

Rodolfo Ruiz-Velasco, Esq. (SBN 265364)
RUIZ-VELASCO LAW FIRM
600 W. Broadway Suite 700
San Diego, CA 92101
Tel: (619) 800-5293
Fax: (619) 399-7047

Attorneys for Plaintiff MARCO SALDANA

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Superior Court of California,
County of San Diego
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Clerk of the Superior Court
By Marfil Estrada, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
SAN DIEGO COUNTY

MARCO SALDANA, an individual,

Plaintiff,

v.

MARISCOS AND STREET TACOS, INC.;
CARLOS ROBLES, an individual;
MARGARITA ROBLES, an individual; and
DOES 1 through 50, inclusive,

Defendants.

CASE NO.: 37-2022-00025334 CU-OE-CTL

COMPLAINT FOR DAMAGES:

1. FAILURE TO PAY WAGES
2. FAILURE TO TIMELY FURNISH
ACCURATE ITEMIZED WAGE
STATEMENTS
3. UNFAIR BUSINESS PRACTICES
4. WAITING TIME PENALTIES PER
LABOR CODE §203
5. MEAL AND REST PERIOD
VIOLATIONS
6. FAILURE TO TIMELY PROVIDE A
COPY OF PAYROLL RECORDS AND
EMPLOYEE FILE
7. FAILURE TO REIMBURSE
8. PRIVATE ATTORNEYS GENERAL
ACT OF 2004 ("PAGA") PER LABOR
CODE §2699, et seq.

[IMAGED FILE]

1
2 Plaintiff MARCO SALDANA, an individual (hereinafter, "Plaintiff") alleges as follows:

3
4 **GENERAL ALLEGATIONS**

5 The public policy of California declares:

6 It is the public policy of this state to vigorously enforce minimum labor standards in
7 order to ensure employees are not required or permitted to work under substandard
8 unlawful conditions or for employers that have not secured the payment of compensation
9 and to protect employers who comply with the law from those who attempt to gain a
competitive advantage at the expense of their workers by failing to comply with
minimum labor standards.

10 (Labor Code §90.5 subd. (a).)

11
12 Despite this clear mandate, DEFENDANTS blatantly violated the California Labor Code
13 and the Industrial Welfare Commission ("IWC") Wage Orders. Defendants willfully and
14 maliciously failed to pay mandated overtime and minimum wage compensation, failed to provide
15 meal and rest periods, failed to reimburse required business expenditures, and failed to provide
16 and maintain proper employee records to their employees.

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18 1. This lawsuit is brought in response to the Defendants' refusal to pay Plaintiff, who
19 is a former employee of Defendants, and the other aggrieved employees all wages that he earned
20 during his employment with Defendants, among other Labor Code violations.

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22 2. The acts complained of herein have occurred within the time period from four (4)
23 years preceding the filing of the original Complaint herein (hereinafter, the "Relevant Time
24 Period").

25 **JURISDICTION AND VENUE**

26 3. The Superior Court of the State of California for the County of San Diego has
27 jurisdiction over this case due to the fact that some of the alleged violations (a) of California
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1 Labor Code (i.e. §§ 200 et seq.), (b) California Business and Professions Code §§ 17200 *et seq.*
2 and (c) related common law violations occurred in the County of San Diego.

3 4. Venue is proper in the Central Division, Hall of Justice San Diego County
4 Superior Court pursuant to Code of Civil Procedure §395(a) and §395.5, because *inter alia*, (a)
5 the Defendants' principal place of business is situated in this County, and (b) complaints
6 regarding such issues may be filed in the Central Division.
7

8 **PARTIES**

9 5. Plaintiff MARCO SALDANA is an individual over the age of eighteen (18) and
10 was an employee of Defendants during the last 4 years.
11

12 6. Plaintiff is informed and believes that Defendant MARISCOS AND STREET
13 TACOS, INC. is a California Corporation, and at all times mentioned herein operated its
14 businesses within the jurisdiction of this Court, and has operated and is doing business as Burrito
15 Factory, El Cacho Fish Taco Stand, Sakana Sushi Bar, and Tijuana Food Court.
16

17 7. Plaintiff is informed and believes that Defendant CARLOS ROBLES is an
18 individual who during the relevant time period has owned, managed and operated and continues
19 to own, manage and operate MARISCOS AND STREET TACOS, INC. and its businesses, and
20 who at all times mentioned in this Complaint herein resided within the jurisdiction of this Court.
21 CARLOS ROBLES was and remains a person acting on behalf of MARISCOS AND STREET
22 TACOS, INC., on information and belief as the chief executive officer, director, and managing
23 agent of MARISCOS AND STREET TACOS, INC., who violated and/or who caused to violate
24 various Labor Code sections and other provisions regulating hours and days of work established
25 by the Industrial Welfare Commission of the State of California rendering her individually liable
26 pursuant to Labor Code Sections 558, 558.1, 1102.5, and 2699 et. seq. In addition, CARLOS
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1 ROBLES is an officer, director, agent, and person acting either individually or as a managing
2 agent, who paid or caused to be paid the Plaintiff and the other aggrieved employees a wage less
3 than the minimum and overtime rate of pay under the law, failed to relieve them of duties during
4 their meal and rest periods, and failed to provide accurate records, or by an order of the
5 commission and is therefore subject to a civil penalty, restitution of wages payable to the
6 employee, and any applicable wages, damages and penalties plus fees and costs imposed
7 pursuant to Labor Sections 203, 558, 558.1, and 2699 et. seq.
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10 8. Plaintiff is informed and believes that Defendant MARGARITA ROBLES is an
11 individual who during the relevant time period has owned, managed and operated and continues
12 to own, manage and operate MARISCOS AND STREET TACOS, INC. and its businesses, and
13 who at all times mentioned in this Complaint herein resided within the jurisdiction of this Court.
14 MARGARITA ROBLES was and remains a person acting on behalf of MARISCOS AND
15 STREET TACOS, INC., on information and belief as the chief financial officer, secretary, and
16 managing agent of MARISCOS AND STREET TACOS, INC., who violated and/or who caused
17 to violate various Labor Code sections and other provisions regulating hours and days of work
18 established by the Industrial Welfare Commission of the State of California rendering her
19 individually liable pursuant to Labor Code Sections 558, 558.1, 1102.5, and 2699 et. seq. In
20 addition, MARGARITA ROBLES is an officer, agent, and person acting either individually or as
21 a managing agent, who paid or caused to be paid the Plaintiff and the other aggrieved employees
22 a wage less than the minimum and overtime rate of pay under the law, failed to relieve them of
23 duties during their meal and rest periods, and failed to provide accurate records, or by an order of
24 the commission and is therefore subject to a civil penalty, restitution of wages payable to the
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1 employee, and any applicable wages, damages and penalties plus fees and costs imposed
2 pursuant to Labor Sections 203, 558, 558.1, and 2699 et. seq.

3 9. DOES 1 to 50, inclusive are now, and/or at all times mentioned in this Complaint
4 were licensed to do business and/or actually doing business in the State of California. Plaintiff
5 does not know the true names or capacities, whether individual, partner or corporate, of DOES 1
6 to 50, inclusive and for that reason, DOES 1 to 50 are sued under such fictitious names pursuant
7 to California Code of Civil Procedure (“CCP”) §474. Plaintiff will amend this Complaint to
8 allege such names and capacities as soon as they are ascertained.
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11 10. Plaintiff is informed and believes and thereon alleges that DOES 1 to 50,
12 inclusive, are former co-employers and/or joint employers of Plaintiff.

13 11. Plaintiff is informed and believes and thereon alleges that DOES 1 to 50,
14 inclusive, are successors in interest to Defendants or are otherwise obligated to pay Plaintiff the
15 wages due and owing to them, e.g. by way of statute, common law, quantum meruit, express
16 written contract, implied in fact contract, or by way of common counts such as money had and
17 received. Plaintiff reserves the right to augment the foregoing allegations to more clearly set
18 forth this Defendant’s liability as discovery progresses and reveals the same.
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21 12. Plaintiff is informed and believes, and based upon such information and belief
22 alleges that the Defendants, and each of them, are now and/or at all times mentioned in this
23 Complaint were in some manner legally responsible for the events, happenings and
24 circumstances alleged in this Complaint.
25

26 13. Plaintiff is further informed and believes, and based upon such information and
27 belief alleges, that at all times herein mentioned, all Defendants, and each of them, were and are
28 the agents, servants, employees, joint venturers, and/or partners of each of the other Defendants,

1 and were, at all such times, acting within the course and scope of said employment and/or
2 agency; furthermore, that each and every Defendant herein, while acting as a high corporate
3 officer, director and/or managing agent, principal and/or employer, expressly directed, consented
4 to, approved, affirmed and ratified each and every action taken by the other co-Defendants, as
5 herein alleged and was responsible in whole or in part for the matters referred to herein.
6

7 14. Plaintiff is further informed and believes, and based upon such information and
8 belief alleges, that at all times herein mentioned, Defendant, and each of them, proximately
9 caused Plaintiff to be subjected to the unlawful practices, wrongs, complaints, injuries and/or
10 damages alleged in this Complaint.
11

12 15. Plaintiff is further informed and believes, and based upon such information and
13 belief alleges, that at all times herein mentioned, Defendants, and each of them were co-
14 employers and/or joint employers of Plaintiff.
15

16 16. Defendants, and each of them, are now and/or at all times mentioned in this
17 Complaint were members of and/or engaged in a joint venture, partnership and common
18 enterprise, and were acting within the course and scope of, and in pursuit of said joint venture,
19 partnership and common enterprise and, as such were co-employers and/or joint employers of
20 Plaintiff.
21

22 17. Defendants, and each of them, at all times mentioned in this Complaint
23 concurred with, contributed to, approved of, aided and abetted, condoned and/or otherwise
24 ratified the various acts and omissions of each and every one of the other Defendants in
25 proximately causing the complaints, injuries and/or damages alleged in this Complaint.
26

27 18. Plaintiff is informed and believes and thereon alleges that at all times herein
28 mentioned, some of the Defendants DOES 1 through 50, Inclusive, were the *alter egos* of the

1 named Defendants. Plaintiff is informed and believes and thereon alleges that there exists such a
2 unity of interest and ownership between the named Defendants and DOES 1 through 50, that the
3 individuality and separateness of the named Defendants and DOES 1 through 50 has ceased to
4 exist. The business affairs of named Defendants and DOES 1 through 50, are, and at all times
5 relevant hereto were, so mixed and intermingled that the same cannot reasonably be segregated,
6 and the same are in inextricable confusion. Defendants, and at all times relevant hereto, used
7 each other as a mere shell and conduit for the conduct of certain of Defendants' affairs. The
8 recognition of the separate existence of Defendants would not promote justice, in that it would
9 permit Defendants to insulate themselves from liability to Plaintiff. Accordingly, the named
10 Defendants constitute the *alter ego* of Defendants DOES 1 through 50, and the fiction of their
11 separate existence must be disregarded.

12 **FIRST CAUSE OF ACTION**

13 **FAILURE TO PAY WAGES**

14 **(Against all Defendants)**

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18 19. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside
19 this section as though fully set forth herein.

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21 20. Plaintiff was an "employee" of Defendants (as defined by section 350 of the
22 Labor Code) but Defendants failed to pay Plaintiff and the other aggrieved employees for all
23 hours worked. Plaintiff and the other aggrieved employees were employed as cooks, food
24 preparers, dishwashers, and cashiers.

25
26 21. Pursuant to Labor Code section 1197, payment of less than the minimum wage
27 fixed by the commission is unlawful.

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1 22. During the entire period of time that Plaintiff and the other aggrieved employees
2 were employed by Defendants, and for the four (4) years preceding the filing of this lawsuit,
3 Defendants were required to compensate them at least at the minimum wage, but failed to carry
4 out their duties and responsibilities as an employer imposed under the laws and regulations of the
5 State of California and violated the law by failing to pay Plaintiff and the other aggrieved
6 employees at least a minimum wage for all hours worked pursuant to all applicable wage orders
7 and in accordance with Labor Code sections 200, 226, 500, 510, 558.1, 1194, 1194.2, and 1197.
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10 23. Defendants regularly failed to pay Plaintiff and the other aggrieved employees all
11 of the wages that they earned and failing to pay at least the minimum wage rate for all hours
12 worked, thus causing minimum wage violations. In violation of state law, Defendants have
13 knowingly and willfully refused to perform their obligations to compensate Plaintiff and the
14 other aggrieved employees for all minimum wages earned and all hours worked. As a direct
15 result, Plaintiff and the other aggrieved employees have suffered, and continue to suffer,
16 substantial losses related to the use and enjoyment of such unpaid wages, lost interest on such
17 wages, costs and attorneys' fees in seeking to compel Defendants to fully perform its obligation
18 under state law, all to their damage in amounts according to proof at the time of trial, but in
19 amounts in excess of the minimum jurisdiction requirement of this Court. Defendants committed
20 the acts alleged herein knowingly and willfully and maliciously, with wrongful and deliberate
21 intent.
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24 24. Defendants' conduct described herein violates Labor Code sections 200, 226,
25 500, 510, 558, 558.1, 1194, 1194.2, and 1197. As a proximate result of the aforementioned
26 violations, Plaintiff and the other aggrieved employees have been damaged in an amount
27 according to proof at the time of trial. Plaintiff is therefore entitled to recover the unpaid balance
28

1 of minimum wages and damages for minimum wage violations in an amount to be proven at
2 trial, plus liquidated damages pursuant to LC §1194.2, plus interest, plus penalties, attorneys'
3 fees, expenses, and costs of suit.
4

5 25. Pursuant to Labor Code §200, "wages" includes all amounts for labor
6 performed by employees of every description, whether the amount is fixed or ascertained by the
7 standard of time, task, piece, commission basis, or other method of calculation.

8 26. Plaintiff is thus entitled to their earned unpaid wages in an amount to be proven
9 at trial, plus interest, penalties, attorneys' fees and costs.
10

11 27. Under California law, including but not limited to, Labor Code sections 200,
12 226, 500, 510, 558, 558.1, and 1198, Defendants were required to compensate Plaintiff and the
13 other aggrieved employees for all overtime, which is calculated at one and one-half (1.5) times
14 the regular rate of pay for hours worked in excess of forty (40) per week or after eight (8) in one
15 day, and double time (2) times the regular rate of pay for hours worked on the seventh
16 consecutive work day, or after twelve (12) hours in any workday.
17

18 28. Throughout his employment with Defendants, Plaintiff regularly worked on
19 average over 90 hours per week. Plaintiff and the other aggrieved employees are or were non-
20 exempt employees entitled to overtime pay under California law, including but not limited to
21 Labor Code sections 200, 226, 500, 510, 558, 558.1, 1194 and 1198. Throughout Plaintiff's
22 employment, Defendants regularly failed to pay Plaintiff and the other aggrieved employees at
23 the overtime wage rate for their overtime hours worked. Specifically, Defendants would
24 intentionally fail to pay Plaintiff, and other aggrieved employees, at the overtime rate where
25 Defendants paid them a weekly salary that did not amount to at least the minimum wage, much
26 less the overtime wage.
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1 29. Under the applicable wage orders, statutes and regulations, Plaintiff and the
2 other aggrieved employees are entitled to one and one-half (1.5) times and double their regular
3 rate of pay for overtime work performed during the entire course of their employment with
4 Defendants.
5

6 30. As a direct result, Plaintiff and the other aggrieved employees have suffered
7 substantial losses related to the use and enjoyment of such wages, lost interest on such wages,
8 and expenses and attorneys' fees in seeking to compel Defendants to fully perform its obligation
9 under state law, all to their respective damage in amounts according to proof at the time of trial,
10 but in amounts in excess of the jurisdiction of this Court. Defendants committed the acts alleged
11 herein knowingly and willfully and maliciously, with the wrongful and deliberate intention of
12 injuring Plaintiff, from improper motives amounting to malice, and in conscious disregard of
13 Plaintiff's rights. Plaintiff is thus entitled to recover nominal, actual, compensatory damages in
14 amounts according to proof at the time of trial, but in amounts in excess of the jurisdiction of this
15 Court.
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18 31. Defendants' conduct described herein violates Labor Code sections 200, 226,
19 500, 510, 558, 558.1, 1194. As a proximate result of the aforementioned violations, Plaintiff has
20 been damaged in an amount according to proof at the time of trial, but in an amount in excess of
21 the jurisdiction of this Court. Therefore, pursuant to Labor Code sections 200, 203, 226, 558,
22 558.1, and 1194, Plaintiff is entitled to recover the unpaid balance of overtime compensation
23 Defendants owe to Plaintiff in an amount to be proven at trial, plus interest, plus penalties,
24 attorneys' fees, expenses, and costs of suit.
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1 32. All accrued and earned vacation pay must be paid as wages at the time of
2 termination of an employee and earned vacation may not be forfeited by an employer pursuant to
3 Labor Code Sections 201, 202, 203, 227, and 227.3, and applicable Wage Orders.

4
5 33. Plaintiff and the other aggrieved employees earned vacation pay per
6 Defendants' vacation pay policy that was not paid by Defendants at the time of separation.
7 Defendants willfully failed to pay Plaintiff and the other aggrieved employees their earned
8 vacation at the time of separation of their employment from Defendants. By Defendants' failure
9 to timely pay accrued vacation pay wages to Plaintiff and the other aggrieved employees,
10 Defendants willfully violated the provisions of Labor Code Sections 201, 202, 203, 227, and
11 227.3, and applicable Wage Orders.
12

13 34. An employer must pay its employees sick leave pursuant to Labor Code Section
14 246, et seq. Defendants failed to pay for sick pay leave in violation of Labor Code Section 246,
15 et seq. Therefore, Plaintiff and the other aggrieved employees are entitled to unpaid sick pay
16 leave in an amount to be proven at trial, plus interest, penalties, attorneys' fees and costs.
17

18 35. Defendants committed the acts alleged herein knowingly and willfully, with the
19 wrongful and deliberate intention of injuring Plaintiff and the other aggrieved employees, from
20 improper motives amounting to malice, and in conscious disregard of Plaintiff's rights.
21 Specifically, Defendants know that they owe wages to Plaintiff and yet have failed to pay him his
22 owed wages and instead have taken efforts to deprive Plaintiff of his owed wages to annoy,
23 harass, oppress, hinder, delay and defraud him in violation of Labor Code section 216.
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SECOND CAUSE OF ACTION
FAILURE TO TIMELY FURNISH
ACCURATE ITEMIZED WAGE STATEMENTS
(Pursuant to Labor Code §226(a) and (e))
(Against all Defendants)

36. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this section as though fully set forth herein.

37. Plaintiff is informed and believes and thereon alleges that Defendants, in violation of Labor Code §226(a), engaged in a practice with respect to Plaintiff and the other aggrieved employees of regularly failing to furnish them with accurate, itemized statements in writing showing (1) all gross wages earned, (2) all deductions, (3) net wages earned, and/or (4) accurate rate of pay during each respective pay period for which wages have been and continue to be due and owing, as well as all other information required by section 226 of the Labor Code. Specifically, Defendants failed to provide wage statements to Plaintiff and the other aggrieved employees showing the above required information.

38. Plaintiff seeks damages pursuant to Labor Code §226(e) for each violation by Defendants of Labor Code §226 of at least \$4,000.00, and pursuant to §§ 226.3, 558.1, plus attorneys' fees and costs. In addition, Plaintiff seeks preliminary and permanent injunctive relief pursuant to Labor Code §226(h).

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44. Further, if Defendants are not enjoined from the unlawful conduct described above, Defendants will continue unabated in its unlawful conduct, which will continue to result in irreparable injury to members of the general public, including, but not limited to Plaintiff and the other aggrieved employees, who are current and former employees of the Defendants, and for which there is no adequate remedy at law. Thus, Plaintiff requests that the Court issue a preliminary and permanent injunction prohibiting Defendants from engaging in the foregoing conduct.

FOURTH CAUSE OF ACTION

FAILURE TO PAY WAGES UPON SEPARATION OF EMPLOYMENT

WAITING TIME PENALTIES PURSUANT TO LABOR CODE §203

(Against all Defendants)

45. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this section as though fully set forth herein.

46. Defendants failed to pay Plaintiff and the other aggrieved employees all earned wages upon the separation of their employment with Defendants in violation of Labor Code sections 201 and 202, including but not limited to, overtime, minimum, regular, and meal and rest period premium wages, and despite his several demands to be paid.

47. Defendants' failure to pay Plaintiff and the other aggrieved employees all wages due was willful and done with malice. Plaintiff and the other aggrieved employees are therefore entitled to penalties pursuant to Labor Code §203 and pursuant to §§ 558, 558.1, plus attorneys' fees and costs.

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1 **FIFTH CAUSE OF ACTION**

2 **MEAL AND REST PERIOD VIOLATIONS**

3 **LABOR CODE §§ 226.7 and 512**

4 **(Against all Defendants)**

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6 48. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside
7 this section as though fully set forth herein.

8 49. Under California Labor Code sections 226.7, 512 and California Wage Orders,
9 Off Duty Meal Periods of 30 minutes are required for all non-exempt employees who work at
10 least 5 hours in a shift, except that when a work period of not more than 6 hours will complete
11 the day's work then the meal period may be waived by mutual consent of the employer and
12 employee. Time records of meal periods must be kept except that meal periods during which
13 operations cease need not be recorded. Employers must provide non-exempt employees 2 Off
14 Duty Rest Periods of 10 minutes each in a normal 8 hour shift. Rest Periods need not be
15 recorded. The Meal Periods are unpaid unless the employee is not fully relieved of all duties.
16 Rest Periods must be paid. An employer who fails to provide off duty meal and rest periods
17 (breaks) must pay the employee an additional 1 hour regular pay for each category of break not
18 provided in a work day.
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22 50. At all times mentioned herein, Defendants violated Labor Code sections 226.7
23 and 512 by refusing to allow Plaintiff and the other aggrieved employees to be timely fully
24 relieved of their duties during their meal periods.

25 51. Accordingly, Plaintiff seeks damages available pursuant to the Labor Code,
26 including but not limited to Labor Code sections 226.7 and 512 in premium wages in an amount
27 to be proven at trial, sections 558, and 558.1, plus interest, fees, and costs.
28

1 **SIXTH CAUSE OF ACTION**

2 **EMPLOYEE FILE & PAYROLL RECORDS VIOLATION**

3 **LABOR CODE §§ 1198.5, 432, 226(b), (c), and (f)**

4 **(Against all Defendants)**

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6 52. Plaintiff incorporates by reference and re-alleges each and every one of the
7 allegations contained in this Complaint as though fully set forth herein.

8
9 53. On or about April 15, 2022, Plaintiff, through his counsel, requested in writing
10 and via certified US mail, that Defendants provide Plaintiff with a copy of certain documents in
11 his employee file and payroll and time records. Defendants failed to timely furnish Plaintiff with
12 a copy of his full employee file and payroll and time records in violation of Labor Code §§432,
13 and 226(b),(c), (f), and 1198.5; IWC Orders 1 through 15, Section 7, and IWC Order 16, Section
14 6, despite multiple requests to do so. Plaintiff is entitled to recover any and all penalties and
15 compensation provided by the Labor Code, including the above mentioned sections and section
16 558.1, for Defendant's failure to furnish the requested personnel and payroll and time records
17 including at least \$750.00 in penalties pursuant to LC §§226(f), 1198.5, and 558.1, plus
18 attorneys' fees and costs.
19
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21 **SEVENTH CAUSE OF ACTION**

22 **FAILURE TO REIMBURSE**

23 **(Against All Defendants)**

24 54. Plaintiff incorporates by reference and re-alleges each and every one of the
25 allegations contained in this Complaint as though fully set forth herein.
26

27 55. Pursuant to Labor Code §2802(a), an employer shall indemnify his or her
28 employee for all necessary expenditures or losses incurred by the employee in direct

1 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
2 the employer.

3 56. Defendants required Plaintiff and the other aggrieved employees to incur
4 expenditures for the benefit of the Defendants including but not limited to use of personal
5 vehicle and personal cellular phone and service, incurred in the discharge of their daily duties.
6 Defendants, however, failed to reimburse Plaintiff and the other aggrieved employees for such
7 expenditures.
8

9 57. Therefore, pursuant to Labor Code §§ 2802(c) and 558.1, Plaintiff is entitled to
10 recover reimbursement for all necessary expenditures for use of personal vehicle and personal
11 cellular phone and service, and other business expenditures incurred in discharge of his daily
12 duties for Defendants in an amount to be proven at trial, plus interest, plus penalties, attorneys'
13 fees, expenses, and costs of suit.
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16 **EIGHTH CAUSE OF ACTION**

17 **PRIVATE ATTORNEYS GENERAL ACT OF 2004 ("PAGA")**

18 **PER LABOR CODE §2699, et seq.**

19 **(Against All Defendants)**

20 58. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside
21 this section as though fully set forth herein.
22

23 59. On or about April 15, 2022, pursuant to Labor Code sections 2699(a) and
24 2699.3, Plaintiff, through his counsel, provided notice in writing by online submission to the
25 California Labor Workforce Development Agency ("LWDA") and via certified US Mail to
26 Defendants and each of them, that Plaintiff intended to assert a PAGA claim pursuant to section
27 2699(a) on his own behalf, and in a representative capacity on behalf of other aggrieved
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1 employees of Defendants, for violations of specified provisions of the California Labor Code.

2 See Exhibit 1 attached to this Complaint. The LWDA did not respond within 65 days.

3 60. As a result, Plaintiff has perfected his right to sue Defendants in a civil action,
4 and to collect statutory penalties, pursuant to Labor Code section 2699.3(a)(2)(A)(1) on behalf of
5 all aggrieved employees (PAGA Employees).
6

7 61. As a result of the acts alleged above, Plaintiff brings this action on his own
8 behalf, and in a representative capacity on behalf of other current or former aggrieved employees
9 (PAGA Employees), for penalties pursuant to California Labor Code section 2699 for
10 Defendants' violations of the enumerated Labor Code sections, including, but not limited to
11 sections 200, 201, 202, 203, 210, 216, 220, 221, 222, 223, 224, 225.5, 226, 226.3, 226.7, 226.8,
12 227, 227.3, 246, 510, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1175, 1194, 1194.2, 1197.1, 1198,
13 1198.5, 1199, 1770-1781, and 2802.
14
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16 62. Pursuant to California Labor Code section 2699, Plaintiff and PAGA Employees
17 are entitled to be awarded twenty-five (25%) percent of all penalties due under California law, in
18 addition to interest, attorney's fees and costs.

19 63. The Court should award seventy-five (75%) percent of all penalties due under
20 California law to the State of California.
21

22 64. Plaintiff, on behalf of the State of California and the aggrieved employees,
23 therefore seek to recover from Defendants, and each of them, allowable damages and civil
24 penalties for the violations claimed above in amount to be proven at trial, plus interest, costs, and
25 attorneys' fees, in accordance with Labor Code sections 2699, *et seq.*
26

27 65. Labor Code Section 558 states that “[a]ny employer or *other person* acting on
28 behalf of an employer who violates, or causes to be violated, a section of this chapter or any

1 provision regulating hours and days of work in any order of the Industrial Welfare Commission
2 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
3 each underpaid employee for each pay period for which the employee was underpaid in addition
4 to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one
5 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
6 was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages
7 recovered pursuant to this section shall be paid to the affected employee. The Section goes on to
8 state that “[t]he civil penalties provided for in this section are in addition to any other civil or
9 criminal penalty provided by law.”
10

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12 66. Labor Code Section 558.1(a) provides in pertinent part: “Any employer or other
13 person acting on behalf of an employer, who violates, or causes to be violated, any provision
14 regulating minimum wages or hours and days of work in any order of the Industrial Welfare
15 Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or
16 2802, may be held liable as the employer for such violation.”
17

18 67. Defendants violated/violate, or caused/causes to be violated, multiple sections
19 of the Labor Code as well as provisions regulating hours and days of work in any order of the
20 Industrial Welfare Commission including those requiring payment of minimum and regular
21 wages and payment of overtime wages, vacation pay and sick pay, meal and rest periods, failure
22 to reimburse business expenditures, and records violations, as set forth in detail throughout this
23 Complaint.
24

25 68. Accordingly, Plaintiff is also entitled to recovery of wages, premium wages,
26 damages, and penalties pursuant to Labor Code Sections 558 and 558.1 in an amount to be
27 proven at trial.
28

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiff prays for judgment against Defendants, as follows:

- 3
- 4 1. For compensatory damages pursuant to, including but not limited to, Labor Code §§ 200,
- 5 201, 202, 203, 218, 221, 222, 223, 224, 225.5, 226, 226.3, 226.7, 227, 227.3, 246,
- 6 350-356, 500, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1194.3, 1197.1, 1198,
- 7 1198.5, 1770-1781, 2802, 2699, et seq., California Wage Orders;
- 8
- 9 2. For pre-judgment interest pursuant to all applicable statutes and laws, including but not
- 10 limited to, Labor Code §§218.6, et seq., 558, 558.1, et seq., and pursuant to Civil Code §§
- 11 3287(b) and 3289;
- 12
- 13 3. For penalties pursuant to Labor Code §§ 203, 225.5, 226, 226(f), 227, 227.3, 1198.5,
- 14 226.3, 226.7, 226.8, 246, 350-356, 512, 558, 558.1, 1174.5, 1194.2, 1197.1, 2802, civil
- 15 penalties pursuant to section 2699, et seq., California Wage Orders, and other statutes and
- 16 laws;
- 17
- 18 4. For all damages available pursuant to all applicable sections of the Labor Code and the
- 19 Industrial Wage Orders;
- 20
- 21 5. For injunctive relief pursuant to Labor Code §226(h);
- 22
- 23 6. For an award of reasonable attorneys' fees and costs;
- 24
- 25 7. For restitution of all monies due to Plaintiff and disgorged profits from the unlawful
- 26 business practices of Defendants;
- 27
- 28 8. For all remedies available pursuant to Business and Professions Code section 17200 et
- seq.;
9. For all other appropriate injunctive, declaratory and equitable relief;
10. For interest to the extent permitted by law; and

1 11. For such other and further relief as the Court may deem proper.

2 Dated: June 28, 2022

3 
Rodolfo Ruiz-Velasco, Esq.
4 Attorneys for Plaintiff,
5 Marco Saldana

EXHIBIT 1

RUIZ-VELASCO LAW FIRM

April 15, 2022

Via Electronic Submission

California Labor & Workforce Development Agency
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

All By Certified Mail

Carlos Robles
Margarita Robles
Mariscos and Street Tacos, Inc.
1655 Broadway Suite 20-21
Chula Vista, CA 91911

Re: **Saldana v. Mariscos and Street Tacos, Inc., et al.**

To Whom It May Concern:

We represent Marco Saldana individually and on behalf of all other individuals (collectively "Plaintiffs") who are either former or current employees of Mariscos and Street Tacos, Inc., a California Corporation which does business as Burrito Factory, El Cacho Fish Taco Stand, Sakana Sushi Bar, and Tijuana Food Court, and its owners and officers Carlos Robles and Margarita Robles, (collectively "Defendants"). Pursuant to Labor Code section 2699.3, this letter constitutes written notice of Defendant's Labor Code violations and of our client's intent to recover statutory penalties under the Labor Code Private Attorney General Act of 2004. A copy of this letter is also being sent to Defendants via certified mail pursuant to Labor Code section 2699.3.

Plaintiffs were employed by Defendants as cooks, food preparers, dishwashers, cashiers, and food purchasers and runners. Plaintiffs are regularly required to work on average at least 12 hours per day 5 to 7 days per week, which amounts to over 60 to 84 hours of work per week without receiving minimum or overtime compensation, but Defendants have improperly misclassified the Plaintiffs by paying them a salary that does not cover at least the minimum wage, much less the overtime rate of pay, causing minimum and overtime wage violations ("wage theft"). Plaintiffs are also not paid their vacation pay wages and sick pay wages despite demands to be paid.

As a result of the violations above and below, and since Defendants pay their employees in cash, Defendants have failed to provide any paycheck statements with accurate hours worked, rate of pay, and regular and overtime hours, and all other required information on the paycheck statements. Further, Defendants failed to keep

accurate time records regarding Plaintiffs, in violation of Section 7 of the Wage Orders and Labor Code section 1174.5.

Plaintiffs were not paid all of their wages owed at the time of their separation of work in violation of LC §§ 203 and 204.

In addition, Defendants fail to fully relieve Plaintiffs from their meal and rest periods and fail to pay them any premiums for their on-duty meal and rest periods. Specifically, Plaintiffs and other current and former employees are not fully relieved of their duties during their meal and rest periods because Defendants require them to work through their meal and rest periods and even if they were allowed, they are not able to because they would not be able to complete their required tasks.

Defendants have required Plaintiffs to use their personal vehicles and cellular phone service in performance of their duties, however, they did not reimburse Plaintiffs for said expenditures in violation of LC §2802.

Defendants also failed to

Carlos Robles and Margarita Robles, as the owners, officers, directors and managers of MST are jointly and severally liable for the above violations pursuant to LC Sections 558, 558.1, 1197.1, and others.

The payment of a less wage than the California minimum wage and minimum wage violations, including failure to pay split shift premiums, are unlawful pursuant to Labor Code Sections 1197, 1197.1, 1194, 558, 558.1. Overtime compensation is statutorily required by California Labor Code Section 510, 558, 558.1. Meal and rest periods are required pursuant to Labor Code section 226.7 and 512, 558, 558.1. Failure to reimburse for expenses incurred in the course of one's employment is a violation of Labor Code Section 2802, et seq. Accurate wage statements must be timely given to employees pursuant to Labor Code section 226. Illegal deductions are in violation of LC Sections 220, 221, 222, 223, 224, et seq. Taking of gratuities from aggrieved employees is a violation of Labor Code sections 350-356. Failure to pay sick pay wages is a violation of LC 246. Failure to pay vacation pay is a violation of LC 227, 227.3. Defendants' misclassification of Plaintiffs is a violation of LC 226.8 Defendants' employment practices implicate violations of numerous other Labor Code sections, including but not limited to the following: Labor Code §§ 98.6, 201, 202, 203, 204, 220, 221, 222, 223, 224, 225.5, 226, 226.3, 226.7, 227.3, 350-356, 510, 512, 558, 558.1, 1102.5, 1194, 1194.2, 1197.1, 2802, et seq., and 2698, et seq.

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Page 3

Accordingly, Plaintiffs respectfully request that the Labor & Workforce Development Agency ("LWDA") initiate an enforcement action with respect to the aforementioned violations. If the LWDA declines to pursue enforcement, Plaintiffs will pursue these claims for statutory penalties on behalf of themselves and all other current and former employees. If you have any questions or concerns regarding the above, do not hesitate to contact us.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Rodolfo Ruiz-Velasco', with a stylized, flowing script.

Rodolfo Ruiz-Velasco, Esq.