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on behalf of himself and all other aggrieved employees

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN FRANCISCO – CIVIC CENTER COURTHOUSE**

11
12 MARVIN GEOVANY FLORES NAVARRO,
on behalf of himself and all other aggrieved
13 employees,

14 **PLAINTIFF,**

15
16 vs.

17 QUACH & LAI LLC, a California limited
liability company d/b/a MANILA ORIENTAL
18 MARKET; and DOES 1 through 20, inclusive,

19 **DEFENDANTS.**

CASE NO.: CGC-22-598253

*Assigned For All Purposes to the Hon. Samuel K.
Feng, Dept. 610*

REPRESENTATIVE ACTION

**FIRST AMENDED COMPLAINT FOR
VIOLATION OF THE CALIFORNIA
PRIVATE ATTORNEYS GENERAL ACT OF
2004, CALIFORNIA LABOR CODE § 2698 et
seq.**

Action Filed: February 18, 2022
Trial Date: Not set.

**ELECTRONICALLY
FILED**
*Superior Court of California,
County of San Francisco*
09/19/2022
Clerk of the Court
BY: BOWMAN LIU
Deputy Clerk

1 Plaintiff MARVIN GEOVANY FLORES NAVARRO, on behalf of himself and all other
2 aggrieved employees (hereafter “PLAINTIFF”), alleges as follows:

3 **INTRODUCTION**

4 1. PLAINTIFF brings this action on behalf of himself and all other aggrieved employees of
5 Defendants QUACH & LAI LLC, a California limited liability company d/b/a MANILA ORIENTAL
6 MARKET, and DOES 1 through 20, inclusive (collectively, “DEFENDANTS”) to recover civil
7 penalties arising from failure to furnish accurate and complete itemized wage statements, unlawful meal
8 period and rest break policies and practices, failure to pay all wages, including premiums wages, due to
9 discharged or quitting employees, and failure to timely pay wages during employment. This action is a
10 representative action under the California Private Attorneys General Act of 2004 (“PAGA”), Labor
11 Code Sections 2698-2699.5.

12 **THE PARTIES**

13 2. PLAINTIFF is a resident of the State of California. At all times relevant to this action,
14 PLAINTIFF was employed by DEFENDANTS as an hourly, non-exempt employee.

15 3. PLAINTIFF is informed and believes, and based thereon alleges, that Defendant
16 QUACH & LAI LLC (“QUACH & LAI”) is, and all times relevant to this action was, a limited liability
17 company organized and existing under the laws of the State of California. PLAINTIFF is informed and
18 believes, and based thereon alleges, that Defendant QUACH & LAI is authorized to transact and conduct
19 business in the State of California and does transact and conduct business in the County of San
20 Francisco, State of California. Further, QUACH & LAI maintains grounds, facilities, and offices in the
21 County of San Francisco, State of California. QUACH & LAI employed PLAINTIFF and other
22 aggrieved persons within the State of California.

23 4. PLAINTIFF is informed and believes, and thereon alleges, that QUACH & LAI owns
24 and operates grocery stores and does business under the name MANILA ORIENTAL MARKET.

25 5. At this time, the true names and capacities of DOES 1 through 20, inclusive, are unknown
26 to PLAINTIFF, and PLAINTIFF therefore sues such DEFENDANTS under fictitious names.
27 PLAINTIFF is informed and believes, and thereon alleges, that each defendant designated as a DOE is

1 in some manner responsible for the occurrences alleged herein, and that PLAINTIFF and other aggrieved
2 employees' injuries and damages were proximately caused by the conduct of said DOE defendants.
3 PLAINTIFF will seek leave of the court to amend this Complaint to allege the true names and capacities
4 of said DOE defendants when such information is ascertained.

5 6. PLAINTIFF is informed and believes, and based thereon alleges, that at all relevant
6 times, DEFENDANTS were joint employers of PLAINTIFF and other aggrieved employees.
7 PLAINTIFF is informed and believes, and thereon alleges, that at all times relevant to this action,
8 DEFENDANTS were the alter egos, predecessors, divisions, affiliates, integrated enterprises, joint
9 employers, subsidiaries, parents, principals, related entities, co-conspirators, authorized agents, partners,
10 joint venturers, and/or guarantors, actual or ostensible, of each other. Each defendant was dominated
11 by his, her, or its codefendants, and each was the alter ego of the other.

12 7. PLAINTIFF is informed and believes, and based thereon alleges, that in perpetrating the
13 acts and omissions alleged herein, DEFENDANTS, and each of them, acted pursuant to, and in
14 furtherance of, their policies and practices of depriving PLAINTIFF and other aggrieved employees
15 their wage and hour rights, through methods which include, but are not limited to: failing to provide
16 complete itemized statements for each pay period in violation of the Labor Code.

17 8. PLAINTIFF is informed and believes, and thereon alleges, that each and every one of
18 the acts and omissions alleged herein were performed by, and/or attributable to, all DEFENDANTS,
19 each acting as agents and/or employees, and/or under the direction and control of, each of the other
20 DEFENDANTS, and that said acts and failures to act were within the course and scope of said agency,
21 employment, and/or direction and control.

22 9. PLAINTIFF is informed and believes, and based thereon alleges, that in accordance with
23 Labor Code Section 558.1, DEFENDANTS and any person acting on behalf of DEFENDANTS are
24 liable for violating, or causing to violate, any provision regulating minimum wages or hours and days
25 of work in any order of the Industrial Welfare Commission, or Labor Code Section 226.

1 **JURISDICTION AND VENUE**

2 10. The Superior Court of the State of California has jurisdiction in this matter because
3 PLAINTIFF is a resident of the State of California, and DEFENDANTS are qualified to do business in
4 California and regularly conduct business in the State of California.

5 11. No federal question is at issue as the claims are based exclusively on California state law.

6 12. Venue is proper in this judicial district and the County of San Francisco, California
7 because among other things, PLAINTIFF and the other aggrieved employees performed work for
8 DEFENDANTS in the County of San Francisco; DEFENDANTS maintain grounds, facilities, and
9 offices, and transact business in the County of San Francisco; DEFENDANTS' unlawful policies,
10 procedures, and/or practices, which are the subject of this action were applied, at least in part, to
11 PLAINTIFF and other aggrieved employees in the County of San Francisco; and DEFENDANTS'
12 unlawful acts and omissions occurred in the County of San Francisco.

13 **PAGA ALLEGATIONS**

14 13. PLAINTIFF is a former hourly, full-time, non-exempt employee of DEFENDANTS'
15 retail grocery store located in San Francisco, California.

16 14. In accordance with Labor Code Section 2699.3, on or about December 14, 2021,
17 PLAINTIFF gave written notice to the California Labor and Workforce Development Agency
18 ("LWDA"), by filing a PAGA Notice online, a copy of which was sent by certified mail to
19 DEFENDANTS, setting forth the specific provisions of the Labor Code and applicable Industrial
20 Welfare Commission ("IWC") Wage Order(s) alleged to have been violated, including the facts and
21 theories to support the alleged violations. PLAINTIFF'S PAGA Notice was sent by certified mail to
22 DEFENDANTS on December 14, 2021.

23 15. On or about July 15, 2022, PLAINTIFF filed an Amended PAGA Notice online, a copy
24 of which was sent by certified mail to DEFENDANTS, setting forth the specific provisions of the Labor
25 Code and IWC Wage Order(s) alleged to have been violated, including the facts and theories to support
26 the alleged violations. PLAINTIFF'S Amended PAGA Notice was sent by certified mail to
27 DEFENDANTS on July 15, 2022.

16. The LWDA did not provide notice of its intention to investigate DEFENDANTS' violations within the sixty-five (65) calendar days of the postmark date of PLAINTIFF'S PAGA Notice, or within sixty-five (65) calendar days of the postmark date of PLAINTIFF'S Amended PAGA Notice. Accordingly, PLAINTIFF has complied with all of the requirements set forth in Labor Code Section 2699.3 to proceed with this representative action under the PAGA.

17. California Judicial Council Emergency Rule 9 related to COVID-19 tolled the statute of limitations applicable to this action for five months and 25 days from April 6, 2020 to October 1, 2020. “Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020.” PAGA’s statute of limitations is governed by the Code of Civil Procedure Section 340 and thus is subject to modification by the California Judicial Council.

18. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Labor Code Sections 2698-2699.5, PLAINTIFF brings this action on behalf of herself and all current and former non-exempt aggrieved employees of DEFENDANTS in the State of California beginning from December 14, 2020 (and as tolled by Emergency Rule 9) and ending at the time this action settles or proceeds to final judgment (the “PAGA PERIOD”).

PREDICATE LABOR CODE VIOLATIONS

Failure to Furnish Complete Itemized Wage Statements

(Labor Code § 226(a))

19. During the PAGA PERIOD, DEFENDANTS routinely failed to fail to provide PLAINTIFF and other aggrieved employees with timely, accurate, and complete itemized wage statements in writing showing the legal entity or entities employing PLAINTIFF and other aggrieved employees in violation of Labor Code Section 226, subdivision (a).

20. During the PAGA PERIOD, and as a result of DEFENDANTS' unlawful policies and practices, DEFENDANTS failed to provide PLAINTIFF and other aggrieved employees with timely and accurate itemized wage statements in accordance with Labor Code Section 226, subdivision (a).

21. The wage statements issued by DEFENDANTS failed to include address of the legal entity that is the employer.

22. During the PAGA PERIOD, PLAINTIFF and other aggrieved employees suffered injury as a result of DEFENDANTS' failure to provide timely and accurate itemized wage statements as PLAINTIFF and other aggrieved employees could not timely and easily determine from the wage statement alone any of the following: gross wages earned, total hours worked by the employee, net wages earned, the inclusive dates of the period for which the employee is paid, the name and address of the legal entity that is the employer and, all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate by the employee.

Failure to Provide Compliant Meal Periods

(Labor Code §§ 226.7, 512)

23. Labor Code Section 512 provides in relevant part, “An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 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.”

24. The applicable IWC Order(s), including IWC Order 7-2001 § 11 states, “(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.”

25. Under California law, when an employee works for a work period of more than five (5) hours, a meal period must be provided no later than the end of the employee's fifth hour of work, *i.e.*, no later than the start of the employee's sixth hour of work. When an employee works for a period of more than 10 hours, a second meal period must be provided no later than the end of the employee's tenth hour of work, *i.e.*, no later than the start of the employee's eleventh hour of work. *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012).

26. Labor Code Section 226.7, subdivision (a) states, “An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission”

27. During the PAGA PENALTY PERIOD, as part of DEFENDANTS' unlawful policies, procedures, and practices, DEFENDANTS failed to provide timely, compliant, off-duty meal periods to PLAINTIFF and other aggrieved employees under Labor Code Sections 226.7 and 512 and the applicable IWC Order(s), including IWC Order 7-2001.

28. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA PENALTY PERIOD, DEFENDANTS did not have any policy or practice pertaining to meal period violations.

29. DEFENDANTS further violated Labor Code Sections 226.7 and 512 and the applicable IWC Order(s) by failing to compensate PLAINTIFF and other aggrieved employees with one (1) additional hour of premium compensation at each employee's regular rate of pay for each workday that a compliant meal period was not provided.

Failure to Provide Compliant Rest Periods

(Labor Code §§ 226.7)

30. At all relevant times, as part of DEFENDANTS' unlawful policies, procedures, and practices to deprive their current and former non-exempt employees all wages earned and due, DEFENDANTS failed to provide compliant rest periods to PLAINTIFF and other aggrieved employees as required pursuant to Labor Code Section 226.7, and the applicable IWC Order(s), including IWC Order 7-2001, § 12.

31. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA PENALTY PERIOD, DEFENDANTS did not have any policy or practice pertaining to rest break violations.

Failure to Timely Pay Wages During Employment

33. Under Labor Code Section 204, for all labor performed between the 1st and 15th days of any calendar month, DEFENDANTS are required to pay their nonexempt employees between the 16th and 26th day of the month during which the labor was performed. Labor Code Section 204 provides that for all labor performed between the 16th and 26th days of any calendar month, DEFENDANTS are required to pay their nonexempt employees between the 1st and 10th day of the following calendar month.

35. During the PAGA PENALTY PERIOD, DEFENDANTS knowingly and willfully failed to timely pay PLAINTIFF and other aggrieved employees all the wages, including premiums wages, by the next regular payroll period as required by Labor Code Section 204. *See, Naranjo v. Spectrum Security Services, Inc.* (May 23, 2022, No. S258966) Cal.5th (2022 Cal. LEXIS 2878, at *2).

36. Under Labor Code Sections 201, 202 and 203, DEFENDANTS are required to pay all earned and unpaid wages to an employee who is discharged. Labor Code Section 201 provides that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately.

37. Under Labor Code Section 202, DEFENDANTS are required to pay all accrued wages due to an employee no later than 72 hours after the employee quits, unless the employee provided 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or wages at the time of quitting.

38. Labor Code Section 203 provides that if an employer willfully fails to pay, in accordance with Labor Code sections 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued wages to the employee for up to thirty (30) days.

39. During the PAGA PENALTY PERIOD and in violation of Labor Code Sections 201 and 202, DEFENDANTS willfully failed to timely pay accrued wages and other compensation, including premium compensation to PLAINTIFF and other aggrieved employees who were discharged or who quit. *See, Naranjo v. Spectrum Security Services, Inc.* (May 23, 2022, No. S258966) ___ Cal.5th ___ (2022 Cal. LEXIS 2878, at *2).

FIRST CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

(Labor Code §§ 2698 *et seq.*)

(AGAINST ALL DEFENDANTS)

40. PLAINTIFF hereby incorporates by reference, as though fully set forth herein, each of the allegations in paragraphs 1 through 39, above.

41. PLAINTIFF is an “aggrieved employee” within the meaning of Labor Code Section 2699, subdivision (c), and a proper representative to bring a civil action on behalf of himself and other current and former non-exempt employees of DEFENDANTS under the procedures specified in Labor Code sections 2699.3 because PLAINTIFF was employed by DEFENDANTS and the alleged Labor Code violation was committed against PLAINTIFF during the PAGA PERIOD.

42. PLAINTIFF seeks civil penalties through a representative action permitted by PAGA.

43. Pursuant to Labor Code Sections 2698 through 2699.5, PLAINTIFF seeks to recover civil penalties from DEFENDANTS in a representative action for the violations set forth above which

1 include, but are not limited to, violations of Labor Code Sections 226, subdivision (a), 201, 202, 203,
2 204, 226.7, and 512

3 44. Under Labor Code Section 2699, subdivision (a), PLAINTIFF seeks civil penalties based
4 on DEFENDANTS' violations of Labor Code provisions for which a civil penalty is specifically
5 provided by statute which include, but are not limited to, the following:

6 a. Under Labor Code Section 226.3, DEFENDANTS are subject to a civil penalty in the
7 amount of two hundred and fifty dollars (\$250.00) per aggrieved employee for the initial pay period
8 where a violation occurs and one thousand dollars (\$1,000.00) per aggrieved employee for violations in
9 subsequent pay periods for violations of Labor Code Section 226, subdivision (a).

10 b. Under Labor Code Section 558, subdivision (a), "[a]ny employer or other person acting
11 on behalf of an employer who violates, or causes to be violated, a Section of this chapter or any provision
12 regulating hours and days of work in any order of the Industrial Welfare Commission," including Labor
13 Code Sections 510 and 512, shall be subject to a civil penalty, in addition to any other penalty provided
14 by law, of fifty dollars (\$50.00) for initial violations for each employee for each pay period for which
15 the employee was underpaid and one hundred dollars (\$100.00) for each subsequent violation for each
16 employee for each pay period for which the employee was underpaid.

17 45. PLAINTIFF further seeks civil penalties based on DEFENDANTS' violations of Labor
18 Code provisions for which a civil penalty is not specifically provided by statute. Labor Code Section
19 2699, subdivision (f) provides that for all Labor Code violations for which a civil penalty is not
20 specifically provided, the following civil penalties apply: one hundred dollars (\$100.00) for each
21 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00) for each
22 aggrieved employee per pay period for each subsequent violation.

23 46. PLAINTIFF seeks such civil penalties in accordance with Labor Code Section 2699,
24 subdivision (f) based on DEFENDANTS' violations of Labor Code provisions for which a civil penalty
25 is not specifically provided.

26 47. PLAINTIFF further seeks reasonable attorneys' fees and costs as allowed by law
27 including under Labor Code Section 2699, subdivision (g)(1).

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, PLAINTIFF, individually and on behalf of all other aggrieved employees,
3 prays for relief against DEFENDANTS as follows:

- 4 1. For civil penalties according to proof and all penalties authorized under the PAGA
5 including under Labor Code Sections 226.3, 558, and 2699, subdivisions (a) and (f);
6 2. For reasonable attorneys' fees and costs as allowed by law including pursuant to Labor
7 Code Section 2699, subdivision (g) and any other applicable provisions providing for attorneys' fees
8 and costs; and
9 3. For such further and additional relief as allowed by law or which the Court deems just
10 and proper.

11 DATED: September 19, 2022

12 Respectfully submitted,

13 **PROXY LAW FIRM LLP**

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16 _____
Hengameh S. Safaei
Rana Nader
17 Attorneys for Plaintiff MARVIN
18 GEOVANY FLORES NAVARRO on
19 behalf of himself and all other aggrieved
20 employees
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PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. My business address is 10880 Wilshire Boulevard, Suite 1101 Los Angeles, California 90024.

On September 19, 2022, I served the following document(s): FIRST AMENDED COMPLAINT FOR VIOLATION OF THE CALIFORNIA PRIVATE ATTORNEYS GENERAL ACT OF 2004, CALIFORNIA LABOR CODE § 2698 *et seq.* on the following person or persons:

Defendant QUACH & LAI LLC d/b/a MANILA ORIENTAL MARKET

DAVID L. MARTIN, SB No. 253858

dave@employmentdefenselaw.com

SHELLY D. SONG, SB No. 312036

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MARTIN LAW FIRM, PC

19800 MacArthur Blvd, Ste. 680

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Telephone: 949-491-4805

Email: dave@employmentdefenselaw.com;

Email: shelly@employmentdefenselaw.com;

Email: Madison Guevara – madison@employmentdefenselaw.com;

Email: Teresa Cai – teresa@employmentdefenselaw.com.

The documents were served by the following means:

☒ **BY ELECTRONIC TRANSMISSION.** Based on an agreement of the parties to accept service by electronic transmission, I electronically served the document(s) to the person(s) at the electronic service address(es) listed above.

☐ **BY OVERNIGHT DELIVERY.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in the attached Proof of Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☐ **BY FAX TRANSMISSION.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax number(s) listed above. No error was reported by the fax machine that I used.

☐ **BY MESSENGER SERVICE.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in the attached Proof of Service List and providing them to a professional messenger service for service.

☐ **BY UNITED STATES MAIL.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in the attached Proof of Service List:

☐ deposited the sealed envelope with the United States Postal Service, with the postage

1 fully prepared.

2 ☐ placed the envelope for collection and mailing, following our ordinary business
3 practices. I am readily familiar with this business's practice for collecting and processing
4 correspondence for mailing. On the same day that correspondence is placed for collection and
mailing, it is deposited in the ordinary course of business with the United States Postal Service,
in a sealed envelope with postage fully prepaid.

5 I am a resident of and employed in the county where the mailing occurred. The envelope or
6 package was placed in the mail at Los Angeles, California.

7 ☐ **BY PERSONAL SERVICE.** I personally delivered the documents to the persons at the
8 addresses listed in the attached Proof of Service List. (1) For a party represented by an attorney,
9 delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's
10 office, in an envelope or package clearly labeled to identify the attorney being served, with a
11 receptionist or an individual in charge of the office; or (c) if there was no person in the office with
whom the notice or papers could be left, by leaving them in a conspicuous place in the office between
the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the
party or by leaving the documents at the party's residence with some person not younger than 18
years of age between the hours of eight in the morning and six in the evening.

12 I declare under penalty of perjury under the laws of the State of California, that the foregoing
13 is true and correct.

14 Executed on September 19, 2022, at Los Angeles, California.

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17 _____
18 Hengameh S. Safaei
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