francisco Against All Defendants)**

13 54. Plaintiffs incorporate herein each and every allegation contained in Paragraphs 1
14 through 53, inclusive, of this Complaint as though fully set forth herein.

15 55. At all times relevant herein, Defendants violated Section 12R.4 of the MWO by failing
16 to allow their employees to clock in at their regularly scheduled arrival times, and failing to pay their
17 employees for time spent waiting to clock in.

18 56. As a result of the failure of Defendants to comply with the provisions of the MWO, the
19 employees of Tower Car Wash have been injured directly through the loss of wages.

20 57. Current and former employees have been deprived of an average of at least 4-6 hours'
21 worth of wages per week. Accordingly, on information and belief, Defendants have stolen at least
22 \$624,000 in wages from their employees, representing time spent waiting to clock in, with an exact
23 amount to be determined at trial.

24 58. Each current and former employee whose rights under the MWO were violated is
25 entitled to payment of liquidated damages in the amount of \$50 for each day or portion thereof that the
26 violation occurred or continued, pursuant to SF Administrative Code Section 12R.7(c).

1 59. Each current employee whose rights under the MWO are being violated is entitled to
2 injunctive relief, pursuant to SF Administrative Code Section 12R.7(c).

3 60. Each current and former employee who is owed wages under the MWO is entitled to
4 interest on all due and unpaid wages at the rate of ten percent per annum, from the date that the wages
5 were due and payable to the date the wages are paid in full, pursuant to SF Administrative Code
6 Section 12R.7(d).

7 **SECOND CAUSE OF ACTION**

8 **VIOLATION OF SAN FRANCISCO MINIMUM WAGE**
9 **ORDINANCE, CALIFORNIA LABOR CODE, AND INDUSTRIAL WELFARE**
10 **COMMISSION ORDER NO. 9-2001,**
11 **SECTION 5 – FAILURE TO PAY OVERTIME COMPENSATION**
12 **San Francisco Administrative Code Section 12R.4, 12R.7**
13 **California Labor Code Sections 510, 1194, 1194.5, 1198**
14 **Industrial Welfare Commission Wage Order No. 9-2001(3)**

15 **(Brought by Plaintiff City and County of San Francisco Against All Defendants)**

16 61. Plaintiffs incorporate herein each and every allegation contained in Paragraphs 1
17 through 60, inclusive, of this Complaint as though fully set forth herein.

18 62. At all times relevant herein, Defendants failed to pay their employees overtime
19 compensation in instances where employees worked for longer than eight hours per day and/or 40
20 hours per week but were "clocked in" for fewer than eight hours per day and/or 40 hours per week, in
21 an amount to be determined at trial.

22 63. Each current or former employee who was denied overtime compensation as set forth
23 above is entitled to payment of liquidated damages in the amount of \$50 for each day or portion
24 thereof that the violation occurred or continued, pursuant to San Francisco Administrative Code
25 Section 12R.7(c).

26 64. Each current employee who is being denied overtime compensation as set forth above
27 is entitled to injunctive relief, pursuant to San Francisco Administrative Code Section 12R.7(c) and
28 California Labor Code Section 1194.5.

1 65. Each current or former employee who was denied overtime compensation as set forth
2 above is entitled to interest on all due and unpaid wages, from the date that the wages were due and
3 payable to the date the wages are paid in full, pursuant to San Francisco Administrative Code Section
4 12R.7(c) and California Labor Code Section 1194.

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6 **THIRD CAUSE OF ACTION**

7 **VIOLATION OF SAN FRANCISCO MINIMUM WAGE ORDINANCE,**
8 **CALIFORNIA LABOR CODE, AND CALIFORNIA**
9 **INDUSTRIAL WELFARE COMMISSION WAGE ORDER NO. 9-2001 – FAILURE TO**
10 **PROVIDE REPORTING TIME PAY**

11 **San Francisco Administrative Code Section 12R.4, 12R.7**

12 **California Labor Code Section 1194.5**

13 **Industrial Welfare Commission Wage Order No. 9-2001(5)**

14 **(Brought by Plaintiff City and County of San Francisco Against All Defendants)**

15 66. Plaintiffs incorporate herein each and every allegation contained in Paragraphs 1
16 through 65, inclusive, of this Complaint as though fully set forth herein.

17 67. At all times relevant herein, Defendants failed to provide their employees reporting
18 time pay in instances where employees arrived for their regularly-scheduled shifts only to be told to
19 leave without clocking in. Defendants have, at a minimum, denied their employees reporting time pay
20 five to six days per year, with some employees being denied reporting time pay far more frequently.

21 68. In addition, Defendants deny reporting time pay to employees who clock in for short
22 periods of time, but are instructed to leave work early because business is slow. In such instances,
23 Defendants are required by law to pay these employees for half their anticipated shift.

24 69. Each current and former employee who was denied reporting time pay as set forth
25 above is entitled to payment of liquidated damages in the amount of \$50 for each day or portion
26 thereof that the violation occurred or continued, pursuant to SF Administrative Code Section 12R.7(c).

27 70. Each current employee who is being denied reporting time pay as set forth above is
28 entitled to injunctive relief, pursuant to SF Administrative Code Section 12R.7(c) and California Labor
Code Section 1194.5.

1 71. Each current and former employee who was denied reporting time pay as set forth
2 above is entitled to interest on all due and unpaid wages at the rate of ten percent per annum, from the
3 date that the wages were due and payable to the date the wages are paid in full, pursuant to SF
4 Administrative Code Section 12R.7(d), California Labor Code Section 1194 and California Industrial
5 Welfare Commission Wage Order No. 9-2001(5).

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7 **FOURTH CAUSE OF ACTION**
8 **VIOLATION OF SAN FRANCISCO MINIMUM WAGE**
9 **ORDINANCE, CALIFORNIA LABOR CODE, AND INDUSTRIAL WELFARE**
10 **COMMISSION ORDER NO. 9-2001 – FAILURE TO PAY WAGES**
11 **OWED UPON DISCHARGE**
12 **San Francisco Minimum Wage Ordinance**
13 **California Labor Code Sections 201, 202 and 203**

14 **(Brought by Plaintiff City and County of San Francisco Against all Defendants)**

15 72. Plaintiff hereby incorporates by reference paragraphs 1 through 71, inclusive, of this
16 Complaint as though fully set forth herein.

17 73. Many of Defendants' employees were discharged or resigned during the time period
18 covered by this Complaint, and Defendants willfully denied them a sum certain for their wages due at
19 their termination or within 72 hours of their resignation, as required by California Labor Code Section
20 203.

21 74. Defendants' former employees are entitled to penalties pursuant to California Labor
22 Code Section 203, in the amount of each person's daily wage multiplied by each day that has passed
23 without Defendants rendering payment, up to a maximum of 30 days.

24 **FIFTH CAUSE OF ACTION**
25 **VIOLATION OF SAN FRANCISCO MINIMUM WAGE**
26 **ORDINANCE, CALIFORNIA LABOR CODE, AND INDUSTRIAL WELFARE**
27 **COMMISSION ORDER NO. 9-2001 – FAILURE TO PROVIDE ACCURATE ITEMIZED**
28 **PAY STATEMENTS**
29 **California Labor Code Section 226**

30 **(Brought by Plaintiff City and County of San Francisco Against all Defendants)**

31 75. Plaintiff hereby incorporates by reference paragraphs 1 through 74, inclusive, of this
32 Complaint as though fully set forth herein.

1 83. Through the conduct described above, Defendants have engaged in the following
2 unlawful, unfair, and fraudulent business practices prohibited by the Business and Professions Code
3 Sections 17200-17210:

4 A. Violating the San Francisco Minimum Wage Ordinance by failing to pay their
5 employees the minimum wage required by that Ordinance;

6 B. Violating the San Francisco Minimum Wage Ordinance by failing to maintain
7 adequate and accurate payroll records, including accurate records of hours their employees worked;

8 C. Violating the San Francisco Minimum Wage Ordinance, California Labor Code
9 Section 510, and Industrial Welfare Commission Order No. 9-2001 by failing to provide overtime pay;

10 D. Violating the San Francisco Minimum Wage Ordinance and Industrial Welfare
11 Commission Order No. 9-2001 by failing to provide their employees with reporting time pay;

12 E. Violating Labor Code Section 203 by willfully failing to pay former employees
13 wages owed them upon discharge, and willfully failing to cure this violation by failing to pay them an
14 additional 30 days' worth of wages.

15 F. Violating Labor Code Section 226 by intentionally failing to provide their
16 employees with accurate itemized statements showing correct wages earned, total hours worked by the
17 employee, and the actual hourly rates in effect during the pay period and the corresponding number of
18 hours worked at each hourly rate by the employee;

19 G. Violating Labor Code Section 223 by secretly paying a wage lower than that
20 required by law, while purporting to pay the required wage.

21 84. Plaintiff is informed and believes, and on that basis alleges, that as a direct and
22 proximate result of the foregoing acts and practices, Defendants have received and/or continue to
23 receive income or other benefits, which they would not have received if they had not engaged in the
24 violations of Business and Professions Code Section 17200, *et seq.*, described in this Complaint.

25 85. Plaintiff is informed and believes, and on that basis alleges, that as a direct and
26 proximate result of the foregoing acts and practices, Defendants were able to unfairly compete with
27 other car washes in the State of California.

1 86. Plaintiff is informed and believes, and on that basis alleges, that Defendants were aware
2 and on notice that all of their conduct herein alleged was unlawful.

3 87. The actions of Defendants are in violation of the laws and public policies of the City
4 and County of San Francisco and the State of California and are inimical to the rights and interest of
5 the general public.

6 88. Plaintiff has no adequate remedy at law in that damages are insufficient to protect the
7 public from the present harm caused by Defendants' practices as described in this Complaint.
8 Defendants will continue to engage in unfair and unlawful business practices. Unless injunctive relief
9 is granted to enjoin Defendants' unfair and unlawful business practices, Plaintiff will suffer irreparable
10 injury and damage.

11 89. Pursuant to Section 17206 of the Business and Professions Code, Defendants are
12 subject to civil penalties of up to \$2,500 per violation of the Business and Professions Code for each
13 act of unfair and unlawful competition.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs pray for the following relief:

16 1. Defendants and their agents, officers, managers, representatives, employees, and
17 anyone acting on their behalf, and their heirs and assignees be permanently enjoined from operating
18 Tower Car Wash in violation of the San Francisco Minimum Wage Ordinance, the California Labor
19 Code, Industrial Welfare Commission Order No. 9-2001 and Business and Professions Code sections
20 17200-17210;

21 2. Pursuant to San Francisco Administrative Code Section 12R.7(c) and Business and
22 Professions Code Section 17203, Defendants, jointly and severally, be ordered to pay their current and
23 former employees all wages unlawfully withheld in the past four years, in an amount of at least
24 \$624,000, with an exact amount to be determined at trial;

25 3. Pursuant to San Francisco Administrative Code Section 12R.7(c), Defendants, jointly
26 and severally, be ordered to pay each current and former employee whose rights under the MWO were
27 violated in the past four years \$50 per day or portion thereof for which the employee was not paid the
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1 required minimum wage for all hours worked, in an amount of at least \$2,496,000, with an exact
2 amount to be determined at trial;

3 4. Pursuant to San Francisco Administrative Code Section 12R.7(c) and California Labor
4 Code Section 1194.5, Defendants, jointly and severally, be ordered to pay their current and former
5 employees reporting time pay, with an exact amount to be determined at trial.

6 5. Pursuant to San Francisco Administrative Code Section 12R.7(c), Defendants, jointly
7 and severally, be ordered to pay their current and former employees \$50 in penalties, per employee
8 and per violation, for failure to provide reporting time pay, with an exact amount to be determined at
9 trial.

10 6. Pursuant to Labor Code Section 203, Defendants be ordered to pay all former
11 employees penalties for willful failure to pay all wages owed immediately upon employees'
12 termination or within 72 hours of their resignation, with an exact amount to be determined at trial;

13 7. Pursuant to Labor Code Section 226(e), Defendants be ordered to pay each current and
14 former employee penalties for intentional failure to provide accurate itemized pay statements, with an
15 exact amount to be determined at trial;

16 8. Pursuant to Business and Professions Code Section 17203, Defendants be ordered to
17 provide restitution to each current or former employee of all wages unlawfully withheld by Defendants
18 during the four years preceding the filing of this Complaint, the exact amount of which to be
19 determined at trial;

20 9. Pursuant to Business and Professions Code Section 17206, Defendants be ordered to
21 pay a civil penalty of \$2,500.00 for each act of unfair competition, payable to the City and County of
22 San Francisco, with an exact amount to be determined at trial;

23 10. Pursuant to San Francisco Administrative Code Section 12R.7(d), Defendants, jointly
24 and severally, be ordered to pay their current and former employees interest on all due and unpaid
25 wages at the rate of ten percent per annum, from the date the wages were due and payable to the date
26 the wages are paid in full, with an exact amount to be determined at trial;

1 11. Plaintiffs be awarded their attorneys' fees and costs pursuant to Section 12R.7(c) of the
2 MWO, and Sections 226 and 1194 of the California Labor Code; and

3 12. For such further and other relief that the Court deems just and proper.

4 Dated: August 17, 2011

DENNIS J. HERRERA
City Attorney
JILL FIGG DAYAL
VINCE CHHABRIA
Deputy City Attorneys

KATE HEGÉ
La Raza Centro Legal

10 By: _____
11 VINCE CHHABRIA
12 Attorney for Plaintiffs
13 CITY AND COUNTY OF SAN FRANCISCO,
14 PEOPLE OF THE STATE OF CALIFORNIA,
15 and DENNIS HERRERA, City Attorney
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1 **REQUEST FOR JURY TRIAL**

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3 Plaintiffs further request a trial by jury on all issues properly belonging before a jury.

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5 Dated: August 17, 2011

DENNIS J. HERRERA
City Attorney
JILL FIGG DAYAL
VINCE CHHABRIA
Deputy City Attorneys

8 KATE HEGÉ
9 La Raza Centro Legal

10

11 By: _____
VINCE CHHABRIA
12 Attorney for Plaintiffs
13 CITY AND COUNTY OF SAN FRANCISCO,
14 PEOPLE OF THE STATE OF CALIFORNIA,
15 and DENNIS HERRERA, City Attorney

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DENNIS J. HERRERA
City Attorney

DIRECT DIAL: (415) 554-4748
EMAIL: tara.collins@sfgov.org

August 17, 2011

Igor Paskhover
Vladimir Syelsky
Lisa Syelsky
Steve Matijevich
Vladigor Investments, Inc.
1601 Mission Street
San Francisco, CA 94103

Re: Minimum Wage Violations at Tower Car Wash

Dear Mr. Paskhover, Mr. Syelsky, Ms. Syelsky and Mr. Matijevich:

As you know, we have joined La Raza Centro Legal in suing you for violating the rights of your employees at Tower Car Wash under San Francisco's Minimum Wage Ordinance ("MWO") and related laws. We have already learned that management at Tower has been attempting to learn whether any employees have cooperated with us in our investigation. Therefore, I am writing to inform you, in the most emphatic possible terms, that it is illegal to threaten employees or to retaliate against them for asserting their workplace rights. We will be watching you closely to make sure nobody at Tower threatens or retaliates against any of its employees, and we will take swift action if this occurs.

The MWO provides that it is unlawful to retaliate against workers for exercising their rights under the ordinance, and creates a presumption that any adverse employment action taken within 90 of the exercise of those rights constitutes retaliation. Prohibited forms of retaliation include firing employees, reducing the number of working hours in response to a complaint, threatening employees with reprisals of any kind, and otherwise changing the terms and conditions of employment to negatively affect employees who have exercised their rights. Furthermore, California law prohibits coercing employees to sign false statements. *See* California Labor Code § 206.5.

If Tower Car Wash employees are in any way retaliated against for their cooperation in our investigation, we will file additional claims for retaliation, and seek compensatory damages for lost wages as well as punitive damages. We will also immediately move for injunctive relief. These are all very expensive options for your company that can be avoided if you simply obey the law by not retaliating against the workers.

Furthermore, I am aware that investigators from the Office of Labor Standards Enforcement ("OLSE") have had difficulty obtaining your full cooperation in their request for employee time records. You are required to produce the records requested by OLSE promptly. In addition, as the litigation proceeds, we will undoubtedly request additional evidence from you. The intentional destruction of evidence related to litigation is subject to severe sanctions, including, but not limited to, monetary and contempt sanctions, a bar on the introduction of

Igor Paskhover, et al.
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evidence by the offending party, and a default judgment entered against the offending party. *See* Cal. Code Civ. Proc. §§ 2023.010-2023.040. Your willful suppression of evidence may also be considered against you by a judge or jury at the time of trial. *See* Cal. Evid. Code § 413.


You must therefore honor your legal obligation to preserve relevant evidence. You should preserve all documents or writings within the meaning of California Evidence Code section 250 (i.e. electronic mail, memoranda, and other evidence stored either in a hard-copy or digital format) that relate to the subject of this lawsuit, including, but not limited to:

- All documents relating to Tower employee time schedules and hours worked;
- All documents reflecting actual time for which Tower employees were paid;
- All documents reflecting communications among you and anyone else at Tower about work schedules, worker compensation, or labor costs;
- Company policies relating to wage and hour practices. This includes directions, instructions, communications, and training documents given to payroll officers or supervisors regarding Tower's pay practices;
- Records pertaining to employee complaints regarding Tower's workplace practices or policies (including informal complaints as well as administrative complaints filed with the California Department of Labor Standards Enforcement an/or in civil court.)
- Documents pertaining to discrimination and harassment complaints made by Tower employees (including informal complaints as well as administrative complaints filed with the California Department of Fair Employment and Housing and/or in civil court.)

You also must preserve all computers used to create such documents and any and all hard drives or other data storage devices used to store such documents. In the case of electronic mail, memoranda, or other correspondence and information stored on computers that is relevant to this lawsuit, it is your legal obligation to preserve not only hard copies of the e-mail, memoranda, or other correspondence, but also the actual computers, hard drives, and any back-up drives, tapes, or other media used to create and store such documents.

You or your attorneys may direct further communications to Deputy City Attorney Vince Chhabria, in the Office of the City Attorney, City Hall Room 234, San Francisco, CA 94102. Mr. Chhabria can be reached by phone at 415-554-4674.

Sincerely,


DENNIS J. HERRERA
City Attorney