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VENTURA
SUPERIOR COURT
FILED

MAR 06 2023

BRENDA L. MCCORMICK
Executive Officer and Clerk
By: *[Signature]*
H. MCINTYRE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA

ANDREW SANTER and SONDRASANTER,)	Case No.: 56-2022-00569081-CU-JR-VTA
Appellants/Defendants,)	STATEMENT OF DECISION
vs.)	
VICKI HUFF,)	
Respondent/Plaintiff.)	

This matter came on calendar for hearing on the appeal by Andrew Santer and Sondra Santer of the August 9, 2022 award by the California Labor Commission in favor of Vicki Huff. Ms. Huff was awarded \$362,170.07 by the Labor Commission for unpaid wages and associated penalties and interest resulting from her services as a domestic worker from April 9, 2019 – July 31, 2020. Mr. Santer and Ms. Santer have timely appealed that award, and it comes to the Superior Court for a de novo review of that award pursuant to Labor Code section 98.2. The case proceeded to hearing before the undersigned judicial officer on November 21 and November 22, 2022. The matter was taken under submission following the arguments of counsel, and the submission of post-trial briefs. The Court issued its Statement of Intended Decision on January 9, 2023. Timely objections have been received from both sides, and the Court now states its decision on the issues submitted to it.

Vicki Huff is a retired adult woman who was living in a rented condominium in

1 Camarillo that she shared with several other persons. That tenancy and living arrangement was
2 approaching an end, and she was looking for residential living quarters. She saw an ad in Craig's
3 list offering a room in a residence in Leisure Village in Camarillo for \$450.00/month in
4 exchange for some meal preparation and light housework from 10:00 a.m. - 7:00 p.m. This offer
5 was made by Andrew Santer on behalf of his mother, Sondra Santer, who was in her eighties and
6 who owned and occupied the Leisure Village unit where the room was located. Ms. Huff was
7 interested, and arranged to meet Mr. Santer at a local Starbucks to discuss it. At this meeting,
8 Ms. Huff stated that she was unwilling to pay rent, but was willing to discuss light housekeeping,
9 meal preparation, and transportation to medical appointments in exchange for free rent. After a
10 visit to the premises and further discussion, Mr. Santer offered Ms. Huff a written "Roommate
11 Agreement" (Exhibit 3) which stated that it was not an employment agreement, and that Ms.
12 Huff was not an employee. Ms. Huff signed it, but never returned it to Mr. Santer. As such, there
13 is no document in evidence signed by both parties. Ms. Huff moved in on March 15, 2019, and
14 proceeded to clean out the refrigerator and stock the kitchen.

15 Ms. Huff and Ms. Santer settled into a routine where Ms. Huff prepared meals, often ate
16 with Ms. Santer, cleaned up the kitchen afterwards, did grocery shopping on a weekly basis
17 (often with Ms. Santer), and took Ms. Santer to medical appointments. By pre- arrangement, Ms.
18 Huff was off the premises for charity work on Thursday, Friday and Saturday for about 4 hours
19 each day, and was also off the premises for 2-3 hours on Sunday for church services. She took
20 Ms. Santer to retail locations, took her to the ER following a fall on one occasion, helped Ms.
21 Santer in and out of her wheelchair as necessary, and called Leisure Village security for
22 assistance on those occasions when Ms. Santer would fall and be unable to get up. Ms. Huff
23 testified that she regarded it as a 24/7 job, and received a text from Mr. Santer (Exhibit 9) stating
24 that he did not expect Ms. Huff to be gone from the premises for more than 2 hours so that
25 "...mom would have coverage..." Ms. Huff testifies that she wanted to discuss salary with Mr.
26 Santer, but that he avoided any discussion of meeting on that subject. Ms. Huff received a notice
27 of termination from Ms. Santer on July 2, 2020. That was convenient for her because she needed
28 hip replacement surgery. Her last day of work for Ms. Santer was July 31, 2020.

1 There were things that Ms. Huff did not do. A paid housekeeper, Sylvia Coronado, came
2 in every two weeks to clean the unit, and to do the laundry and the bedding. If Ms. Santer fell,
3 Ms. Huff did not try to pick her up. She called security to do that.

4 The question facing the Court is whether or not there was an employment relationship,
5 and if so, what were its terms and conditions.

6 The Court finds that Ms. Huff was an employee, and that both Mr. Santer and Ms. Santer
7 were employers.

8 The intention of the parties is not determinative, and they disagree. Ms. Huff was
9 providing more than nominal services for Ms. Santer. She was preparing meals, buying
10 groceries, taking Ms. Santer to medical appointments, assisting with her wheelchair, and doing
11 some light housekeeping. This was a benefit to Ms. Santer, and more than a roommate would be
12 expected to provide. Ms. Huff's hours were negotiated to exclude charity work and Sunday
13 church. Other than that, she was on premises, and expected to be on premises for the benefit of
14 Ms. Santer. Exhibit 9 cannot be disregarded. Anyone receiving it would reasonably expect it to
15 require the recipient to provide "coverage" for Ms. Santer, an elderly lady. The Court does not,
16 however, give it the expansive scope as argued by counsel for Ms. Huff. Ms. Huff performed
17 services that are in excess of what would be expected of a roommate. The Court finds that the
18 provisions of Wage Order 15 and *Martinez v. Combs*, 49 Cal.4th 35, are applicable.

19 Finding that an employment relationship existed does not extend to a finding that the job
20 was 24/7. Ms. Huff's employment obligations generally stopped after dinner and the associated
21 kitchen clean up. After hours work consisted of a call to Security if Ms. Santer fell out of bed.
22 Testimony established that such calls on an after hour basis were few. Based on this infrequency,
23 the Court finds that these after hour calls were not part of the employment relationship, and did
24 not operate to extend the hours of the working day, or amount to Ms. Huff being "on call" during
25 the nighttime hours. The trip to the ER was a one time event that probably consumed 5 hours.
26 The Court finds that the customary daily hours of the job began with the preparation of breakfast
27 at 9:00 a.m. and ended with the kitchen cleanup after dinner at 7:00 p.m. On a weekly basis,
28 excluding the 3 days of charity work, and excluding further the time for church on Sunday, this

1 amounted to a 55 hour work week. This is calculated at 10 hours on Monday Tuesday and
2 Wednesday; 6 hours on Thursday, Friday and Saturday; and 7 hours on Sunday. For Monday,
3 Tuesday and Wednesday, this is 9 hours of regular time, and 1 hour of time and a half. Thursday,
4 Friday and Saturday are 6 hours of straight time. Sunday is 7 hours of straight time. The trip to
5 the ER is 5 hours of time and a half. For the period April 2019 to December 31, 2019, time is
6 payable at \$11.00/hour. For the time January 1, 2020 - July 31, 2020, time is payable at
7 \$12.00/hour. Both rates are the then prevailing minimum wage. The period 4/9/19 - 12/31/19
8 comprises 38 weeks (267 days). The period 1/1/20 - 7/31/20 comprises 30 weeks (210 days).
9 Nine hours at \$11.00/hour is \$99.00. One hour at time and a half is \$16.50/hour.

10 Wages unpaid are calculated as follows:

11 2019 - 38 weeks at 55 hours/week is 45 hours/week at straight time and 10 hours/week
12 overtime. 45 hours at \$11.00/hour equals \$495.00, plus 10 hours at \$16.50/hour, which equals
13 \$165.00 calculates out to \$660.00/week. For 38 weeks in 2019, this is \$25,080.00.

14 2020 - 30 weeks at 55 hours/week is 45 hours/week at straight time and 10 hours/week
15 overtime. 45 hours at \$12.00/hour equals \$540.00, plus 10 hours at \$18.00/hour, which equals
16 \$180.00, which calculates to \$720.00/week. For 30 weeks in 2020, this is \$21,600.00. The trip to
17 the ER is 5 hours at the overtime rate of \$18.00/hour, or \$90.00, for a total of \$21,690.00.

18 Total lost wages for 2019 and 2020 are \$46,770.00.

19 Labor Code section 203 requires a penalty for not timely paying wages calculated at 30
20 days wages at the prevailing rate of the last 30 days of an employee's employment. The rate is
21 \$12.00/hour, the work day is 9 hours, and it adds \$3,240.00.

22 Liquidated damages are owed as a penalty, and calculated at all hours worked multiplied
23 at the rate those hours were worked. For 2019, this amounts to 55 hours/week for 38 weeks less
24 the 63 hours she did not work. This calculates out to 2,027 hours at \$11.00/hour, or \$22,297. For
25 2020, the numbers are a 55 hour week, 30 weeks, less the 36 hours she did not work, 1619 hours
26 at \$12.00/hour. The number is \$19,428.00. The final number (2019 and 2020) is \$41,725.00.

27 The Labor Code entitles an employee to 10% simple interest on wages not paid. Unpaid
28 wages for 2019 are \$24,080. For 2020, the unpaid wages are \$21,690.00. Ten per cent of those

1 numbers is \$2,508.00 for 2019 and \$2169.00 for 2020.

2 Adding it all up, Vicki Huff is entitled to an award of \$96,412.00. Respondent/Plaintiff is
3 the prevailing party, and is entitled to her statutory costs of suit. If attorneys fees are being
4 claimed, they will be considered in a noticed motion as opposed to an entry on a cost bill.
5 Counsel for Respondent/Plaintiff is directed to prepare, and to submit a form of Judgment.

6 The clerk is directed to give notice.

7 Dated: March 6, 2023


HENRY J. WALSH
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

SHORT TITLE: SANTER VS. HUFF	CASE NUMBER: 56-2022-00569081-CU-JR-VTA
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CLERK'S CERTIFICATE OF SERVICE BY MAIL

I certify that I am not a party to this cause. I certify that a true copy of Statement of Decision was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at Ventura, California, on 03/07/2023.

Clerk of the Court,



By, _____



H McIntyre, Clerk

LOUIS H KREUZER, II
950 COUNTY SQUARE DRIVE
STE 105
VENTURA, CA 93003 US

CHRISTOPHER A FORTUNATI
1849 KNOLL DRIVE
VENTURA, CA 93003 US



Leisure village shared housing

3 years ago · Camarillo
rooms & shares

\$450

beginning search for a senior woman to share leisure village home with current senior woman owner. Rent is 450/month and all inclusive no additional costs.

Home is 2 bedroom 2 bath with patio. Community pool, spa, gym, courts, golf, and association building with multiple clubs and activities.

The reduced rent is in exchange for rides to shopping and appointments, help with some meal prep, light housework as needed, all typically between 10a to 7p.

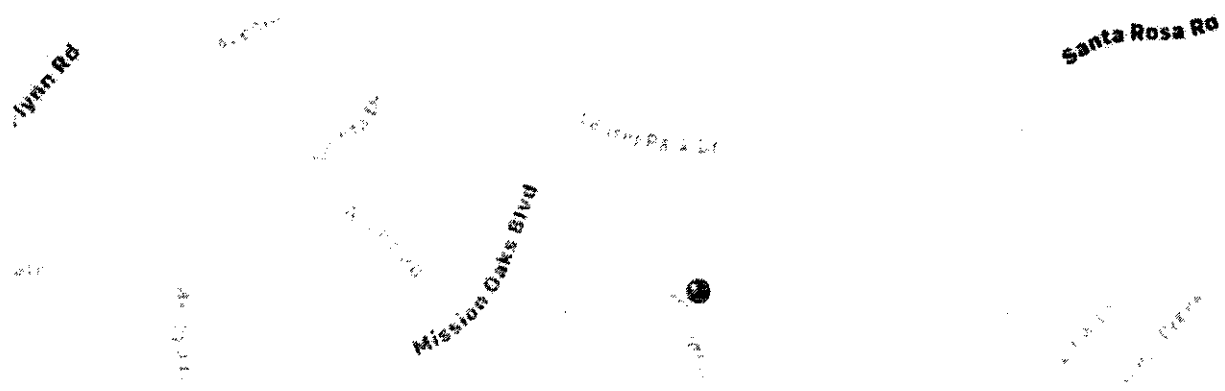
Must be nonsmoker, able to push wheelchair, have a current drivers license, speak English, and pass a background check. No overnight guests.

If interested please reply to this posting and we can arrange a phone call.

<https://www.leisurevillage.org/>

Thank you for your interest.

- furnished: ✓
- housing type: condo
- laundry: w/d in unit
- no smoking: ✓
- parking: attached garage
- private bath: private bath
- private room: private room
- area: 1100 ft²
- move-in date: 4/1/2019



posting status is expired

repost

ROOMMATE AGREEMENT

This document represents a legal contract that details the terms and liabilities of individuals residing in residential property, hereinafter referred to as the "Agreement".

Section 1. The Parties & Property

This agreement is a New Roommate joining current tenancy among Roommates. Including the New Roommate, there shall be Two (2) Roommates.

The New Roommate, known as Vicki Huff hereinafter referred to as the "New Roommate" and the Owner Roommate(s), known as Sondra Santer (Landlord) hereinafter known as the "Roommates" agree to the following:

The street address of the Property is 42034 Village 42, Camarillo, CA 93012 hereinafter known as the "Property".

Section 2. The Term

The duration of this Agreement is to start with the move-in and possession of the Property on March 15, 2019 and continue Month to Month hereinafter referred to as the "Term".

Section 3. Security Deposit

No Security Deposit for the New Roommate.

The New Roommate shall not complete a Move-in Checklist at the time of possession.

Section 3. Rent

The New Roommate agrees to pay in rent the amount of \$0 due on the Fifteenth (15th) of every month.

In exchange for \$0 rent, New Roommate agrees to provide custodial support as described in Additional Agreement section.

Section 4. Utilities

Rent is all inclusive.

Section 5. Move-Out

If, for any reason, the New Roommate decides to move-out of the Property, they may do

so, by providing 30 days notice.

Section 6. Additional Agreements

In Addition to this Agreement, the Roommates collectively agree that: New Roomate agrees to provide custodial support such as meals, transportation, wheel chair/walker escort, laundry, and assistance. This is not an Employment agreement and New Roomate is not an Employee.

Section 7. Lead Paint Disclosure

NA

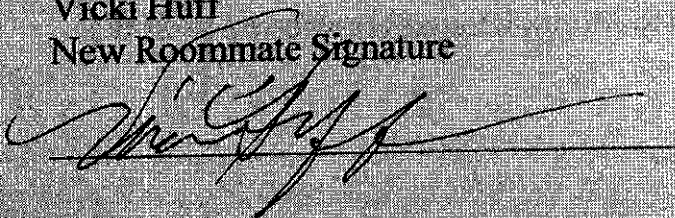
Section 8. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of the Property's location.

Section 9. Authorization

This agreement has been signed on March 15th, 2019.

Vicki Huff
New Roommate Signature

A handwritten signature in black ink, appearing to read "Vicki Huff", written over a horizontal line.

Sondra Santer
Roommate #2 Owner/Landloard Signature



OFFICIAL NOTICE

**INDUSTRIAL WELFARE COMMISSION
ORDER NO. 15-2001
REGULATING
WAGES, HOURS AND WORKING CONDITIONS IN THE**

HOUSEHOLD OCCUPATIONS

Effective January 1, 2002 as amended

Sections 4(A) and 10(C) amended and republished by the Department of Industrial Relations, effective January 1, 2021, pursuant to SB 3, Chapter 4, Statutes of 2016 and section 1182.13 of the Labor Code

This Order Must Be Posted Where Employees Can Read It Easily

Please Post With This Side Showing

OFFICIAL NOTICE

Effective January 1, 2002 as amended

Sections 4(A) and 10(C) amended and republished by the Department of Industrial Relations effective January 1, 2021, pursuant to SB 3, Chapter 4, Statutes of 2016 and section 1182.13 of the Labor Code



INDUSTRIAL WELFARE COMMISSION ORDER NO. 15-2001 REGULATING WAGES, HOURS AND WORKING CONDITIONS IN THE HOUSEHOLD OCCUPATIONS

TAKE NOTICE: To employers and representatives of persons working in industries and occupations in the State of California: The Department of Industrial Relations amends and republishes the minimum wage and meals and lodging credits in the Industrial Welfare Commission's Orders as a result of legislation enacted (SB 3, Ch. 4, Stats of 2016, amending section 1182.12 of the California Labor Code), and pursuant to section 1182.13 of the California Labor Code. The amendments and republishing make no other changes to the IWC's Orders.

1. APPLICABILITY OF ORDER

This order shall apply to all persons employed in household occupations whether paid on a time, piece rate, commission, or other basis, unless such occupation is performed for an industry covered by an industry order of this Commission, except that:

(A) Provisions of Sections 3 through 12 of this order shall not apply to persons employed in administrative, executive, or professional capacities. The following requirements shall apply in determining whether an employee's duties meet the test to qualify for an exemption from those sections:

(1) Executive Exemption A person employed in an executive capacity means any employee:

(a) Whose duties and responsibilities involve the management of the enterprise in which he/she is employed or of a customarily recognized department or subdivision thereof; and

(b) Who customarily and regularly directs the work of two or more other employees therein; and

(c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and

(d) Who customarily and regularly exercises discretion and independent judgment; and

(e) Who is primarily engaged in duties which meet the test of the exemption. The activities constituting exempt work and non-exempt work shall be construed in the same manner as such items are construed in the following regulations under the Fair Labor Standards Act effective as of the date of this order: 29 C.F.R. Sections 541.102, 541.104-111, and 541.115-116. Exempt work shall include, for example, all work that is directly and closely related to exempt work and work which is properly viewed as a means for carrying out exempt functions. The work actually performed by the employee during the course of the workweek must, first and foremost, be examined and the amount of time the employee spends on such work, together with the employer's realistic expectations and the realistic requirements of the job, shall be considered in determining whether the employee satisfies this requirement.

(f) Such an employee must also earn a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment. Full-time employment is defined in Labor Code Section 515(c) as 40 hours per week.

(2) Administrative Exemption. A person employed in an administrative capacity means any employee:

(a) Whose duties and responsibilities involve either:

(i) The performance of office or non-manual work directly related to management policies or general business operations of his employer or his/hers employer's customers; or

(ii) The performance of functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein; and

(b) Who customarily and regularly exercises discretion and independent judgment; and

(c) Who regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity (as such terms are defined for purposes of this section); or

(d) Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge; or

(e) Who executes under only general supervision special assignments and tasks; and

(f) Who is primarily engaged in duties which meet the test of the exemption. The activities constituting exempt work and non-exempt work shall be construed in the same manner as such terms are construed in the following regulations under the Fair Labor Standards Act effective as of the date of this order 29 C.F.R. Sections 541.201-205, 541.207-208, 541.210, and 541.215.

Exempt work shall include, for example, all work that is directly and closely related to exempt work and work which is properly viewed as a means for carrying out exempt functions. The work actually performed by the employee during the course of the workweek must, first and foremost, be examined and the amount of time the employee spends on such work, together with the employer's realistic expectations and the realistic requirements of the job, shall be considered in determining whether the employee satisfies this requirement.

(g) Such employee must also earn a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment. Full-time employment is defined in Labor Code Section 515(c) as 40 hours per week.

(3) Professional Exemption A person employed in a professional capacity means any employee who meets all of the following requirements:

(a) Who is licensed or certified by the State of California and is primarily engaged in the practice of one of the following recognized professions: law, medicine, dentistry, optometry, architecture, engineering, teaching, or accounting; or

(b) Who is primarily engaged in an occupation commonly recognized as a learned or artistic profession. For the purposes of this subsection, "learned or artistic profession" means an employee who is primarily engaged in the performance of:

(i) Work requiring knowledge of an advanced type in a field or science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes, or work that is an essential part of or necessarily incident to any of the above work; or

(ii) Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee or work that is an essential part of or necessarily incident to any of the above work; and

(iii) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

(c) Who customarily and regularly exercises discretion and independent judgment in the performance of duties set forth in subparagraphs (a) and (b).

(d) Who earns a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment.

(e) Subparagraph (b) above is intended to be construed in accordance with the following provisions of federal law as they existed as of the date of this order: 29 C.F.R. Sections 541.207, 541.301(a)-(d), 541.302, 541.306, 541.307, 541.308, and 541.310.

(f) Notwithstanding the provisions of this subparagraph, pharmacists employed to engage in the practice of pharmacy, and registered nurses employed to engage in the practice of nursing, shall not be considered exempt professional employees, nor shall they be considered exempt from coverage for the purposes of this subparagraph unless they individually meet the criteria established for exemption as executive or administrative employees.

(g) Subparagraph (f) above shall not apply to the following advanced practice nurses:

(i) Certified nurse midwives who are primarily engaged in performing duties for which certification is required pursuant to Article 2.5 (commencing with Section 2746) of Chapter 6 of Division 2 of the Business and Professions Code.

(ii) Certified nurse anesthetists who are primarily engaged in performing duties for which certification is required pursuant to Article 7 (commencing with Section 2825) of Chapter 6 of Division 2 of the Business and Professions Code.

(iii) Certified nurse practitioners who are primarily engaged in performing duties for which certification is required pursuant to Article 8 (commencing with Section 2834) of Chapter 6 of Division 2 of the Business and Professions Code.

(iv) Nothing in this subparagraph shall exempt the occupations set forth in clauses (i), (ii), and (iii) from meeting the requirements of subsection 1(A)(3)(a)-(d) above.

(h) Except, as provided in subparagraph (i), an employee in the computer software field who is paid on an hourly basis shall be exempt, if all of the following apply:

(i) The employee is primarily engaged in work that is intellectual or creative and requires the exercise of discretion and independent judgment.

(ii) The employee is primarily engaged in duties that consist of one or more of the following:

– The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications.

– The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications.

– The documentation, testing, creation, or modification of computer programs related to the design of software or hardware for computer operating systems.

(iii) The employee is highly skilled and is proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering. A job title shall not be determinative of the applicability of this exemption.

(iv) The employee's hourly rate of pay is not less than forty-one dollars (\$41.00). The Office of Policy, Research and Legislation shall adjust this pay rate on October 1 of each year to be effective on January 1 of the following year by an

amount equal to the percentage increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers.¹

(i) The exemption provided in subparagraph (h) does not apply to an employee if any of the following apply:

(i) The employee is a trainee or employee in an entry-level position who is learning to become proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering.

(ii) The employee is in a computer-related occupation but has not attained the level of skill and expertise necessary to work independently and without close supervision.

(iii) The employee is engaged in the operation of computers or in the manufacture, repair, or maintenance of computer hardware and related equipment.

(iv) The employee is an engineer, drafter, machinist, or other professional whose work is highly dependent upon or facilitated by the use of computers and computer software programs and who is skilled in computer-aided design software, including CAD/CAM, but who is not in a computer systems analysis or programming occupation.

(v) The employee is a writer engaged in writing material, including box labels, product descriptions, documentation, promotional material, setup and installation instructions, and other similar written information, either for print or for on screen media or who writes or provides content material intended to be read by customers, subscribers, or visitors to computer-related media such as the World Wide Web or CD-ROMs.

(vi) The employee is engaged in any of the activities set forth in subparagraph (h) for the purpose of creating imagery for effects used in the motion picture, television, or theatrical industry.

(B) Except as provided in Sections 1, 2, 4, 10, and 15, the provisions of this order shall not apply to personal attendants. The provisions of this order shall not apply to any person under the age of 18 who is employed as a baby sitter for a minor child of the employer in the employer's home.

(C) The provisions of this order shall not apply to any individual who is the parent, spouse, child, or legally adopted child of the employer.

(D) The provisions of this order shall not apply to any individual participating in a national service program, such as AmeriCorps, carried out using assistance provided under Section 12571 of Title 42 of the United States Code. (See Stats. 2000, ch. 365, amending Labor Code Section 1171.)

2. DEFINITIONS

(A) An "alternative workweek schedule" means any regularly scheduled workweek requiring an employee to work more than eight (8) hours in a 24-hour period.

(B) "Commission" means the Industrial Welfare Commission of the State of California.

(C) "Division" means the Division of Labor Standards Enforcement of the State of California.

(D) "Emergency" means an unpredictable or unavoidable occurrence at unscheduled intervals requiring immediate action.

(E) "Employ" means to engage, suffer, or permit to work.

(F) "Employee" means any person employed by an employer.

(G) "Employer" means any person as defined in Section 18 of the Labor Code, who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person.

(H) "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.

(I) "Household Occupations" means all services related to the care of persons or maintenance of a private household or its premises by an employee of a private householder. Said occupations shall include but not be limited to the following: butlers, chauffeurs, companions, cooks, day workers, gardeners, graduate nurses, grooms, house cleaners, housekeepers, maids, practical nurses, tutors, valets, and other similar occupations.

(J) "Personal attendant" includes baby sitters and means any person employed by a private householder or by any third party employer recognized in the health care industry to work in a private household, to supervise, feed, or dress a child or person who by reason of advanced age, physical disability, or mental deficiency needs supervision. The status of "personal attendant" shall apply when no significant amount of work other than the foregoing is required.

(K) "Minor" means, for the purpose of this order, any person under the age of 18 years.

(L) "Primarily" as used in Section 1, Applicability, means more than one-half the employee's work time.

(M) "Shift" means designated hours of work by an employee, with a designated beginning time and quitting time.

(N) "Split shift" means a work schedule, which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.

(O) "Teaching" means, for the purpose of Section 1 of this Order, the profession of teaching under a certificate from the Commission for Teacher Preparation and Licensing or teaching in an accredited college or university.

(P) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.

(Q) "Workday" and "day" mean any consecutive 24-hour period beginning at the same time each calendar day.

(R) "Workweek" and "week" mean any seven (7) consecutive days, starting with the same calendar day each week. "Workweek" is a fixed and regularly recurring period of 168 hours, seven (7) consecutive 24-hour periods.

3. HOURS AND DAYS OF WORK

(A) A LIVE-IN employee shall have at least 12 consecutive hours free of duty during each workday of 24 hours, and the total

¹ Pursuant to Labor Code section 515.5, subdivision (a)(4), the Office of the Director - Research, Department of Industrial Relations, has adjusted the minimum hourly rate of pay specified in this subdivision to be \$49.77 effective January 1, 2007. This hourly rate of pay is adjusted on October 1 of each year to be effective on January 1, of the following year, and may be obtained at <http://www.dir.ca.gov/iwc/computerSoftwareEmployees.html> or by mail from the Department of Industrial Relations.

span of hours for a day of work shall be no more than 12 hours, except under the following conditions:

(1) The employee shall have at least three (3) hours free of duty during the 12-hour span of work. Such off-duty hours need not be consecutive, and the schedule for same shall be set by mutual agreement of employer and employee, provided that

(2) An employee who is required or permitted to work during scheduled off-duty hours or during the 12 consecutive off-duty hours shall be compensated at the rate of one and one-half (1½) times the employee's regular rate of pay for all such hours worked.

(B) No LIVE-IN employee shall be required to work more than five (5) days in any one workweek without a day off of not less than 24 consecutive hours except in an emergency as defined in subsection 2(D), provided that the employee is compensated for time worked in excess of five (5) workdays in any workweek at one and one-half (1½) times the employee's regular rate of pay for hours worked up to and including nine (9) hours. Time worked in excess of nine (9) hours on the sixth (6th) and seventh (7th) workdays shall be compensated at double the employee's regular rate of pay.

(C) The following overtime provisions are applicable to non-LIVE-IN employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (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:

(1) 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 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

(2) 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.

(3) 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.

(D) One and one-half (1½) times a minor's regular rate of pay shall be paid for all work over 40 hours in any workweek except minors 16 and 17 years old who are not required by law to attend school and may therefore be employed for the same hours as an adult are subject to subsections (A) and (B) or (C) above.

(VIOLATIONS OF CHILD LABOR LAWS are subject to civil penalties of from \$500 to \$10,000 as well as to criminal penalties. Refer to California Labor Code Sections 1285 to 1312 and 1390 to 1399 for additional restrictions on the employment of minors and for descriptions of criminal and civil penalties for violation of the child labor laws. Employers should ask school districts about any required work permits.)

(E) An employee may be employed on seven (7) workdays in one workweek with no overtime pay required when the total hours of employment during such workweek do not exceed 30 and the total hours of employment in any one workday thereof do not exceed six (6).

(F) The provisions of Labor Code Sections 551 and 552 regarding one (1) day's rest in seven (7) shall not be construed to prevent an accumulation of days of rest when the nature of the employment reasonably requires the employee to work seven (7) or more consecutive days; provided, however, that in each calendar month, the employee shall receive the equivalent of one (1) day's rest in seven (7).

(G) Except as provided in subsections (D) and (F), this section shall not apply to any employee covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employees, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage.

(H) Notwithstanding subsection (G) above, where the employer and a labor organization representing employees of the employer have entered into a valid collective bargaining agreement pertaining to the hours of work of the employees, the requirement regarding the equivalent of one (1) day's rest in seven (7) (see subsection (F) above) shall apply, unless the agreement expressly provides otherwise.

(I) If an employer approves a written request of an employee to make up work time that is or would be lost as a result of a personal obligation of the employee, the hours of that makeup work time, if performed in the same workweek in which the work time was lost, may not be counted toward computing the total number of hours worked in a day for purposes of the overtime requirements, except for hours in excess of 11 hours of work in one (1) day or 40 hours of work in one (1) workweek. If an employee knows in advance that he/she will be requesting makeup time for a personal obligation that will recur at a fixed time over a succession of weeks, the employee may request to make up work time for up to four (4) weeks in advance; provided, however, that the makeup work must be performed in the same week that the work time was lost. An employee shall provide a signed written request for each occasion that the employee makes a request to make up work time pursuant to this subsection. While an employer may inform an employee of this makeup time option, the employer is prohibited from encouraging or otherwise soliciting an employee to request the employer's approval to take personal time off and make up the work hours within the same workweek pursuant to this subsection.

4. MINIMUM WAGES

(A) Every employer shall pay to each employee wages not less than the following:

(1) Any employer who employs 26 or more employees shall pay to each employee wages not less than the following:

(a) Thirteen dollars (\$13.00) per hour for all hours worked, effective January 1, 2020;

(b) Fourteen dollars (\$14.00) per hour for all hours worked, effective January 1, 2021;

(c) Fifteen dollars (\$15.00) per hour for all hours worked, effective January 1, 2022.

(2) Any employer who employs 25 or fewer employees shall pay to each employee wages not less than the following:

(a) Twelve dollars (\$12.00) per hour for all hours worked, effective January 1, 2020;

- (b) Thirteen dollars (\$13.00) per hour for all hours worked, effective January 1, 2021;
- (c) Fourteen dollars (\$14.00) per hour for all hours worked, effective January 1, 2022;
- (d) Fifteen dollars (\$15.00) per hour for all hours worked, effective January 1, 2023.

Employees treated as employed by a single qualified taxpayer pursuant to Revenue and Taxation Code section 23626 are treated as employees of that single taxpayer. LEARNERS. Employees during their first 160 hours of employment in occupations in which they have no previous similar or related experience, may be paid not less than 85 percent of the minimum wage rounded to the nearest nickel.

(B) Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.

(C) When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.

(D) The provisions of this section shall not apply to apprentices regularly indentured under the State Division of Apprenticeship Standards.

5. REPORTING TIME PAY

(A) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

(B) If an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay, which shall not be less than the minimum wage.

(C) The foregoing reporting time pay provisions are not applicable when:

- (1) Operations cannot commence or continue due to threats to employees or property; or when recommended by civil authorities; or
- (2) Public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities, or sewer system; or
- (3) The interruption of work is caused by an Act of God or other cause not within the employer's control.

(D) This section shall not apply to an employee on paid standby status who is called to perform assigned work at a time other than the employee's scheduled reporting time.

6. LICENSES FOR DISABLED WORKERS

(A) A license may be issued by the Division authorizing employment of a person whose earning capacity is impaired by physical disability or mental deficiency at less than the minimum wage. Such licenses shall be granted only upon joint application of employer and employee and employee's representative if any.

(B) A special license may be issued to a nonprofit organization such as a sheltered workshop or rehabilitation facility fixing special minimum rates to enable the employment of such persons without requiring individual licenses of such employees.

(C) All such licenses and special licenses shall be renewed on a yearly basis or more frequently at the discretion of the Division.

(See California Labor Code, Sections 1191 and 1191.5)

7. RECORDS

(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.

(B) Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

(C) 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 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.

(D) Clocks shall be provided in all major work areas or within reasonable distance thereto insofar as practicable.

8. CASH SHORTAGE AND BREAKAGE

No employer shall make any deduction from the wage or require any reimbursement from an employee for any cash shortage, breakage, or loss of equipment, unless it can be shown that the shortage, breakage, or loss is caused by a dishonest or willful act, or by the gross negligence of the employee.

9. UNIFORMS AND EQUIPMENT

(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. The term "uniform" includes wearing apparel and accessories of distinctive design or color.

NOTE: This section shall not apply to protective apparel regulated by the Occupational Safety and Health Standards Board.

(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. This subsection (B) shall not apply to apprentices regularly indentured under the State Division of Apprenticeship Standards.

NOTE: This section shall not apply to protective equipment and safety devices on tools regulated by the Occupational Safety and Health Standards Board.

(C) A reasonable deposit may be required as security for the return of the items furnished by the employer under provisions of subsections (A) and (B) of this section upon issuance of a receipt to the employee for such deposit. Such deposits shall be made pursuant to Section 400 and following of the Labor Code or an employer with the prior written authorization of the employee may deduct from the employee's last check the cost of an item furnished pursuant to (A) and (B) above in the event said item is not returned. No deduction shall be made at any time for normal wear and tear. All items furnished by the employer shall be returned by the employee upon completion of the job.

10. MEALS AND LODGING

(A) "Meal" means an adequate, well-balanced serving of a variety of wholesome, nutritious foods.

(B) "Lodging" means living accommodations available to the employee for full-time occupancy which are adequate, decent, and sanitary according to usual and customary standards. Employees shall not be required to share a bed.

(C) Meals or lodging may not be credited against the minimum wage without a voluntary written agreement between the employer and the employee. When credit for meals or lodging is used to meet part of the employer's minimum wage obligation, the amounts so credited may not be more than the following:

EFFECTIVE: For an employer who employs:	JANUARY 1, 2020		JANUARY 1, 2021		JANUARY 1, 2022		JANUARY 1, 2023 All Employers regardless of number of Employees
	26 or More Employees	25 or Fewer Employees	26 or More Employees	25 or Fewer Employees	26 or More Employees	25 or Fewer Employees	
LODGING							
Room occupied alone	\$61.13 /week	\$56.43 /week	\$65.83 /week	\$61.13 /week	\$70.53 /week	\$65.83 /week	\$70.53 /week
Room shared	\$50.46 /week	\$46.58 /week	\$54.34 /week	\$50.46 /week	\$58.22 /week	\$54.34 /week	\$58.22 /week
Apartment — two thirds (2/3) of the ordinary rental value, and in no event more than:	\$734.21 /month	\$677.75 /month	\$790.67 /month	\$734.21 /month	\$847.12 /month	\$790.67 /month	\$847.12 /month
Where a couple are both employed by the employer, two thirds (2/3) of the ordinary rental value, and in no event more than:	\$1086.07 /month	\$1002.56 /month	\$1169.59 /month	\$1086.07 /month	\$1253.10 /month	\$1169.59 /month	\$1253.10 /month
MEALS							
Breakfast	\$4.70	\$4.34	\$5.06	\$4.70	\$5.42	\$5.06	\$5.42
Lunch	\$6.47	\$5.97	\$6.97	\$6.47	\$7.47	\$6.97	\$7.47
Dinner	\$8.68	\$8.01	\$9.35	\$8.68	\$10.02	\$9.35	\$10.02

(D) Meals evaluated as part of the minimum wage must be bona fide meals consistent with the employee's work shift. Deductions shall not be made for meals not received or lodging not used.

(E) If, as a condition of employment, the employee must live at the place of employment or occupy quarters owned or under the control of the employer, then the employer may not charge rent in excess of the values listed herein.

11. 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.

12. 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 (3½) 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.

13. CHANGE ROOMS AND RESTING FACILITIES

(A) Employers shall provide suitable lockers, closets, or equivalent for the safekeeping of employees' outer clothing during working hours, and when required, for their work clothing during non-working hours. When the occupation requires a change of clothing, change rooms or equivalent space shall be provided in order that employees may change their clothing in reasonable privacy and comfort. These rooms or spaces may be adjacent to but shall be separate from toilet rooms and shall be kept clean.

NOTE: This section shall not apply to change rooms and storage facilities regulated by the Occupational Safety and Health Standards Board.

(B) Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.

14. 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.

15. PENALTIES

(See California Labor Code, Section 1199)

(A) In addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty of:

(1) Initial Violation — \$50.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to the amount which is sufficient to recover unpaid wages.

(2) Subsequent Violations — \$100.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to an amount which is sufficient to recover unpaid wages.

(3) The affected employee shall receive payment of all wages recovered.

(B) The labor commissioner may also issue citations pursuant to California Labor Code Section 1197.1 for non-payment of wages for overtime work in violation of this order.

16. ELEVATORS

Adequate elevator, escalator or similar service consistent with industry-wide standards for the nature of the process and the work performed shall be provided when employees are employed four floors or more above or below ground level.

17. EXEMPTIONS

If, in the opinion of the Division after due investigation, it is found that the enforcement of any provision contained in Section 7, Records; Section 12, Rest Periods; Section 13, Change Rooms and Resting Facilities; Section 14, Seats; or Section 16, Elevators, would not materially affect the welfare or comfort of employees and would work an undue hardship on the employer, exemption may be made at the discretion of the Division. Such exemptions shall be in writing to be effective and may be revoked after reasonable notice is given in writing. Application for exemption shall be made by the employer or by the employee and/or the employee's representative to the Division in writing. A copy of the application shall be posted at the place of employment at the time the application is filed with the Division.

18. FILING REPORTS

(See California Labor Code, Section 1174(a))

19. INSPECTION

(See California Labor Code, Section 1174)

20. SEPARABILITY

If the application of any provision of this order, or any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this order should be held invalid or unconstitutional or unauthorized or prohibited by statute, the remaining provisions thereof shall not be affected thereby, but shall continue to be given full force and effect as if the part so held invalid or unconstitutional had not been included herein.

21. POSTING OF ORDER

Every employer shall keep a copy of this order posted in an area frequented by employees where it may be easily read during

the workday. Where the location of work or other conditions make this impractical, every employer shall keep a copy of this order and make it available to every employee upon request.

QUESTIONS ABOUT ENFORCEMENT of the Industrial Welfare Commission orders and reports of violations should be directed to the Labor Commissioner's Office. A listing of offices is on the back of this wage order. For the address and telephone number of the office nearest you, information can be found on the internet at <http://www.dir.ca.gov/DLSE/dlse.html> or under a search for "California Labor Commissioner's Office" on the internet or any other directory. The Labor Commissioner has offices in the following cities: Bakersfield, El Centro, Fresno, Long Beach, Los Angeles, Oakland, Redding, Sacramento, Salinas, San Bernardino, San Diego, San Francisco, San Jose, Santa Ana, Santa Barbara, Santa Rosa, Stockton, Van Nuys.

SUMMARIES IN OTHER LANGUAGES

The Department of Industrial Relations will make summaries of wage and hour requirements in this Order available in Spanish, Chinese and certain other languages when it is feasible to do so. Mail your request for such summaries to the Department at:
P.O. Box 420603, San Francisco, CA 94142-0603.

RESUMEN EN OTROS IDIOMAS

El Departamento de Relaciones Industriales confeccionará un resumen sobre los requisitos de salario y horario de esta Disposición en español, chino y algunos otros idiomas cuando sea posible hacerlo. Envíe por correo su pedido por dichos resúmenes al Departamento a: P.O. Box 420603, San Francisco, CA 94142-0603.

其他文字的摘錄

工業關係處將摘錄本規則中有關工資和工時的規定，用西班牙文、中文印出。其他文字如有需要，也將同樣辦理。如果您有需要，可以來信索閱，請寄到：

Department of Industrial Relations
P.O. Box 420603
San Francisco, CA 94142-0603

For further information or to file your complaints, visit <https://www.dir.ca.gov/dlse/dlse.html> or contact the State of California at the following department offices:

California Labor Commissioner's Office, also known as, Division of Labor Standards Enforcement (DLSE)

BAKERSFIELD

Labor Commissioner's Office/DLSE
7718 Meany Ave.
Bakersfield, CA 93308
661-587-3060

REDDING

Labor Commissioner's Office/DLSE
250 Hemsted Drive, 2nd Floor, Suite A
Redding, CA 96002
530-225-2655

SAN JOSE

Labor Commissioner's Office/DLSE
100 Paseo De San Antonio, Room 120
San Jose, CA 95113
408-277-1266

EL CENTRO

Labor Commissioner's Office/DLSE
1550 W. Main St.
El Centro, CA 92243
760-353-0607

SACRAMENTO

Labor Commissioner's Office/DLSE
2031 Howe Ave, Suite 100
Sacramento, CA 95825
916-263-1811

SANTA ANA

Labor Commissioner's Office/DLSE
2 MacArthur Place Suite 800
Santa Ana, CA 92707
714-558-4910

FRESNO

Labor Commissioner's Office/DLSE
770 E. Shaw Ave., Suite 222
Fresno, CA 93710
559-244-5340

SALINAS

Labor Commissioner's Office/DLSE
950 E. Blanco Rd., Suite 204
Salinas, CA 93901
831-443-3041

SANTA BARBARA

Labor Commissioner's Office/DLSE
411 E. Canon Perdido, Room 3
Santa Barbara, CA 93101
805-568-1222

LONG BEACH

Labor Commissioner's Office/DLSE
300 Oceangate, 3rd Floor
Long Beach, CA 90802
562-590-5048

SAN BERNARDINO

Labor Commissioner's Office/DLSE
464 West 4th Street, Room 348
San Bernardino, CA 92401
909-383-4334

SANTA ROSA

Labor Commissioner's Office/DLSE
50 "D" Street, Suite 360
Santa Rosa, CA 95404
707-576-2362

LOS ANGELES

Labor Commissioner's Office/DLSE
320 W. Fourth St., Suite 450
Los Angeles, CA 90013
213-620-6330

SAN DIEGO

Labor Commissioner's Office/DLSE
7575 Metropolitan Dr., Room 210
San Diego, CA 92108
619-220-5451

STOCKTON

Labor Commissioner's Office/DLSE
31 E. Channel Street, Room 317
Stockton, CA 95202
209-948-7771

OAKLAND

Labor Commissioner's Office/DLSE
1515 Clay Street, Room 801
Oakland, CA 94612
510-622-3273

SAN FRANCISCO

Labor Commissioner's Office/DLSE
455 Golden Gate Ave. 10th Floor
San Francisco, CA 94102
415-703-5300

VAN NUYS

Labor Commissioner's Office/DLSE
6150 Van Nuys Boulevard, Room 206
Van Nuys, CA 91401
818-901-5315

OAKLAND-HEADQUARTERS

Labor Commissioner's Office/DLSE
1515 Clay Street, Room 1302
Oakland, CA 94612
510-285-2118
DLSE2@dir.ca.gov

EMPLOYERS: Do not send copies of your alternative workweek election ballots or election procedures.

Prevailing Wage Hotline (415) 703-4774

Only the results of the alternative workweek election shall be mailed to:

Department of Industrial Relations
Office of Policy, Research and Legislation
P.O. Box 420603
San Francisco, CA 94142-0603
(415) 703-4780

The 2002 Update Of
The DLSE
Enforcement Policies and Interpretations
Manual
(Revised)

The Division of Labor Standards Enforcement (DLSE) Enforcement Policies and Interpretations Manual summarizes the policies and interpretations which DLSE has followed and continues to follow in discharging its duty to administer and enforce the labor statutes and regulations of the State of California.

Lilia Garcia-Brower, State Labor Commissioner

AUGUST, 2019

DIVISION OF LABOR STANDARDS ENFORCEMENT
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- 45.4.5 Written Agreement Required For Credit Against Minimum Wage: Meals or lodging may not be credited against the minimum wage without a voluntary written agreement between the employer and the employee which explicitly references that such credits are being applied toward the minimum wage obligation of the employer. In addition, "Deductions shall not be made for meals not received nor lodging not used."
- 45.4.6 Employer May Not Force Purchase On The Employee. As the California courts have determined, deductions by employers which amount to coerced purchases from the employer are forbidden by the provisions of Labor Code § 450. (See *California State Restaurant Assn. v. Whitlow* (1976) 58 Cal.App.3d 340) Consequently, while the offer may be made by the employer, it may not be couched in terms of a requirement that the employee purchase the meal or the lodging.
- 45.4.6.1 Prior History. IWC Orders prior to 1976 had contained language which was silent on the question of the employer's right to credit meals toward the employer's minimum wage requirement. It had been the established practice in the restaurant industry up until 1976 to credit the minimum wage obligation if meals were "furnished or reasonably made available" to the employee. The Whitlow court noted that "In light of the prohibition against compelled purchases in section 450, the implied power of the commission to authorize in kind payments must be limited to situations in which such manner of payment is authorized by specific and prior voluntary employee consent. This limitation is consistent with the strong public policy favoring full payment of minimum wages, which the Legislature has effectuated by making payment of less than the minimum wage unlawful." (*Id.*, at 58 Cal.App.3d p. 348)
- 45.4.7 Labor Code § 1182.8. Labor Code § 1182.8 permits employers of apartment managers to charge up to two-thirds of the fair market rental value of an apartment if:
1. there is a voluntary written agreement, and
 2. no portion of the rental charge is used to meet the minimum wage obligation.
- 45.4.7.1 This means that the manager must be paid at least the minimum wage for all of the hours worked and none of the apartment value may be credited toward that minimum wage obligation. Note the "hours worked" definition for these types of employees is different under Order 5. (See *Brewer v. Patel* (1993) 20 Cal.App.4th 1017.)
- 45.4.7.2 Calculating Overtime. In situations involving either charging two-thirds of the fair market value or use of the credits allowed in Section 10 of the Orders, if it becomes necessary to establish what the regular rate of pay is for purposes of overtime computation, the difference between the amount paid for rent or the amount taken as credit and the actual fair market value of the apartment must be figured into the calculation. (See discussion at Section 49.1.2.2 of this Manual)

45.5 Uniform And Tool Requirements.

- 45.5.1 The IWC Orders, Section 7, Section 9(A), provides, inter alia:

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. The term "uniform" includes wearing apparel and accessories of distinctive design or color.

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exercising some limited control over his employee at all times. For instance, by statute the employee must give preference to the business of his employer if it is similar to the personal business he transacts. (Labor Code § 2863). However, immediate control by the employer which is for the direct benefit of the employer must be compensated. (O.L. 1993.03.31, 1992.01.28, 1994.02.16, 1998.12.28, 2001.03.22.)

46.4 **Basic Definition of Uninterrupted Sleep Time.** Sleep time is defined as a period of rest during which the employee is permitted to sleep without any interruptions. Generally, sleep time may not be deducted from hours worked. (*See Mendiola v. CPS Sec. Solutions, Inc.* (2015) 60 Cal.4th 833, where the Supreme Court held that CPS Security Solutions, Inc. could not exclude “sleep time” from 24-shifts of on-call security guards under Wage Order 4 and that this is the general rule.)

46.5 **Exceptions to Basic Definition of Uninterrupted Sleep Time.** Federal sleep time exclusions do not apply unless the exclusion is incorporated in the Wage Orders. Certain employees under Wage Order Nos. 4 and 5 and ambulance drivers and attendants under Wage Order No. 9, however, can have a period of sleep time deducted from their work shifts. Employees in the “Health Care Industry” under Orders 4 and 5 who are subject to federal regulations and are required to live on the employer’s premises (residential care facilities, for instance) or working 24 hour shifts, must be paid for all hours they are required to remain on the employer’s premises, subject to the sleep time exclusions, only if they meet the definition of employees in the health care industry and only if the criteria set forth for such an exclusion in the federal regulations is met. The federal proviso at 29 CFR sec. 785.22 provides, *inter alia*:

(a) Where an employee is required to be on duty for 24 hours or more, the employer and the employee may agree to exclude bona fide meal periods and a bona fide regularly scheduled sleeping period of not more than 8 hours from hours worked, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted night’s sleep. If sleeping period is of more than 8 hours, only 8 hours will be credited. Where no expressed or implied agreement to the contrary is present, the 8 hours of sleeping time and lunch periods constitute hours worked.

(b) Interruptions of sleep. If the sleeping period is interrupted by a call to duty, the interruption must be counted as hours worked. If the period is interrupted to such an extent that the employee cannot get a reasonable night’s sleep, the entire period must be counted. For enforcement purposes, the Divisions have adopted the rule that if the employee cannot get at least 5 hours’ sleep during the scheduled period the entire time is working time.”

- “1. An employee is entitled to compensation whenever he or she is on duty;
2. An employee is deemed to be ‘on duty’ when he or she is required to be on the employer’s premises; *however*
3. If an employee is deemed to reside on the premises at a group care home because
 - a. the employee is on duty at the group home and is compensated for at least eight hours in each of five consecutive 24-hour periods; and

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- b. the employee sleeps on the premises for all sleep periods between the beginning and end of this 120-hour period;
- 4. Then and only then, an employer may deduct sleep time from the compensable hours if and only if
 - a. Employee is provided private quarters in a homelike environment; and
 - b. Reasonable agreement reached in advance to deduct sleep time; and
 - c. ([Which is] Normally) [an] agreement [] in writing."

This test is also fact intensive and requires detailed analysis of the nature of the living quarters and sleep time exclusion agreement.

46.5.1 **Wage Order 5 sleep-time exclusion:** Wage Order No. 5 provides that, for “[employees with direct responsibility for children who...are receiving 24 hour residential care,” “[t]ime spent sleeping shall not be included as hours worked.” (Wage Order 5, subd. 3(A)(2), (2)(d).), and states that for employees who are required to reside on the employment premises, hours worked includes “that time spent carrying out assigned duties,” which would exclude time spent sleeping. (*Mendiola* at 364, citing Wage Order 5, subd. 2(K).) *Mendiola* noted that the language in Wage Order No. 5 is akin to the language in 29 C.F.R. sec. 785.22, which addresses sleep time exclusions for employees who reside on the employment premises.

46.5.2 Because federal sleep time regulations are not incorporated into Wage Order 15, which is the applicable state law that covers work performed in the home, all on-call hours spend at assigned worksites under the employer’s control are compensable under California law. Under state law, provisions in the federal Department of Labor Regulations relating to sleep time only apply to certain employees in the health care industry working under Wage Order Nos. 4 and 5 and certain ambulance drivers and attendants under Wage Order No. 9. “[F]ederal law does not control unless it is more beneficial to employees than the state law. (29 U.S.C. § 218.)” *Aguilar v. Association for Retarded Citizens* (1991) 234 Cal.App.3d 21, 34 (holding 17 hour shifts with release time do not equate with 24 hour shifts and are not subject to federal sleep time provisions for group home relief workers.).

46.6.1 **Changing Uniforms or Washing Up at Work.** Time spent changing clothes or washing up on the employer’s premises is compensable if it is compelled by the necessities of the employer’s business. (O .L. 1994.02.03-3; 1998.12.23) It should be noted, however, that for enforcement purposes, the Division utilizes a de minimis test concerning certain activities of employees (See *Lindow v. United States* 738 F.2d 1057 (9th Cir.1984)) Under this test the Division will consider (1) the practical administrative difficulty of recording the additional time; (2) the aggregate amount of compensable time, and (3) the regularity of the additional activity. (O.L. 1988.05.16)

46.6.2 The only federal definition of the term “hours worked” is contained in the FLSA at 29 U.S.C. § 203(o) which simply excludes “any time spent in changing clothes or washing at the beginning or end of each work day.” Federal case law, however, has limited this exception and has held that any actions which are an integral and indispensable part of the employee’s principal activity task are compensable. (*Steiner v. Mitchell*, 350 U.S. 247 (1956) holding that time spent showering and changing at the beginning and end of each day in a battery plant is compensable.)


<input checked="" type="checkbox"/> SUPERIOR COURT OF THE STATE OF CALIFORNIA MUNICIPAL COURT OF THE STATE OF CALIFORNIA JUSTICE COURT OF THE STATE OF CALIFORNIA COUNTY OF <u>Ventura</u> <u>Main Courthouse</u> JUDICIAL DISTRICT	FOR COURT USE ONLY VENTURA SUPERIOR COURT FILED AUG 22 2022 BRENDA L. McCORMICK Executive Officer and Clerk By: _____, Deputy MARIANA SUAZO
PLANTIFF <u>Viki Huff</u>	
DEFENDANT <u>Andrew Santer and Sondra Santer</u>	
NOTICE OF APPEAL	
NOTICE OF APPEAL of the Order, Decision or award of the Labor Commissioner in State Case Number <u>WC-CM-821320</u> Dated <u>08/19/2022</u> and served upon the undersigned appellant, <u>Andrew Santer and Sondra Santer</u> on <u>08/19/2022</u> , is given and filed pursuant to Labor Code Section 98.2. Appellant attached as Exhibit "A" a copy of the Order, Decision or Award appealed and requests that the Clerk of the Court set the cause for hearing before the above-entitled court, where it shall be heard <i>de novo</i> in accordance with Labor Code Section 98.2, and that the Clerk of the Court give Notice of time, date and place of the new trial to each of the following parties and the Labor Commissioner's office at the places listed below. Appellant certifies that a copy of this Notice of Appeal has been served upon the Labor Commissioner and a copy has been mailed to the Respondent, as shown below.	
APPELLANT (OR ATTORNEY) (NAME, ADDRESS, TELEPHONE NUMBER) <u>Christopher A. Fortunati, Esq.;</u> <u>1849 Knoll Drive, Ventura, California 93003; (805) 658-1000</u>	
OFFICE OF THE LABOR COMMISSIONER (ADDRESS AND TELEPHONE NUMBER) STATE LABOR COMMISSIONER <u>Labor Commissioner, State of California;</u> <u>411 E. Canon Perdido, Room 3, Santa Barbara, CA 93101; (805) 568-1222</u>	
RESPONDENT (OR ATTORNEY) (NAME, ADDRESS, TELEPHONE NUMBER) <u>Law Office of Louis H. Kreuzer II</u> <u>950 County Square Drive, Ste. 105, Ventura, California 93003</u>	
Dated <u>08/19/2022</u> <div style="text-align: right; margin-top: 10px;">  Signature of Appellant </div>	

Exhibit A

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BEFORE THE LABOR COMMISSIONER
OF THE STATE OF CALIFORNIA

VICKI HUFF, AN INDIVIDUAL,)	CM-821320
)	
Plaintiff,)	
vs.)	ORDER, DECISION, OR AWARD OF THE LABOR COMMISSIONER
)	
ANDREW SANTER, an individual)	
SONDRA SANTER, an individual)	
)	
Defendants.)	

BACKGROUND

VICKI HUFF, (hereinafter "Plaintiff"), filed an initial claim with the Labor Commissioner's office on February 3, 2021. Plaintiff's complaint alleges she is due:

1. \$33,957.00 in regular wages earned from April 9, 2019 through August 1, 2020.
2. \$129,151.00 in overtime wages earned from April 9, 2019 through August 1, 2020.
3. \$5,159.00 in meal period premiums accrued April 9, 2019 through August 1, 2020.
4. \$5,159.00 in rest period premiums accrued April 9, 2019 through August 1, 2020
5. Liquidated damages pursuant to Labor Code section 1194.2.
6. Waiting time penalties pursuant to Labor Code section 203.
7. Interest pursuant to Labor Code sections 98.1 and 1194.2.

A hearing was conducted via zoom in Santa Barbara, California, on March 14, 2022 and May 5, 2022 before Hearing Officer, Erika Miller designated by the Labor Commissioner

1 to hear this matter. Plaintiff was represented by Louis H. Kreuzer II, attorney at law.
2 ANDREW SANTER (Andrew), an individual and SONDRASANTER (Sondra), an
3 individual (hereinafter collectively referred to as "Defendants") were represented by
4 Christopher Fortunati, attorney at law. Due consideration having been given to the
5 testimony, documentary evidence, and arguments presented, the Labor Commissioner
6 hereby adopts the following Order, Decision or Award.
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9 FINDINGS OF FACT

10 Defendants employed Plaintiff in the county of Ventura, California under a verbal
11 agreement to perform duties as a domestic worker beginning April 9, 2019. Plaintiff
12 claimed that she typically worked twenty-four hours per day, six to seven days a week and
13 received nothing in wages. Defendants terminated Plaintiff's employment on August 1,
14 2020.
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17 Plaintiff testified that she answered an advertisement for a vacant room¹ on
18 Craigslist. Defendants initially proposed reduced monthly rent of \$450.00 in exchange for
19 light housekeeping and companionship for Andrew Santer's mother, Sondra. Plaintiff
20 declined to pay any rent and perform work for Defendants. Subsequently, Andrew hired
21 Plaintiff to perform light housekeeping, meal preparation and provide Sondra with
22 transportation to various appointments in exchange for a bedroom at no charge. Prior to
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26 ¹ 10 x 10 room.
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1 moving into the home² Plaintiff and Andrew discussed the potential of renegotiating the
2 arrangement in the event Plaintiff felt the work was more than anticipated. Plaintiff moved
3 into Sondra's home on March 15, 2019, while Sondra was hospitalized for three weeks.
4 Defendants' provided Plaintiff with a roommate agreement, but Plaintiff did not return
5 the signed document to Defendants. Plaintiff began performing her duties on April 9, 2019.
6 Plaintiff started her workday at 9:00 AM and worked through the evening. Plaintiff stated
7 that she prepared and served breakfast, cleaned the kitchen, dusted, vacuum, made beds
8 and did laundry. In the afternoon, she made lunch, cleaned up, and provided
9 companionship until Sondra moved to her room. Plaintiff was free to perform leisure
10 activities; play games on an iPad and watch television, until she prepared dinner at
11 between 5:00 PM and 6:00 PM and sat down for dinner between 6:30 PM and 7:00 PM and
12 cleaned the kitchen again. Plaintiff stated she also cooked for Andrew and his family on
13 holidays and a couple times a month. Plaintiff testified that she typically had all meals with
14 Sondra, but Plaintiff paid for her own groceries separately. Plaintiff testified she was
15 permitted a thirty minute break to herself, but she did not go out or leave the house.
16 Plaintiff testified she was free to go to her room, but needed to listen for Sondra in the
17 event she needed anything³ or required assistance in case she fell. Plaintiff stated that there
18 were days that she took Plaintiff on shopping trips, medical, appointments, or wherever
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26 ² February 2019.

27 ³ Cleaning up a flooded bathroom, requests for snacks at night, or a change of undergarments that occurred multiple times a week.

1 Sondra wanted to go in the evening. Plaintiff testified that there were periods of time that
2 she could leave the premises, but was not permitted to leave the home for more than two
3 hours at a time. Plaintiff testified that there were only three to five instances that she was
4 relieved for a period of twelve consecutive hours and on once instance took a day off to
5 visit her daughter on New Year's Eve.
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8 Plaintiff testified that four hours per day, three⁴ days a week she performed
9 volunteer work from 2:00 PM to 6:00 PM. A caregiver, Rosa covered Plaintiff's duties from
10 2:00 PM to 6:00 PM, while Plaintiff performed other charity work. Rosa stopped her
11 services in December 2019. A new caregiver, Margaret began working in January 2020 and
12 also provided coverage while Plaintiff performed charity work. Margaret stopped her
13 services in March 2020. After March 2020, there were no longer any visitors at the home.
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16 Plaintiff further stated that she took off between two and three hours on most
17 Sundays until March 2020 and also ceased all volunteer work as a result of the Covid-19
18 pandemic. Plaintiff testified that she was required to remain at the house during the
19 evening, and was able to sleep between seven and eight hours each night. Plaintiff testified
20 there were nights she only slept five hours, if Sondra had a fall. Throughout the duration
21 of claim period, Plaintiff called emergency services on twelve occasions. Plaintiff testified
22 that in May or June 2019, she communicated to Andrew that she wanted discuss their
23 employment arrangement. Plaintiff testified that she and Andrew discussed the
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⁴ Thursday, Friday, Saturday.

1 purchasing of groceries, and Andrew complained that she had been away from the home
2 for more than two hours. Plaintiff does not dispute that in one instance she left the home
3 for three hours without coverage. Plaintiff testified that Andrew avoided any discussion
4 related to her requests for renegotiating their agreement. Plaintiff testified that she had a
5 medical condition, but it did not interfere with her duties.
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8 Under cross-examination, Plaintiff testified that she was diagnosed with a medical
9 condition that required her to get a hip replacement. Plaintiff testified that at the time she
10 found Defendants' advertisement she was looking for a place to rent and a job. Plaintiff
11 had a part time job before moving in with Sondra, but is not a certified caregiver. Plaintiff
12 moved into Sondra's residence in Leisure Village, a retirement community. Plaintiff
13 testified that she never agreed to pay rent or pay for utilities. Plaintiff testified that she
14 signed a roommate agreement on March 15, 2019, but did not provide a copy to
15 Defendants. Plaintiff signed an agreement that states she is not an employee. Plaintiff
16 testified that she made three meals a day, seven days a week. Plaintiff stated that from 9:00
17 AM to 11:00 AM she made breakfast and cleaned the kitchen. Plaintiff prepared lunch,
18 consisting of soup, sandwich, or salads and later cleaned up from 1:30 PM to 2:30 PM.
19 Plaintiff later stated that she prepared and ate dinner from 5:30 PM to 6:30 PM then took
20 another hour to clean up from 6:30 PM to 7:30 PM. Plaintiff testified that on days she left
21 to volunteer, she prepared Sondra's meals before she left the home. Plaintiff testified that
22 she did not assist Sondra with bathing, changing undergarments, using the bathroom.
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1 Plaintiff not able to physically lift Sondra. Plaintiff testified that she had a car when she
2 moved in to home, but it occasionally broke down. Plaintiff typically used Sondra's car to
3 perform Defendants' errands and to get groceries for herself and Sondra. Plaintiff also
4 collected her prescriptions from Costco every three months. Plaintiff testified that she
5 performed part-time work filling boxes with candy that she distributed to various
6 establishments that were available for customers to purchase candy. Plaintiff purchased
7 candy at Sam's Club once a month to fill her containers. Occasionally, she may have
8 purchased candy at other retailers. Plaintiff spent between one and two hours, once a week
9 to fill her boxes. Plaintiff performed this work in her room, with the door open, as to listen
10 for Sondra. On Thursday, Friday and Saturday Plaintiff drove to eight different locations
11 to drop off her boxes of candy from 2:00 PM to 6:00 PM. Plaintiff used her personal vehicle
12 to drive from Thousand Oaks, Oxnard, Camarillo and Ventura. Before leaving her home
13 she filled twenty-four 10" x 4" boxes with candy purchased Sam's club. Plaintiff testified
14 that she did not keep all receipts from her shopping trips. Plaintiff submitted what she had
15 as outlined in her Exhibits. Plaintiff supplemental Exhibit 4- represents receipts related to
16 going out to 266 days. Exhibit 5 represents 37 trips to the market to purchase groceries for
17 herself and Sondra. Plaintiff stated that her trips to Sam's club were for only groceries but
18 also purchased candy too. Plaintiff testified that she moved out of her resident on or
19 about July 31, 2020. Plaintiff testified she traveled to Vons, Ralphs, Sam's club in in Oxnard
20 off Rose Avenue. Plaintiff also traveled to Costco in Oxnard to pick up prescriptions and
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1 groceries. Plaintiff testified she travelled to a Vons on the opposite end of Camarillo
2 because they had more variety for groceries and not related to her volunteer/candy work.
3 Plaintiff testified that within a month or two of moving in she made verbal requests to
4 meet with Andrew to renegotiate their agreement, but he avoided her. Plaintiff testified
5 that despite her dissatisfaction with the arrangement she continued to work and live on
6 the premises, as she had nowhere else to go and feared eviction. Plaintiff testified that she
7 had to assist Sondra throughout the night. Plaintiff had to call for security or paramedics
8 to help Sondra when she fell and kept her company until assistance arrived. Plaintiff stated
9 that time spent filling her candy boxes was not deducted from her complaint. Plaintiff
10 stated she was not denied rest periods and was free to leave the home, but did not.
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14 Defendants dispute the Plaintiff's claim in its entirety. Defendants argued that
15 Plaintiff was not an employee, but a tenant that provided companionship in exchange for
16 a free room. Sylvia Coronado (Coronado) identified herself as Sondra's housekeeper since
17 2012. Coronado stated that from April 2019 to August 1, 2020 she worked Fridays from
18 10:00 AM to 3:00 PM and as needed. Coronado performed various duties; laundry,
19 cleaning kitchen floors and counters, stripping beds, cleaning bathrooms, vacuuming and
20 dusting. Coronado further stated that she drove Plaintiff to doctor appointments three to
21 five times a month and grocery shopping up to twice a week as well as various errands as
22 needed. Coronado had minimal interaction with Plaintiff, but was aware that she
23 prepares meals for Sondra. Coronado could not estimate how much time Plaintiff spent
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1 preparing meals and did not observe Plaintiff clean the home. Coronado was aware that
2 Plaintiff operated a candy business.

3 Under cross-examination, Coronado testified that she continued to work for
4 Plaintiff every Friday without a break in service. Coronado testified that Plaintiff typically
5 left the home on Fridays before 12:30 PM to deliver her candy boxes to various locations.
6

7 Rhonda Davis (Davis), Sondra's daughter testified that she also lives in Leisure
8 Village, in a separate unit from her mother, but visits her three to four times per week.
9 During claim period, Davis visited Sondra during the week. Plaintiff did not complain
10 about her living arrangements and never mentioned being paid a wage. Davis was aware
11 that Plaintiff entered into an agreement with her brother, Andrew. Plaintiff agreed to
12 prepare meals, perform light housekeeping and call security in the event of an emergency
13 in exchange, Plaintiff resided in the home rent free. Davis observed Plaintiff make a meal
14 of toast and juice on weekends. Davis did not observe Plaintiff prepare dinner from start
15 to finish, observed that dinner had been prepared. Davis testified that Plaintiff advised
16 that she performed with the Susan G. Komen Foundation, and worked outside the home
17 three days a week, four hours per day. Davis observed that Plaintiff had a trouble with her
18 hip and had difficulty ambulating. Plaintiff getting out of car. On one occasion, she took
19 Plaintiff to dentist, as Plaintiff couldn't drive due to pain.
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1 Under cross-examination, Davis testified that there were one or two emergencies
2 that occurred at the home, but occurred infrequently. It was not brought to her attention
3 that Plaintiff was up at night with Sondra. Davis testified that she was not present at the
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5 time parties entered into their agreement to exchange services for a free rent. Davis
6 testified that she cannot recall if her Sondra or Andrew advised that Plaintiff left from 2:00
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8 PM to 6:00 PM, three days a week. Davis further stated that she is not aware of any
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10 payments made to Plaintiff as there was not an employee/employer relationship. Davis
11 argued that Plaintiff was not required to notify anyone if she was late returning to the
12 residence. Davis has no knowledge of Plaintiff being reprimanded. Plaintiff does not recall
13 if she had discussions with Plaintiff related to her performance. Davis does not know the
14 reason for Plaintiff moving out of the residence. Davis was aware that Plaintiff needed
15 surgery, but had no concern that Plaintiff's health would impair the care provided to
16
17 Sondra.

18 Sondra testified that Plaintiff moved into her home to help with shopping, cooking
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20 and light housekeeping. Plaintiff did not pay rent or utilities and had access to the entire
21 home. Plaintiff prepared breakfast, lunch, and dinner. Sondra estimates that Plaintiff
22 spent up to twenty minutes to prepare breakfast and minimal time cleaning up. Plaintiff
23 spent between thirty and forty-five minutes to prepare and serve lunch. After they ate
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25 together, Plaintiff spent another twenty minutes cleaning up. Three days a week, Plaintiff
26 spent twenty minutes to pre-make a lunch and leave it at Plaintiff's bedside, while Plaintiff
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1 left the house. After each meal period Plaintiff cleaned up and spent more time to get the
2 dishes done. Sondra estimates that Plaintiff spent one and one-half hours to cook and clean
3 up after dinner. Plaintiff also sat down to eat with her. Sondra testified that she never
4 observed Plaintiff complete house work. Sondra testified that Plaintiff completed grocery
5 shopping and they shared expenses. Plaintiff went once a week to do shopping for the
6 household. Plaintiff was primarily present in the event of an emergency and only occurred
7 twice. Santer testified that she observed Plaintiff take rest periods during the day,
8 observed her sitting in her room, feet up, could go anywhere at any time and observed
9 her doing work related to charity in the garage.

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13 Under cross-examination, Sondra testified that she was just released from a skilled
14 nursing facility when her son, Andrew posted an advertisement on Craigslist. Sondra
15 testified that Plaintiff was not a friend and did not provide companionship. Plaintiff
16 provided a service in exchange for living at the home at no cost. Effective March 2020, her
17 visitors were limited to her Andrew and Davis, but Coronado continued to report to work.
18 Plaintiff was typically home alone three day as week, while Plaintiff performed her charity
19 work. On Sundays, Plaintiff attend religious services and went to lunch with friends.
20 Sondra testified that Plaintiff was expected to remain on premises during dinnertime,
21 bedtime and during the day. However, at night Plaintiff had no restrictions and could do
22 as she pleased so long as meals were prepared. Sondra testified that typically, Andrew
23 drove her to medical appointments and if he was not available the Plaintiff or Coronado
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1 took her to appointments. Sondra estimates that Plaintiff drove her to appointments on
2 one or two occasions. Sondra has no knowledge of Plaintiff being reprimanded.

3 Andrew testified that Plaintiff replied to a Craigslist advertisement and he met
4 Plaintiff in person on or about February 2019. Plaintiff did not indicate that she was
5 seeking employment or compensation. Plaintiff initially requested to move into Santer's
6 home and wanted to pay a reduced monthly rent. Plaintiff later proposed that she not
7 pay any rent or utilities in exchange for helping Sondra. Andrew testified that he drafted
8 a roommate agreement and Plaintiff did not object to sharing the house or express any
9 concerns related to an employment status. After Plaintiff moved into the home, she
10 advised that individuals are typically paid for services that she provided. Andrew referred
11 Plaintiff back to the written agreement he prepared. Andrew argued that Plaintiff was
12 compensated through free rent and utilities. After Plaintiff's request for compensation, she
13 remained on the premises. Andrew estimates that \$1,000.00 per month was a fair rental
14 value for the room Plaintiff occupied. Andrew argued that Plaintiff was not required to
15 remain on the premises, as he, Davis and Coronado were available to assist Sondra.
16 Andrew observed Plaintiff prepare meals and run errands for Sondra, using Sondra's
17 vehicle and estimated that Plaintiff spent a couple of hours once a week to buy groceries.
18 Andrew was aware that Plaintiff was employed in a part-time job and had previously
19 discussed, which hours she would be away from the home. Andrew understood that three
20 days a week, Plaintiff was away from the home from 2:00 PM to 6:00 PM or from 1:00 PM
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1 to 6:00 PM. on Wednesdays, Thursdays and Fridays. Andrew stated that there was an
2 instance that he texted Plaintiff about her schedule. Sondra advised him that Plaintiff was
3 away from the home for a period of time and he was concerned that Plaintiff was away
4 from Sondra for more than two hours on a day she was not scheduled to perform her part-
5 time job. Andrew stated Plaintiff did not indicate that she was owed wages, upon
6 termination of the rental agreement. Andrew argued that Plaintiff did not perform any
7 work, as she was only there to help and assist and further stated that there were no
8 restrictions placed on Plaintiff with respect to personal actives. However, Plaintiff was not
9 permitted to have guests in the home. Plaintiff could leave the premises at any time, so
10 long as meals were prepared and he was notified that Plaintiff planned to be away for an
11 extended period of time.
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15 Under cross-examination, Andrew stated that he does not recall, if Plaintiff signed
16 a copy of his rental agreement. Andrew testified he wanted to know when Plaintiff would
17 be away from the home, so that he could be present to assist Sondra. Plaintiff was not
18 required to be in the home, but was expected to notify him if she was gone for more than
19 two hours, as per their mutual understanding.
20

21
22 Plaintiff submitted the following Exhibits:

23
24 Plaintiff Exhibit 1- March 15, 2019 Roommate Agreement,

25 Plaintiff Exhibit 2- August 27, 2019, text communication from Andrew Santer.

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27 Plaintiff Exhibit 3- July 2, 2020 Notice of Termination to vacate premises by August 1, 2020,

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Defendants submitted the following Exhibits:

Defendants Exhibit A- Advertisement on Craigslist,

Defendants Exhibit B- Plaintiff's response to Advertisement.

Defendants Exhibit C- Description and images of 14103 Village, Camarillo.

LEGAL ANALYSIS

At all times while employed by the Defendants, the Plaintiff was an employee whose wages, hours and working conditions were governed by The Industrial Welfare Commission Order Number 15-2001, (Order) regulating wages, hours and working conditions in the Household Occupations and by provisions of the California Labor Code. In these proceedings, the Plaintiff has the burden of proving every element of his/her case by a preponderance of the evidence (Evidence Code §500).

Section 2 of the order in part defines,

(F) "Employee" means any person employed by an employer.

(G) "Employer" means any person as defined in section 18 of the Labor Code, who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours or working conditions of any person.

Under California, law an employer must compensate its employees for all hours worked. "Hours worked" is defined as "the time during which an employee is subject to the control of an employer and includes all the time employee is suffered or permitted to

1 work, whether or not required to do so.” (Wage Order 15, Section 2 (H). If an employee is
2 subject to the employer’s control, the employee does not have to be working during that
3 period in order to be compensated (emphasis added) (*Mendiola v. CPS Sec. Solutions, Inc.*
4 (2015) 60 Cal.4th 833).

6 I. Employee v. Employer Relationship

7 Here, Plaintiff was subject to several restrictions imposed by Defendants and the
8 nature of Plaintiff’s duties required her to remain on premises for extended periods of time.
9 Plaintiff was required to be a non-smoker, push a wheel chair, have a valid driver’s license,
10 was subject to a background check and not permitted to have overnight guests as indicated
11 in the Craigs List announcement. The “Roommate Agreement” provided to Plaintiff,
12 indicates that Plaintiff is to provide meals, transportation wheel chair/walker escort,
13 laundry and assistance. Defendants also placed restrictions on Plaintiff’s time. Plaintiff
14 was expected to notify Defendants if she was away from the home for more than two hours
15 on days she did not perform volunteer work. Based on Plaintiff’s credible testimony and
16 documentary evidence, Plaintiff was subject to the control of the Defendants, therefore
17 Plaintiff is an employee.

22 II. Regular and Overtime Wages

23 Subsection 7 of the Order requires an employer to keep accurate time records for
24 each employee showing actual in-out time, meal periods, total daily hours worked and total
25 hours worked in each pay period. When an employer fails to keep and/or submit the proper
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1 records, the employee's own records, reconstruction or testimony from his/her present
2 memory may be sufficient to establish the hours worked (emphasis added) (*Hernandez v.*
3 *Mendoza* (1988) 199 Cal.App. 3d Supp.1).
4

5 Subsection 3 (A) of the order provides in part: that a LIVE-IN employee shall have
6 at least 12 consecutive hours free of duty during each workday of 24 hours, and the total
7 span of hours for a day of work shall be no more than twelve hours, except under the
8 following conditions:
9

10 (1) The employee shall have at least three hours free of duty during the twelve hour
11 span of work. Such off-duty hours need not be consecutive, and the schedule for same shall
12 be set by mutual agreement of employer and employee, provided that
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14 (2) An employee who is required or permitted to work during scheduled off-duty
15 hours or during the 12 consecutive off-duty hours shall be compensated at the rate of one
16 and one-half times the employee's regular rate of pay for all such hours worked.
17

18 Subsection 3(B) provides that No LIVE-IN employee shall be required to work more
19 than five days in any one workweek without a day off of not less than 24 consecutive hours
20 except in an emergency as defined in subsection 2(D), provided that the employee is
21 compensated for time worked in excess of five workdays in any workweek at one and one-
22 half times the employee's regular rate of pay for hours worked up to and including nine
23 hours. Time worked in excess of nine hours on the sixth (6th) and seventh (7th) workdays
24 shall be compensated at double the employee's regular rate of pay
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2 Defendants argued that Plaintiff's hours were paid in full because she performed
3 work in exchange for lodging. Section 10(C) of Order 15 provides meals or lodging may not
4 be credited against the minimum wage without a voluntary written agreement between the
5 employer and the employee. When credit for meals or lodging is used to meet part of the
6 employer's minimum wage obligation, it may not be more than \$51.73 per week effective
7 January 1, 2019 and not more than \$56.43 per week effective January 1, 2020.
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10 Section 45.4.5 of the Division of Labor Standards Enforcement Manual states in part,
11 "Lodging may not be credited against the minimum wage without a voluntary written
12 agreement between the employer and the employee which explicitly references that such
13 credits are being applied toward the minimum wage obligation of the employer". In this
14 instance, Defendants did not explicitly state in writing that credit will be applied toward
15 the minimum wage. Therefore, a lodging credit will not be given to the Defendants.
16
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18 In order for sleep time to be deducted from hours worked, an employer must meet
19 specific criteria. A) The worker must be provided private quarters in a homelike
20 environment. B) The worker usually gets at least five consecutive hours of uninterrupted
21 sleep at least half the time. C) There is a written agreement entered into in advance that
22 takes into consideration the important factors at the worksite and contains the following:
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24 1) A provision for all hours worked. 2) A realistic estimate of on-duty and off-duty time.
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26 3) May provide for the deduction of sleep up to eight hours of sleep. 4) Provision for
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1 interruptions of sleep, including a realistic estimate of frequency and length of
2 interruptions. 5) The employer must pay for any nightly interruptions and no deduction
3 for sleep time in those instances where the employee does not get at least five hours of net
4 sleep. Employer may also deduct time during the 24 hours shift where the employee is free
5 from duty and may leave. 6) If the employee is a permanent or extended term resident,
6 then there must be a provision for personal time outside where the employee is free to
7 engage in any personal activity they wish, including leaving the premises. If each of the
8 above is met, sleep time may be deducted per the agreement.
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11 In this instance, Defendants provided Plaintiff with private quarters in a homelike
12 environment. However, Defendants failed to provide a written agreement with the
13 previously mentioned stipulations. In fact, the nature of Plaintiff's duties required her to
14 remain on the premises overnight. Therefore, a sleep deduction will not be taken from
15 hours worked by Plaintiff. Based on the Plaintiff's credible testimony and documentary
16 evidence, Plaintiff established that she performed work from April 9, 2019 to July 31, 2020
17 and received nothing in wages. The agreement between the parties amounts to non-
18 monetary payment for work performed. Plaintiff was subject to the control of Defendants,
19 and was suffered or permitted to work without payment of the California minimum wage.
20 Therefore, Plaintiff takes \$47,520.00⁵ in regular wages and \$122,105.00⁶ in overtime wages.
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26 ⁵ (2019- 2,304 regular hours at \$11.00 per hour = \$25,344.00) + (2020-1,848 regular hours at \$12.00 per hour = \$22,176.00) = \$47,520.00.
27 Calculations reflect Plaintiff did not work four hours per day, three days a week; Plaintiff did not perform work three hours per day on
Sundays, and Plaintiff did not work a full day on December 31, 2019.

⁶ ((2019-2,687 overtime hours at \$16.50 per hour = \$44,335.50) + (814 double time hours at \$22.00 per hour = \$17,908.00) = \$62,243.00 +
(2020-2,311 overtime hours at \$18.00 per hour = \$41,598.00) + (761 double time hours x \$24.00 per hour = \$18,264.00) = \$59,862.00)

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III. Meal Periods and Rest Period Premiums

Labor Code section 226.7 provides; "(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission. (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, 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 period is not provided."

Pursuant to section 12 of the order, 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.

In this instance, Plaintiff's testimony is clear that she was permitted a thirty minute meal period to herself, but she chose not go out or leave the house. Plaintiff also stated, she was not denied rest periods and was free to leave the home, but chose to remain at the home. Therefore, Plaintiff takes nothing for this portion of her claim.

IV. Liquidated Damages

Labor Code section 1194.2 provides in relevant part that "...an employee shall be entitled to recover liquidated damages in an amount to equal the wages unlawfully unpaid and interest thereon..." Liquidated damages compensate employees for losses sustained as a result of not receiving at least minimum wage for all hours worked.

\$122,105.00 Calculations reflect that Plaintiff ceased all volunteer work and did not leave the home on Sundays. Also took into account 5 days that Plaintiff was off duty for 12 hours.

1 In this instance, Plaintiff was no paid at least the minimum wage for all hours
2 worked from April 9, 2019 to July 31, 2020. Therefore, the Plaintiff \$122,895.00 in liquidated
3 damages.

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5 **V. Waiting Time Penalties**

6 Numerous California courts have recognized that wages are not ordinary debts and
7 that prompt payment of wages upon termination is a fundamental public policy (*Gould v.*
8 *Maryland Sound Industries* (1995) 31 Cal.App. 1147).

10 Labor Code section 202 provides in relevant part "If an employee quits his or her
11 employment, his or her wages shall become due and payable not later than 72 hours
12 thereafter, unless the employee has given 72 hours previous notice of his or her intention
13 to quit, in which case the employee is entitled to his or her wage at the time or quitting."

15 Labor Code section 203 provides that, if an employer willfully fails to pay any wages
16 to an employee who quits or is discharged, the wages of the employee shall continue as a
17 penalty from the due date thereof at the same rate until paid, up to a maximum of thirty
18 (30) days.

21 As used in section 203, "willful" merely means that the employer failed to perform
22 an act which the law requires (*Davis v. Morris* (1940) 37 Cal.App.2d 269). An employer may
23 act "willfully," within the meaning of section 203, even when the employer's failure to pay
24 stems from a sincerely held belief that payment was not required.
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1 In this instance, it is undisputed that Defendants terminated Plaintiff's employment
2 on August 1, 2020 and Plaintiff remains unpaid. Therefore, the Plaintiff is entitled to
3 receive \$10,825.50 in waiting time penalties, pursuant to Labor Code section 203, consisting
4 of \$360.85 per day, calculated at the maximum of thirty days.⁷

6 Labor Code section 98.1(c) provides that all awards granted pursuant to this hearing
7 shall accrue interest on all due and unpaid wages from the date that said amounts became
8 due until the amounts are paid. Therefore, the Plaintiff is entitled to \$58,824.57 in interest
9 accrued to date on the amount due.

11 CONCLUSIONS

13 For all of the reasons set forth above, IT IS HEREBY ORDERED those Defendants
14 shall pay Plaintiff a **total amount of \$362,170.07** as indicated below:

16 Of the total amount of \$362,170.07 awarded to Plaintiff, IT IS HEREBY ORDERED
17 that Defendant, ANDREW SANTER, an individual owes Plaintiff the full amount of
18 \$362,170.07 as follows:

- 19 1. Plaintiff is entitled to receive \$47,520.00 in regular wages.
- 20 2. Plaintiff is entitled to \$122,105.00 in unpaid overtime wages.
- 21 3. Plaintiff is entitled to \$122,895.00 in liquidated damages.
- 22 4. Interest in the amount of \$58,824.57 pursuant to Labor Code sections 98.1(c)
23 and 1194.2.

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27 ⁷ Based on earnings from January 5, 2020 - February 29, 2020. Plaintiff earned \$2,526.00 divided by seven days
week = \$360.85 per day.

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5. Plaintiff is entitled to receive \$10,825.50 in waiting time penalties.

Of the total amount of \$362,170.07 awarded to Plaintiff, IT IS HEREBY FURTHER ORDERED, that Defendant, SONDRA SANTER, an individual owes Plaintiff a total of \$362,170.07 as follows:

1. Plaintiff is entitled to receive \$47,520.00 in regular wages.
2. Plaintiff is entitled to \$122,105.00 in unpaid overtime wages.
3. Plaintiff is entitled to \$122,895.00 in liquidated damages.
4. Interest in the amount of \$58,824.57 pursuant to Labor Code sections 98.1(c) and 1194.2.
5. Plaintiff is entitled to receive \$10,825.50 in waiting time penalties.

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1 The total amount of Plaintiff's award to which he is entitled is \$361,170.07 The Defendants,
2 are each equally liable for the full amount of \$362,170.07. This award is not yet a final
3 judgment. This award shall become final and enforceable as a judgment in court against
4 each Defendant that does not file an appeal pursuant to Labor Code Section 98.2. Once a
5 final judgment based on this award is entered in court against any non-appealing
6 Defendant, Plaintiff may seek to recover the amounts set forth in the judgment against that
7 non-appealing Defendant- **but Plaintiff can only recover a total of \$362,170.07 from all**
8 **Defendants together.** The Labor Commissioner's Office will immediately proceed to
9 obtain a final judgment against any Defendant that does not appeal this award.
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15 Dated: August 9, 2022

Erika Miller
Erika Miller, Hearing Officer

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