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13 Attorneys for Representative Plaintiff

14
15 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **IN AND FOR THE COUNTY OF SAN LUIS OBISPO**

17 YOLANDA MARTINEZ-MALDONADO,
18 individually, and on behalf of all others
19 similarly situated,

20 Plaintiff,

21 vs.

22 ARGONAUT CALIFORNIA VENTURES,
23 INC. d.b.a. KFC, and DOES 1 through 100,
24 inclusive,

25 Defendants.

Case No. 21CVP-0248

REPRESENTATIVE ACTION

**FIRST AMENDED PRIVATE ATTORNEYS
GENERAL ACT COMPLAINT FOR CIVIL
PENALTIES**

[CAL. LAB CODE § 2699]

26 Representative Plaintiff alleges as follows:

27 **INTRODUCTION**

28 1. This is a representative action seeking civil penalties under the Labor Code Private
Attorneys General Act of 2004, codified as California Labor Code §§ 2698 *et seq.* ("PAGA").

2. Plaintiff Yolanda Martinez-Maldonado ("Representative Plaintiff" or "Plaintiff")
brings this action individually as an aggrieved employee and on behalf of all other persons
similarly situated ("Aggrieved Employees") who are or have been employed by Defendant
Argonaut California Ventures, Inc. d.b.a. KFC and/or Does 1 through 100, inclusive (collectively

1 “Defendants”) exempt and non-exempt food-service employees the State of California at any time
2 after September 14, 2020.

3 3. The “Relevant Time Period” is designated as the time from September 14, 2020
4 through the date of trial, based upon the allegation that the violations of California’s wage and
5 hour laws, as described more fully below, have been ongoing throughout that time.

6 4. During the claims period, Defendants have had a consistent policy of (1) unlawfully
7 denying Plaintiff and Aggrieved Employees statutorily-mandated meal and rest periods, (2)
8 willfully failing to provide Plaintiff and Aggrieved Employees with accurate semimonthly
9 itemized wage statements reflecting the total number of hours each worked, the applicable
10 deductions, and the applicable hourly rates in effect during the pay period, and (3) willfully failing
11 to pay compensation in a prompt and timely manner to Plaintiff and those Aggrieved Employees
12 whose employment with Defendants has terminated.

13 5. Defendants operate a chain of KFC restaurants within California for which
14 Representative Plaintiff worked as a non-exempt Shift Supervisor. The Representative Plaintiff is
15 informed and believes and, on that basis, alleges that, within the claims period, Defendants
16 employed scores, if not hundreds, of individuals in California to perform these services,
17 employment positions which did not, and currently do not, meet any known test for exemption
18 from the payment of minimum and/or overtime wages, reimbursements for business-related
19 expenses incurred and/or the entitlement to meal or rest periods.

20 6. Despite actual knowledge of these facts and legal mandates, Defendants have and
21 continue to enjoy an advantage over their competition and a resultant disadvantage to their workers
22 by electing not to sufficiently offer rest periods to Aggrieved Employees and by not providing
23 them all pay when due and/or when certain Aggrieved Employees’ employment with Defendants
24 terminated.

25 7. Plaintiff is informed and believes and, based thereon, alleges that Defendants’
26 officers knew of these facts and legal mandates yet, nonetheless, repeatedly authorized and/or
27 ratified the violation of the laws cited herein.
28

9. This Court has jurisdiction over Plaintiff's and Aggrieved Employees' claims for civil penalties sought herein under the California Labor Code §§ 2698 *et seq.*

10. Venue as to Defendants is proper in this County pursuant to California Code of Civil Procedure § 395(a). Defendants provided the aforementioned services within this County where Plaintiff and numerous Aggrieved Employees worked, transacts business, has agents, and is otherwise within this Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein have had a direct effect on Representative Plaintiff and those similarly situated within the State of California and within this County.

11. Representative Plaintiff Yolanda Martinez-Maldonado is a natural person who was employed by Defendants as a Shift Supervisor during the Relevant Time Period. At all times herein relevant, Plaintiff was and is now an individual within the category of Aggrieved Employees further described and defined herein.

12. In these capacities, Representative Plaintiff is and was entitled to full, uninterrupted and statutorily-mandated meal and rest periods, as well as other benefits of employment as set forth herein.

13. As used throughout this Complaint, the term “Aggrieved Employees” refers to the named Plaintiff herein as well as each and every person employed by Defendants in California as a non-exempt employee during the Relevant Time Period.

DEFENDANT

15. Representative Plaintiff is informed and believes and, based thereon, alleges that, at all times herein relevant, Defendants (including the Doe defendants) did business within the State of California providing restaurant services.

16. Those defendants identified as Does 1 through 100, inclusive, are and were, at all relevant times herein-mentioned, officers, directors, partners, and/or managing agents of some or each of the remaining defendants. Representative Plaintiff is informed and believes and, on that basis, alleges that, at all relevant times herein mentioned, Defendants, and each of them, employed and/or exercised control over the wages, hours, and/or working conditions of the Representative Plaintiff and the Aggrieved Employees within the State of California.

17. The Representative Plaintiff is unaware of the true names and capacities of those defendants sued herein as Does 1 through 100, inclusive and, therefore, sues these defendants by such fictitious names. The Representative Plaintiff will seek leave of court to amend this Complaint when such names are ascertained. The Representative Plaintiff is informed and believes and, on that basis, alleges that each of the fictitiously-named defendants were responsible in some manner for, gave consent to, ratified, and/or authorized the conduct herein alleged and that the adverse financial impacts, as herein alleged, were proximately caused thereby.

18. Representative Plaintiff is informed and believes and, on that basis, alleges that, at all relevant times herein mentioned, each of the defendants was the agent and/or employee of each of the remaining defendants and, in doing the acts herein alleged, was acting within the course and scope of such agency and/or employment.

REPRESENTATIVE ACTION ALLEGATIONS

19. The Representative Plaintiff brings this action as a representative action on behalf of the following category of Aggrieved Employees:

Non-Exempt Employees

All persons who are and/or were employed as by Defendant Argonaut California Ventures, Inc. and/or the DOE defendant(s) in one or more of their California locations at any time after September 14, 2020.

20. Defendants' officers and directors are excluded from the category of Aggrieved Employees defined in the preceding paragraph.

COMMON FACTUAL ALLEGATIONS

21. As described herein, for years, Defendants have knowingly failed to properly compensate Plaintiff and the Aggrieved Employees for all wages earned and due (including, but not necessarily limited to, compensation for missed meal and/or rest periods). Moreover, Defendants have failed to provide Plaintiff and the Aggrieved Employees with net ten-minute rest periods for work shifts exceeding four hours or a major fraction thereof, and has failed to provide uninterrupted, unrestricted meal periods of at least 30 minutes for work shifts exceeding five hours. Defendants have declined to pay these wages, even upon an Aggrieved Employee's termination or resignation from employment, in blatant violation of California Labor Code §§ 201-204, inclusive. More than 30 days have passed since certain Aggrieved Employees have left Defendants' employ.

22. Defendant also failed to provide Plaintiff and Aggrieved Employees with accurate semimonthly itemized statements, in violation of California Labor Code § 226. In doing so, Defendant has not only failed to pay its workers the full amount of compensation due, it has, until now, effectively shielded itself from its employees' scrutiny for its unlawful conduct by concealing the magnitude and financial impact of its wrongdoing.

23. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff and Aggrieved Employees are entitled to penalties pursuant to Labor Code §§ 2699 *et seq.* for violations described above including missed meal periods and missed rest periods, in an amount to be established at trial. As a further direct and proximate result of Defendant's

1 unlawful conduct, as set forth herein, Plaintiff and Aggrieved Employees are entitled to recover
2 penalties for failure to provide semimonthly itemized wage statements of hours worked and all
3 applicable hourly rates (in violation of California Labor Code § 226) in an amount to be established
4 at trial. As a further direct and proximate result of Defendants' unlawful conduct, as set forth
5 herein, Plaintiff and Aggrieved Employees are also entitled to recover attorneys' fees, litigation
6 costs, and restitution of ill-gotten gains, pursuant to statute.

7 24. Plaintiff complied with the procedures for bringing suit specified in California
8 Labor Code § 2699.3. By letter dated September 14, 2021, Plaintiff gave written notice to the
9 Labor and Workforce Development Agency ("LWDA") and Defendant of the specific provisions
10 of the California Labor Code alleged to have been violated, including the facts and theories to
11 support these violations.

12 **FIRST CAUSE OF ACTION**
13 **PRIVATE ATTORNEYS GENERAL ACT CLAIM**
14 **(California Labor Code §§ 2699)**

15 24. Each and every allegation of the preceding paragraphs is incorporated in this cause of action with
16 the same force and effect as though fully set forth herein.

17 25. California Labor Code § 2699(a) provides, in pertinent part:

18 Notwithstanding any other provision of the law, any provision of this code
19 that provides for a civil penalty to be assessed and collected by the Labor
20 and Workforce Development Agency or any of its departments, divisions,
21 commissions, boards, agencies, or employees, for a violation of this code,
22 may, as an alternative, be recovered through a civil action brought by an
aggrieved employee on behalf of himself or herself and other current or
former employees. . .

23 26. Representative Plaintiff (and each and every other Aggrieved Employee defined
24 herein) are "aggrieved employees," as defined by California Labor Code § 2699(c), because they
25 were employed by Defendants and were among the many employees against whom violations of
26 law were committed.

28. Representative Plaintiff brings this action individually and on behalf of all Aggrieved Employees alleging violations of the California Labor Code provisions cited in the preceding paragraphs.

29. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Representative Plaintiff and Aggrieved Employees are entitled to recover penalties as provided by California Labor Code § 2699, in an amount to be established at trial, as well as costs and attorneys' fees pursuant to statute.

RELIEF SOUGHT

WHEREFORE, the Representative Plaintiff, individually and on behalf of the Aggrieved Employees, prays for judgment and the following specific relief against Defendants, and each of them, jointly and separately, as follows:

1. That the Court declare, adjudge, and decree that this action is a proper representative action pursuant to California Labor Code § 2699;
 2. That the Court make an award of civil penalties for violations of the California Labor Code, pursuant to California Labor Code § 2699;
 3. For reasonable attorneys' fees, pursuant to California Labor Code § 2699(g) and/or California Code of Civil Procedure § 1021.5;
 4. For costs of suit and any and all such other relief as the Court deems just and proper;
- and

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1 5. For all other Orders, findings and determinations identified and sought in this
2 Complaint.

3
4 Dated: November 18, 2021

COLE & VAN NOTE

5
6 By: 

Scott Edward Cole, Esq.
Attorneys for Representative Plaintiff

PROOF OF SERVICE

I am over 18 years of age, not a party to the above-captioned action, and am employed by the law firm of Cole & Van Note, 555 12th St., Suite 1725, Oakland, California 94607.

On this date, I served a copy of:

FIRST AMENDED PRIVATE ATTORNEYS GENERAL ACT COMPLAINT FOR CIVIL PENALTIES

X	By depositing the document(s) with the U.S. Postal Service, with postage fully prepaid, addressed as indicated below, in the ordinary course of business.
	By facsimile transmission to the fax number(s) below, before 5:00 p.m. PST.
	By placing the document(s) in a sealed Federal Express envelope, affixing a pre-paid air bill and delivering it to a Federal Express agent.
	By personal delivery.
	By e-mail transmission to the e-mail address(es) below.
	By electronic filing using the CM/ECF System which will send a Notice of Electronic Filing to the email address(es) listed in the Electronic Mail Notice List.
	By uploading the document(s) to the third-party document management/service company, court-approved for purposes of this litigation.
	By electronic submission to the Labor and Workforce Development Agency.

on the following person(s):

Kyle A. Wende, Esq.
James T. Conley, Esq.
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
500 Capitol Mall, Suite 2500
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the United States and the State of California the foregoing is true and correct. Executed in Oakland, California on November 18, 2021.



Nicole Randle