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FILED
Superior Court Of California
County Of Los Angeles

NOV 13 2013

Sherri R. Carter, Executive Officer/Clerk
By *Rusty Pinkney*, Deputy
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6 Attorneys for Plaintiff
PEOPLE OF THE STATE OF CALIFORNIA

7
8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES, WEST JUDICIAL DISTRICT, AIRPORT COURT**

10
11 THE PEOPLE OF THE STATE OF CALIFORNIA,
12 Plaintiff,
13 v.
14 WILSHIRE WEST CAR WASH, LLC et al.,
15 Defendants.

Case No. 3 WA 20320

**TERMS AND CONDITIONS OF
PROBATION**

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18 A. Defendant Wilshire West Car Wash, LLC

19 Upon the No Contest plea of defendant Wilshire West Car Wash, LLC ("Wilshire West") to
20 Counts 4, 5, 6, 7, 10 and 11 of the First Amended Complaint, the Court orders as follows:

21 Imposition of sentence is suspended and Wilshire West is placed on 36 months' summary
22 probation with the following terms and conditions:

- 23 1. Pay restitution, as follows:
- 24 a. Restitution to specified current and former employees of Wilshire West shall be in
25 the total amount of \$656,547.00. The individual names and amounts are specified
26 in a spreadsheet that shall be maintained confidential by the People and Wilshire
27 West.
 - 28 b. Wilshire West will deposit the sum of \$656,547.00 into an account identified to
the People (the "Restitution Account") and provide confirmation that the funds
are available for distribution as set forth below by December 13, 2013.

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- c. Wilshire West will prepare payroll checks drawn on the Restitution Account, with proper deductions, for all specified current and former employees' restitution. The checks will be delivered to a representative of the California Department of Labor Standards Enforcement ("DLSE") by December 18, 2013.
 - d. The DLSE thereafter will distribute all restitution checks to the current and former employees. Employees will be required to sign a release of liability in the form attached in Appendix A.
 - e. After twelve months of its receipt of the checks, in the event any employees cannot be located or decline to accept a restitution check, DLSE will return all undistributed checks to Wilshire West. Wilshire West within five days will re-deposit these checks into the Restitution Account and deliver to DLSE a single lump-sum payment for the combined remaining gross restitution amounts. DLSE will deposit that payment into the Department of Industrial Relations' Unpaid Wages Fund ("the Fund").
 - f. In the event an employee recovers back wages from Wilshire West in a separate legal action, DLSE shall reimburse Wilshire West up to the amount allocated for that employee in the Fund.
- 2. Pay base fines of \$2,000.00 plus penalty assessments no later than December 13, 2013.
 - 3. Additional fines of \$4,000.00 plus penalty assessments are ordered but execution suspended pending successful completion of probation. In the event of a proven probation violation, the additional amounts are payable within 30 days.
 - 4. Pay the People's investigative costs of \$1,052.20 no later than December 13, 2013. (Check made out to City of Santa Monica.)
 - 5. Pay DLSE's investigative costs of \$6,381.15 no later than December 13, 2013. (Check made out to California Labor Commissioner.)
 - 6. Comply with these additional terms of probation:
 - a. Pay for all hours worked. Must pay car wash employees for all hours worked.

This includes all of the following:
 - i. time that employees are under the control of management
 - ii. time that employees are on-call to return to work when summoned
 - iii. time that employees are on stand-by status, including all times when business is slow and they are at the work premises under the control of management

1 iv. time that employees are at the work premises but are not on a bona fide
2 meal break (bona fide meaning that employees must be completely free
3 from work or obligation to return during the break)

4 v. time that employees perform work prior to the opening of the car wash
5 and after the closing of the car wash

6 This does not include the following:

7 vi. time when the employee comes onto the car wash premises more than five
8 minutes prior to the scheduled start of his or her shift, without the prior
9 authorization of the car wash's management, and no work is done by the
10 employee while he is on the premises

11 vii. time where the employee clocks in 1/10 of an hour early to work or clocks
12 out 1/10 of an hour late from work pursuant to a policy that provides for
13 rounding of employee time and prohibits employees from clocking in
14 more than 1/10 of an hour before their shift or working while not clocked
15 in, and where the rounding is tracked and calculated through an electronic
16 time keeping system that records the actual clock in and out times

17 b. Shall not require car wash employees to work "off the clock" before, during, or
18 after their shift.

19 c. Bona fide meal periods. Must comply with California Labor Code section 512(a)
20 and must provide all car wash employees with a bona fide meal period of at least
21 30 minutes, during which time the employee is free from work and the employer's
22 control, for each work period of more than five hours; provided, however, that the
23 meal period may be waived by mutual consent of both the employer and
24 employee if the total work period per day is no more than six hours. No more than
25 one unpaid meal break may be given for each work day, unless the employee
26 works a period of more than ten hours in which case the employee shall be given
27 a second bona fide meal period of at least 30 minutes.

28 d. Paid rest periods. Must comply with Industrial Welfare Commission Order
Number 9-2001, section 12 and must provide a paid ten-minute rest period to car
wash employees for every four hours worked.

e. Shall not require employees to return to work from rest or meal periods before the
scheduled return time or retaliate, reduce hours, or take any other adverse
employment action against employees who fail to return to work if so required.

f. Collecting of wages. Must comply with California Labor Code section 221 by not
collecting or receiving any part of the wages previously paid to car wash
employees.

g. Shall not require car wash employees to pay any fee associated with towel
laundering or with the payment of money to any other car wash employee. This
does not prevent any bona fide tip sharing arrangement voluntarily done by
employees and not required of all.

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- h. Shall not require car wash employees to pay any fee associated with the cost of any television service.
 - i. Split shifts. Must comply with Industrial Welfare Commission Order Number 9-2001, section 4(c) and must provide the required supplemental pay to car wash employees for working a schedule which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.
 - j. Reporting time. Must comply with Industrial Welfare Commission Order Number 9-2001, section 5(a) (reporting time pay). This includes the following:
 - i. Each day a car wash employee is required to report to work, but is not put to work or is furnished with less than half of his or her usual or scheduled day's work, the employee must be paid for half the usual or scheduled day's work, but in no event for less than two hours nor more than four hours, at his or her regular rate of pay;
 - ii. If an employee is required to report for work a second time in one day and is furnished less than two hours of work on the second reporting, he or she must be paid for two hours at his or her regular rate of pay.
 - iii. Employees need not be given reporting time pay when a work interruption is caused by an act of God, such as an earthquake or other disaster. This exception does not include rain or other typical inclement weather; however, nothing in this provision requires that the car wash open for business on any particular day, or prevents it from opening late or closing early on any particular day, as long as all wage and hour laws are followed in such an event.
 - k. Timekeeping. Must keep accurate written records of all hours worked by car wash employees. This must include:
 - i. An electronic timekeeping system, such as a punch card, fingerprint identification, or other similar system, in which car wash employees log, record, or otherwise enter their own times in and out for all shifts, meal breaks and paid rest periods.
 - ii. Generation of written time records based on the time entries referred to in the preceding sub-paragraph, and not relying on time records generated by supervisors.
 - iii. All employee time records, including records of all logging in and out, must be maintained for at least three years.
 - iv. Must train all supervisors and employees in the new timekeeping system and instruct them to begin using it within 30 days of plea.

- 1 v. Shall not alter or manipulate time or payroll records to reduce the number
2 of hours actually worked by an employee.
- 3 vi. Shall ensure that only employees who are scheduled to work and are
4 logged in on the time clock are present on the car wash premises during
5 business hours, with the exception of employees who choose to visit the
6 premises for non-working purposes such as to gather personal belongings,
7 check or verify scheduled hours, and receive their paycheck. Employees
8 logged out for bona fide meal or rest break periods may remain on the car
9 wash premises if they choose to.
- 10 vii. Shall post a monthly car wash work schedule at least three days in
11 advance of the schedule becoming effective in a location visible to all
12 employees.
- 13 l. Shall not threaten or imply that adverse action will be taken against any car wash
14 employee because of his or her receipt of restitution in this case.
- 15 m. Shall not in any way retaliate, reduce hours, or take any other adverse
16 employment action, or threaten or imply that such action will be taken against any
17 employee who exercises rights under the federal, state, or local labor laws.
- 18 n. Shall not provide financial incentives to supervisors to reduce the number of
19 reported work hours of car wash employees.
- 20 o. Nothing in this order prevents Wilshire West from selling or closing the car wash
21 business in its discretion.
- 22 p. Notice to Employees. Within 10 days of the date of this plea, Wilshire West
23 shall:
24 i. give all current car wash employees a copy of the summary of these terms
25 contained in Appendix B, translated into Spanish;
26 ii. post a copy of Appendix B, translated into Spanish, in a highly visible area
27 of the car wash that is frequented by employees; and
28 iii. have a supervisor read aloud Appendix B, translated into Spanish, to all
employees at a meeting of all present employees on work time.
- q. Notice of violations. In the event the People determine that Wilshire West has
violated a term of probation, prior to seeking judicial relief the People will
provide written notice of the alleged violation to Wilshire West's counsel.
Defense counsel may then meet and confer with the People to address the alleged
violations and attempt to reach an informal resolution. Nothing in this provision
requires the People to forego judicial relief for a probation violation. Notice to
defense counsel shall be given via U.S. mail and email, to:

Jeffrey B. Isaacs
Amanda Touchton
Isaacs | Friedberg LLP
633 W. Fifth Street, 28th floor

1 Los Angeles, CA 90071
2 jisaacs@ifcounsel.com
3 atouchton@ifcounsel.com

4 B. Defendant Gary Pendleton

5 Upon the No Contest plea of defendant Gary Pendleton to Counts 4, 5, 6, 7, 10 and 11 of the
6 First Amended Complaint, the Court orders as follows:

7 Imposition of sentence is suspended and Gary Pendleton is placed on 36 months' summary
8 probation with the following terms and conditions:

- 9 1. Complete 120 hours community service within 12 months from date of plea.
- 10 2. Additional 120 hours of community labor is ordered but execution is suspended pending
11 successful completion of probation. In the event of a proven probation violation, the 120
12 hours must be served within 12 months.
- 13 3. Comply with these additional terms of probation with respect to the management of
14 Wilshire West Car Wash:
 - 15 a. Shall not require car wash employees to work "off the clock" before, during, or
16 after their shift.
 - 17 b. Shall not give more than one unpaid meal break for each work day.
 - 18 c. Shall not require employees to return to work from rest or meal periods before the
19 scheduled return time or retaliate, reduce hours, or take any other adverse
20 employment action against employees who fail to return to work if so required.
 - 21 d. Shall not collect or receive any part of the wages previously paid to car wash
22 employees.
 - 23 e. Shall not require car wash employees to pay any fee associated with towel
24 laundering or with the payment of money to any other car wash employee. This
25 does not prevent any bona fide tip sharing arrangement voluntarily done by
26 employees and not required of all.
 - 27 f. Shall not require car wash employees to pay any fee associated with the cost of
28 any television service.
 - g. Shall not alter or manipulate time or payroll records to reduce the number of
hours actually worked by an employee.
 - h. Shall not threaten or imply that adverse action will be taken against any employee
because of his or her receipt of restitution in this case.

- 1 i. Shall not in any way retaliate, reduce hours, or take any other adverse
2 employment action, or threaten or imply that such action will be taken against any
3 employee who exercises rights under the federal, state, or local labor laws.
4 j. Shall not provide financial incentives to supervisors to reduce the number of
5 reported work hours of car wash employees.

6 4. Obey all laws.

7 C. Defendant Rigoberto Torres

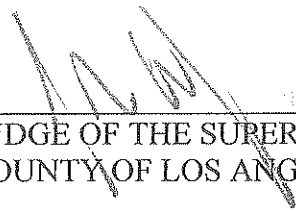
8 Upon the No Contest plea of defendant Rigoberto Torres to Count 10 of the First Amended
9 Complaint, the Court orders as follows:

- 10 1. Imposition of sentence is held in abeyance for 18 months.
- 11 2. Torres shall complete 12 days community labor within 12 months from the date of plea.
12 At least three days of community labor must be completed every 90 days.
- 13 3. Torres shall comply with these additional terms with respect to the management of
14 Wilshire West Car Wash:
- 15 a. Shall not require car wash employees to work "off the clock" before, during, or
16 after their shift.
- 17 b. Shall not give more than one unpaid meal break for each work day.
- 18 c. Shall not require employees to return to work from rest or meal periods before the
19 scheduled return time or retaliate, reduce hours, or take any other adverse
20 employment action against employees who fail to return to work if so required.
- 21 d. Shall not collect or receive any part of the wages previously paid to car wash
22 employees.
- 23 e. Shall not require car wash employees to pay any fee associated with towel
24 laundering or with the payment of money to any other car wash employee. This
25 does not prevent any bona fide tip sharing arrangement voluntarily done by
26 employees and not required of all.
- 27 f. Shall not require car wash employees to pay any fee associated with the cost of
28 any television service.
- g. Shall not alter or manipulate time or payroll records to reduce the number of
hours actually worked by an employee.
- h. Shall not threaten or imply that adverse action will be taken against any employee
because of his or her receipt of restitution in this case.

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- i. Shall not in any way retaliate, reduce hours, or take any other adverse employment action, or threaten or imply that such action will be taken against any employee who exercises rights under the federal, state, or local labor laws.
 - j. Shall not provide financial incentives to supervisors to reduce the number of reported work hours of car wash employees.
4. Torres shall obey all laws.
 5. Progress reports shall be provided to the Court every 90 days.
 6. If Torres completes the community labor and no commits violations of the above terms, he may petition the court for dismissal of the case no sooner than 18 months from date of plea. The People will agree to the dismissal of the case if both of those conditions are met.
 7. If the community labor is not timely completed or if Torres violates a probationary term, he will be sentenced by the Court for violation of Count 10 to include 12 additional days of community labor.

Dated: November 13, 2013



JUDGE OF THE SUPERIOR COURT
COUNTY OF LOS ANGELES

JAMES R. DABNEY



1 APPENDIX A: RELEASE OF LIABILITY FORM

2 GENERAL RELEASE

3 If you execute this Release you will receive \$ _____ in back pay. Your
4 acceptance and negotiation of the above amount shall be a waiver by you of any further right to
5 maintain an action for recovery of additional amounts against Wilshire West Car Wash
6 ("EMPLOYER"). You agree that you cannot accept or participate in any new claim, judgment,
7 award, settlement or other payment as a result of or related to any charge, complaint or claim
8 released herein filed with any federal, state or local court or agency, or federal, state or local
9 commission with jurisdiction over the claims released herein. You cannot join the class of, nor be a
10 party to, any class actions or collective actions arising out of any of the released claims.

11 *Please note that EMPLOYER's settlement payments shall be considered a bar to any further
12 wage claim proceeding arising out of any of the released claims.*

13 Your signature on this Release and acceptance of the above amount hereby releases and
14 forever discharges the "Released Parties," consisting of EMPLOYER and all persons acting by,
15 through, or in concert with any of them, of and from any and all manner of action or actions, cause
16 or causes of action, in law or in equity, for any violation of the California Labor Code and Industrial
17 Welfare Commission Wage Orders, which Releasing Party now has or may hereafter have against
18 the Released Parties, or any of them, arising out of the Releasing Party's employment with
19 EMPLOYER during the period between January 22, 2009 to September 30, 2012 ("Claim Period").

20 This release covers all claims, known and unknown, arising out of your employment with
21 EMPLOYER during the Claim Period. California Civil Code section 1542, provides:

22 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
23 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR
24 HER OWN FAVOR AT THE TIME OF EXECUTING THE RELEASE,
25 WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY
26 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

27 **By agreeing to this General Release, you expressly waive any right you may have under
28 California Civil Code section 1542, as well as under any other statutes or common law
principles of similar effect with respect to the claims specifically released herein.**

If you do not wish to participate in this Settlement, the amounts received on your behalf will
be deposited into the Department of Industrial Relations' Unpaid Wages Fund.

_____ Yes, I wish to receive the back pay and release all claims.

_____ No, I do not wish to receive the back pay and release all claims.

Date: _____

Employee Signature

Employee Name (please print)

