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ALAMEDA COUNTY

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By Michelle R

Deputy

SUPERIOR COURT OF CALIFORNIA

ALAMEDA COUNTY

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ANGELA VALENTINE, individually and on
behalf of other members of the general public
similarly situated,

Plaintiff,

vs.

PRADEEP K. KHATRI, VNS HOTELS,
INC., and DOES 1 through 50, inclusive,

Defendants.

Case No.: RG 16813080

FIRST AMENDED COMPLAINT

[CLASS ACTION]

1. Labor Code § 1194
2. B&P § 17200 – Overtime
3. B&P § 17200 – Meal and Rest Breaks
4. B&P § 17200 – Injunction/Dec. Relief
5. B&P § 17200 – Business Expenses
6. Labor Code §§ 221, 223, 400-410, 2802, CCR tit. 8, § 11050(8) – Business Expenses
7. Labor Code § 203 – Waiting Time Penalties
8. Labor Code § 226, 1174, 1174.5 – Paystub violations
9. Labor Code § 2699 – PAGA violations

GENERAL ALLEGATIONS

1
2 1. Plaintiff Angela Valentine was an employee of defendants Pradeep K. Khatri and
3 VNS Hotels, Inc. in Hayward, California (collectively, "Defendants").

4 2. Defendant Pradeep K. Khatri is an individual residing at 6 Spring Lane, Belmont,
5 California. Upon information and belief, Pradeep K. Khatri is the owner of VNS Hotels, Inc.

6 3. Defendant VNS Hotels, Inc. is a corporation registered to do business and doing
7 business in California under the name of Days Inn & Suites located at 2440 Mission Blvd.,
8 Hayward, California. VNS Hotels, Inc.'s address is 6 Spring Lane, Belmont, California. The
9 agent for service of VNS Hotels, Inc. is Pradeep K. Khatri whose address is identified as 6
10 Spring Lane, Belmont, California.

11 4. Venue is proper in Alameda County as at least some of the acts complained of
12 herein occurred in Alameda County and as VNS Hotels, Inc.'s principal place of business is in
13 Hayward, Alameda County.

14 5. At all times herein mentioned, Plaintiff and the class identified herein worked as
15 hotel employees for Defendants at the Days Inn & Suites located in Hayward, California. At all
16 times herein mentioned, Plaintiff and the class have been, and continue to be, domiciled in the
17 State of California.

18 6. At all times herein mentioned Defendants and Does 1 through 50 are and were
19 corporations, business entities, individuals and partnerships, licensed to do business and actually
20 doing business in the State of California, Alameda County. Defendants own and operate a hotel
21 under the name Days Inn & Suites. As such, and based upon all the facts and circumstances
22 incident to Defendants' business in California, Defendants are subject to California Labor Code
23 §§ 1194 *et seq.*, California Business and Professions Code § 17200 *et seq.*, (Unfair Practices
24 Act) and the applicable Industrial Welfare Commission Wage Orders.

25 7. Plaintiff does not know the true names or capacities, whether individual, partner
26 or corporate, of the Defendants sued herein as Does 1 through 50, inclusive, and for that reason,
27 said Defendants are sued under such fictitious names, and Plaintiff prays leave to amend this
28 complaint when the true names and capacities are known. Each of said fictitious Defendants

1 was responsible in some way for the matters alleged herein and proximately caused Plaintiff and
2 members of the class to be subject to the illegal employment practices, wrongs and injuries
3 complained of herein.

4 8. At all times herein mentioned, each of said Defendants participated in the doing
5 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
6 Defendants, and each of them, were the agents, servants and employees of each of the other
7 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
8 acting within the course and scope of said agency and employment.

9 9. At all times herein mentioned, Defendants, and each of them, were members of,
10 and engaged in, a joint venture, partnership and common enterprise, and acting within the
11 course and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

12 10. At all times herein mentioned, the acts and omissions of various Defendants, and
13 each of them, concurred and contributed to the various acts and omissions of each and all of the
14 other Defendants in proximately causing the injuries and damages as herein alleged.

15 11. At all times herein mentioned, Defendants, and each of them, ratified each and
16 every act or omission complained of herein. At all times herein mentioned, the Defendants, and
17 each of them, aided and abetted the acts and omissions of each and all of the other Defendants
18 in proximately causing the damages as herein alleged. Further, at all times mentioned herein,
19 the wage and hour related compensation policies of Defendants are and were dictated by,
20 controlled by, and ratified by the Defendants herein and each of them.

21 12. Plaintiff is informed and believes and on that basis alleges that at all material
22 times, Defendants and each of them acted as Plaintiff's employer by either exercising control
23 over Plaintiff's wages, hours and/or working conditions; or allowing Plaintiff to suffer work or
24 permitting Plaintiff to work; or engaging Plaintiff, creating a common law employment
25 relationship. As such, each of the Defendants has acted as an employer and/or a joint employer
26 of Plaintiff herein.

27 13. All of the acts and failures to act alleged herein were duly performed by and
28 attributable to all Defendants, each acting as a successor, agent, alter ego, employee, indirect

1 employer, joint employer, integrated enterprise and/or under the direction and control of the
2 others, except as specifically alleged otherwise. The acts and failures to act were within the
3 scope of such agency and/or employment and each Defendant participated in, approved and/or
4 ratified the unlawful acts and omissions by the other Defendants complained of herein.
5 Whenever and wherever reference is made in this complaint to any act by a Defendant or
6 Defendants, such allegations and reference shall also be deemed to mean the acts and failures to
7 act of each Defendant acting individually, jointly, and/or severally.

8 14. Plaintiff is informed and believes and thereon alleges that VNS Hotels, Inc. is an
9 alter ego corporation of individual Defendant Pradeep K. Khatri by reason of the following:

10 (a) Plaintiff is informed and believes and thereon alleges that the individual defendant, at
11 all times herein mentioned, dominated, influenced and controlled the corporate defendant, the
12 directors, and officers as well as the business, property, and affairs of the corporation.

13 (b) Plaintiff is informed and believes and thereon alleges that, at all times herein
14 mentioned, there existed and now exists a unity of interest and ownership between the
15 individual defendant and the corporate defendant; the individuality and separateness of the
16 individual defendant and the corporate defendant has ceased.

17 (c) Plaintiff is informed and believes and thereon alleges that, at all times since the
18 incorporation of the corporate defendant, the corporate defendant has been and now is a mere
19 shell and naked framework which the individual defendant uses as a conduit for the conduct of
20 his personal business, property and affairs.

21 (d) Plaintiff is informed and believes and thereon alleges that, at all times herein
22 mentioned, the corporate defendant was created and continued pursuant to a fraudulent plan,
23 scheme and device conceived and operated by the individual defendant whereby the income,
24 revenue and profits of the corporate defendant were diverted by the individual defendant to
25 himself.

26 (e) Plaintiff is informed and believes and thereon alleges that, at all times herein
27 mentioned, the corporate defendant was organized by the individual defendant as a device to
28 avoid individual liability and for the purpose of substituting a financially irresponsible

1 corporation in the place of the individual defendant, and the corporate defendant was formed
2 with capitalization totally inadequate for the business in which the corporation was engaged.

3 (f) By virtue of the foregoing, adherence to the fiction of the separate corporate
4 existence of each of the corporate defendant would, under the circumstances, sanction a fraud
5 and promote injustice in that Plaintiff would be unable to realize upon any judgment in her
6 favor.

7 15. Plaintiff is informed and believes and thereon alleges that, at all times relevant
8 hereto, the individual defendant Pradeep K. Khatri and the corporate defendant VNS Hotels,
9 Inc. acted for each other in connection with the conduct hereinafter alleged and that each of
10 them performed the acts complained of herein and/or breached the duties herein complained of
11 as agents of each other and each is therefore fully liable for the acts of the other.

12 16. Pursuant to California Labor Code §§ 218, 218.6, and 1194, Plaintiff may bring a
13 civil action for overtime wages directly against the employer without first filing a claim with the
14 California Division of Labor Standards Enforcement and may recover such wages, together
15 with interest thereon, penalties, attorney fees and costs.

16 17. Plaintiff and all members of the class identified herein were regularly scheduled
17 as a matter of uniform company policy to work and in fact worked as hotel employees in excess
18 of eight hours per workday and/or in excess of forty hours per workweek without receiving
19 straight time and premium pay compensation for all hours worked. As a matter of policy and
20 practice, Defendants required, suffered and permitted Plaintiff and the class to work off-the-
21 clock without any compensation. Defendants also required, suffered and permitted Plaintiff and
22 the class to work seven days a week without premium pay. Defendants' failure to pay the wages
23 owed was not in good faith and Defendants' have no reasonable basis for refusing the pay the
24 wages they know to be due and owing. Defendants knew they were not paying the wages due
25 and owing and intentionally failed to pay the wages due and owing.

26 18. Defendants failed to provide, authorize, permit and document meal and rest
27 period breaks for Plaintiff and the class in the number, length and manner as required by law. At
28 no time has Plaintiff or the class entered into any written agreement with Defendants expressly

1 or impliedly waiving their right to their meal and rest breaks.

2 19. Defendants have maintained policies and/or practices that require Plaintiff and
3 the class to pay the ordinary business expenses of Defendants. Plaintiff and members of the
4 class identified herein were subject to deductions from their pay for cash shortages. Plaintiff and
5 the class were not reimbursed for ordinary business expenses incurred by the employees at
6 Defendants' direction and for Defendants' benefit.

7 20. Defendants willfully, intentionally and knowingly did not provide Plaintiff and
8 the class with accurate itemized statements showing all of the information required pursuant to
9 Labor Code §§ 226 and 1174 and Plaintiff and the class were injured thereby.

10 **CLASS ALLEGATIONS**

11 21. This complaint is brought by Plaintiff pursuant to California Code of Civil
12 Procedure § 382 on behalf of a class. All claims alleged herein arise under California law for
13 which Plaintiff seeks relief authorized under California law. The class is comprised of, and
14 defined as:

15 All current and former employees of VNS Hotels, Inc. and/or
16 Pradeep K. Khatri who worked at any time from four years prior to
the time this case is filed up to the time of trial.

17 22. The members of the class are so numerous that joinder of all members is
18 impracticable. The exact number of the members of the class can be determined by reviewing
19 Defendants' records.

20 23. Plaintiff will fairly and adequately protect the interests of the class and has
21 retained counsel that is experienced and competent in class action and employment litigation.
22 Plaintiff has no interests that are contrary to, or in conflict with, members of the class.

23 24. A class action suit, such as the instant one, is superior to other available means
24 for fair and efficient adjudication of this lawsuit. The damages suffered by individual members
25 of the class may be relatively small when compared to the expense and burden of litigation,
26 making it virtually impossible for members of the class to individually seek redress for the
27 wrongs done to them.

28 25. A class action is, therefore, superior to other available methods for the fair and

1 efficient adjudication of the controversy. Absent these actions, the members of the class likely
2 will not obtain redress of their injuries and Defendant will retain the proceeds of its violations of
3 California law.

4 26. Even if any member of the class could afford individual litigation against
5 Defendant, it would be unduly burdensome to the judicial system. Concentrating this litigation
6 in one forum will promote judicial economy and parity among the claims of individual members
7 of the class and provide for judicial consistency.

8 27. There is a well-defined community of interest in the questions of law and fact
9 affecting the class as a whole. Questions of law and fact common to each of the class
10 predominate over any questions affecting solely individual members of the action. Among the
11 common questions of law and fact are:

- 12 a. Whether the class has been paid at the premium rate for overtime hours
13 worked;
- 14 b. Whether the class has been paid for all hours worked;
- 15 c. Whether Defendants have authorized and permitted the class to take meal
16 and rest breaks;
- 17 d. Whether Defendants took unauthorized deductions from the class;
- 18 e. Whether Defendants failed to reimburse the class for ordinary business
19 expenses; and,
- 20 f. Whether VNH Hotels, Inc. is an alter ego of Pradeep K. Khatri.

21 **FIRST CAUSE OF ACTION**

22 **(Labor Code § 1194)**

23 28. Plaintiff incorporates the allegations contained in the previous paragraphs of this
24 Complaint as if fully set forth herein.

25 29. California Labor Code § 510 states that an employee must be paid overtime,
26 equal to 1.5 times the employee's regular rate of pay, for all hours worked in excess of 40 per
27 week and/or 8 hours per day and for work on the seventh day up to eight hours. Labor Code §
28 510 also provides that any work in excess of 12 hours in a day or in excess of 8 hours on the

1 seventh day of work shall be compensated at the rate for two-times the employee's regular rate.

2 30. Class members regularly work more than 40 hours per week and/or 8 hours per
3 day but are not paid overtime compensation at the premium rate. Class members regularly work
4 more than 12 hours a day and more than 8 hours on a seventh day without overtime
5 compensation at the premium rate.

6 31. In violation of Labor Code § 1197, Defendants have failed to pay class members
7 the minimum wage by having class members work off-the-clock.

8 32. Defendants have violated Labor Code § 1194 by paying class members less than
9 the legal minimum wage and less than the legal overtime compensation. As such Defendants are
10 liable for the full amount of the unpaid wages including interest thereon, attorneys' fees and
11 costs.

12 33. As a result of Defendants' violations of Labor Code § 1194 and 1197, Plaintiff
13 and the class is entitled to liquidated damages pursuant to Labor Code § 1194.2.

14 **SECOND CAUSE OF ACTION**

15 **(Bus. & Prof. Code § 17203 – Overtime)**

16 34. Plaintiff incorporates the allegations contained in the previous paragraphs of this
17 Complaint as if fully set forth herein.

18 35. Defendants have committed an act of unfair competition under California
19 Business & Professions Code § 17200 *et seq.* by not paying the required state law minimum
20 wage, straight time and overtime pay to the members of the class.

21 36. Pursuant to Bus. & Prof. Code § 17203, Plaintiff requests an order requiring
22 Defendants to make restitution of all overtime wages due to the class.

23 **THIRD CAUSE OF ACTION**

24 **(Bus. & Prof. Code § 17203 – Meal and Rest Breaks)**

25 37. Plaintiff incorporates the allegations contained in the previous paragraphs of this
26 Complaint as if fully set forth herein.

27 38. In violation of Labor Code § 512 and IWC Wage Order 5-2001, Defendant failed
28 to provide, authorize, permit and document meal and rest period breaks for the class in the

1 number, length and manner as required. At no time has the Plaintiff or the class entered into any
2 written agreement with Defendants expressly or impliedly waiving their right to their meal and
3 rest breaks. Plaintiff and the class have been injured by Defendants' failure to comply with
4 Labor Code § 512 and IWC Wage Order 5-2001 and are thus entitled to the wages set forth in
5 Labor Code § 226.7.

6 39. Pursuant to Bus. & Prof. Code § 17203, Plaintiff requests Defendants make
7 restitution of all wages due to the class under this Third Cause of Action.

8 **FOURTH CAUSE OF ACTION**

9 **(Bus. & Prof. Code § 17203 – Injunction and Declaratory Relief)**

10 40. Plaintiff incorporates the allegations contained in the previous paragraphs of this
11 Complaint as if fully set forth herein.

12 41. Plaintiff, and all persons similarly situated, are further entitled to and do seek a
13 both a declaration that the above-described business practices are unfair, unlawful and/or
14 fraudulent and injunctive relief restraining Defendants from engaging in any of such business
15 practices in the future. Such misconduct by Defendants, unless and until enjoined and restrained
16 by order of this Court, will cause great and irreparable injury to all members of the class in that
17 the Defendants will continue to violate California law, represented by labor statutes and IWC
18 Wage Orders, unless specifically ordered to comply with same. This expectation of future
19 violations will require current and future employees to repeatedly and continuously seek legal
20 redress in order to gain compensation to which they are entitled under California law. Plaintiff
21 has no other adequate remedy at law to insure future compliance with the California labor laws
22 and wage orders alleged to have been violated herein.

23 **FIFTH CAUSE OF ACTION**

24 **(Bus. & Prof. Code § 17200 - Business Expenses)**

25 42. Plaintiff incorporates the allegations contained in the previous paragraphs of this
26 Complaint as if fully set forth herein.

27 43. . California Labor Code §§ 221, 223, 400-410, 2802, and Title 8 of the California
28 Code of Regulations, § 11050(8) generally state that an employer may not deduct from or

1 reduce an employee's wages for the purpose of shifting the employer's ordinary cost of doing
2 business to the employee.

3 44. Plaintiff and the members of the proposed class have been forced to pay the
4 business expenses of Defendants without reimbursement by Defendant including, for example,
5 cleaning supplies, food, office supplies, mileage and mobile telephone use. These expenses
6 were reasonable and necessarily incurred by Plaintiff and the members of the proposed class as
7 Defendants directed Plaintiff and other class member to specifically make these purchases
8 and/or incur these expenses for Defendants' benefit. Defendants also unlawfully deducted from
9 the wages of Plaintiff and the class for ordinary losses not due to the dishonest or willful act, or
10 by the gross negligence of the employee. Defendants' policy and practice of having class
11 members pay for Defendants' ordinary business expenses also causes class members to forfeit
12 their wages to Defendants.

13 45. Defendants have committed an act of unfair competition by illegally deducting
14 these amounts from the wages of Plaintiff and the members of the proposed class and/or failing
15 to reimburse these amounts to Plaintiff and the members of the proposed class.

16 46. Pursuant to Business & Professions Code § 17203, Plaintiff requests an order
17 requiring Defendants to make restitution of all wage deductions and unreimbursed business
18 expenses due to Plaintiff and the class in an amount to be proven at trial.

19 **SIXTH CAUSE OF ACTION**

20 **(Labor Code §§ 221, 223, 400-410, 2802 and Cal. Code Reg. tit. 8, § 11050(8))**

21 47. Plaintiff incorporates the allegations contained in the previous paragraphs of this
22 Complaint as if fully set forth herein.

23 48. Labor Code § 221 provides, "It shall be unlawful for any employer to collect or
24 receive from an employee any part of wages theretofore paid by said employer to said
25 employee."

26 49. Labor Code § 223 provides: "Where any statute or contract requires an employer
27 to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while
28 purporting to pay the wage designated by statute or by contract."

1 50. Labor Code §§ 400-410 (“Employee Bond Law”) provide the limited
2 circumstances under which an employer can exact a cash bond from its employees. These
3 provisions are designed to protect employees against the very real danger of an employer taking
4 or misappropriating employee funds held by the employer in trust.

5 51. Labor Code § 2802 provides that “[a]n employer shall indemnify his or her
6 employee for all necessary expenditures or losses incurred by the employee in direct
7 consequence of the discharge of his or her duties.”

8 52. Title 8 of the California Code of Regulations, § 11050(8), states, “No employer
9 shall make any deduction from the wage or require any reimbursement from an employee for
10 any cash shortage, breakage, or loss of equipment, unless it can be shown that the shortage,
11 breakage, or loss is caused by a dishonest or willful act, or by the gross negligence of the
12 employee.”

13 53. These and related statutes are designed to prevent employers from using secret
14 deductions or other accounting practices to drive down the wage scale or pay employees less
15 than the stated wage. They also reflect California’s fundamental and substantial public policy
16 protecting employee wages.

17 54. Plaintiff and the class were subject to deductions from their compensation by
18 Defendants which were not the result of dishonest, willful, or grossly negligent acts by those
19 employees, but instead were the ordinary costs of doing business. Defendants were obligated to
20 indemnify Plaintiff and the other class members for such expenses as the costs of cleaning
21 supplies, food, office supplies, mileage and mobile telephone use. These expenses were
22 reasonable and necessarily incurred by Plaintiff and the members of the class. Defendants’
23 policy and practice of having class members pay for Defendants’ ordinary business expenses
24 also causes class members to forfeit their wages to Defendants.

25 55. Defendants unlawfully charged and failed to reimburse its employees in violation
26 of Labor Code §§ 221, 223, 400-410, 2802 and Cal. Code Reg. tit. 8, § 11050(8) and Plaintiff
27 and the class are entitled to reimbursement for, and repayment of, these deductions, plus interest
28 and attorneys’ fees and costs.

1 Complaint as if fully set forth herein.

2 64. Defendants, as a matter of company policy and practice, did not maintain or
3 provide accurate itemized statements in violation of Labor Code §§ 226 and 1174.

4 65. For instance, Defendant did not state or did not accurately state, *inter alia*, the
5 total hours worked, hours worked daily, the actual hourly rate, all deductions taken, and name
6 and address of the actual employer of Plaintiff and other class members in their pay statements.
7 Defendants' failure to maintain accurate itemized statements was willful, knowing, intentional,
8 and the result of Defendants' custom, habit, pattern and practice. Defendants' failure to
9 maintain accurate itemized statements was not the result of isolated, sporadic or unintentional
10 behavior. Due to Defendants' failure to comply with the requirements of Labor Code §§ 226
11 and 1174, Plaintiff and other class members were injured thereby.

12 66. Such a pattern and practice as alleged herein is unlawful and creates an
13 entitlement to recovery by Plaintiff and the class identified herein for all damages and penalties
14 pursuant to Labor Code §§ 226 and 1174.5, including interest thereon, penalties, attorneys' fees
15 and costs.

16 **NINTH CAUSE OF ACTION**

17 **(Labor Code § 2699 et seq.)**

18 67. Plaintiff incorporates the allegations contained in the previous paragraphs of this
19 Complaint as if fully set forth herein.

20 68. As alleged above, Defendants failed to comply with the California Labor Code.
21 As such, Plaintiff is an "aggrieved employee" as defined in Labor Code § 2699(a). Pursuant to
22 Labor Code § 2699, the Labor Code Private Attorneys General Act of 2004, Plaintiff brings this
23 action on behalf of herself and other current and former employees of Defendants and seeks
24 recovery of applicable civil penalties as follows:

25 a. where civil penalties are specifically provided in the Labor Code for each
26 of the violations alleged herein, Plaintiff seeks recovery of such penalties;

27 b. where civil penalties are not established in the Labor Code for each of the
28 violations alleged herein, Plaintiff seeks recovery of the penalties established
in § 2699(e) of the Labor Code Private Attorneys General Act of 2004, and in
accordance with § 200.5 of the Labor Code.

