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Clerk of the Superior Court
By J. Sanchez ,Deputy Clerk

Attorney for Plaintiff Marcelino Nunes, an individual, on behalf of himself and all other aggrieved employees, and the State of California, pursuant to the Private Attorney General Act of 2004

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

MARCELINO NUNES, an individual, on behalf of himself and all other aggrieved employees and the State of California, pursuant to the Private Attorney General Act of 2004,

Plaintiff,

v.

SOCAL NAUTICAL INC. d/b/a Carefree Boat Club, a California corporation, CARLOS ROMAN, an individual, DOES 1-25, inclusive,

Defendants.

Case No.: 25CU018704C

**COMPLAINT FOR ENFORCEMENT OF
THE CALIFORNIA LABOR CODE UNDER
THE PRIVATE ATTORNEYS GENERAL
ACT OF 2004**

INTRODUCTION

Plaintiff MARCELINO NUNES, an individual, on behalf of himself, the aggrieved employees of Defendants SOCAL NAUTICAL INC. d/b/a Carefree Boat Club, CARLOS ROMAN, and DOES 1-25, inclusive (collectively, "Defendants"), and the State of California pursuant to the Private Attorney General Act of 2004 ("Plaintiff") brings this lawsuit against

Defendants for the enforcement of the Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, et seq.)(“PAGA”).

PARTIES

1. Plaintiff MARCELINO NUNES (“Plaintiff”) is an individual resident of the County of San Diego, State of California. From on or around February 1, 2020 to November 6, 2024 (“Employment Period”), Plaintiff was misclassified as an independent contractor by Defendants as Dock Staff in the County of San Diego, State of California.

2. Defendant SOCAL NAUTICAL INC. d/b/a Carefree Boat Club (“CBC”) is a California corporation. Upon information and belief, CBC owns and operates multiple boat docks throughout the County of San Diego, State of California. CBC’s agent for service of process is Defendant CARLOS ROMAN located at 4980 North Harbor Drive, Suite 201, San Diego, California 92106.

3. Defendant CARLOS ROMAN (“Mr. Roman”) is a natural person who, upon information and belief, is a resident of the County of San Diego, State of California. During all relevant time periods, Mr. Roman is/was the Chief Executive Officer, Chief Financial Officer, and Director of CBC, and is/was a managing agent of CBC pursuant to Labor Code section 558.1 and Civil Code section 3294.

4. Plaintiff is unaware of the true names and capacities of all defendants. Plaintiff sues those unknown defendants by their fictitious names, DOES 1-25, inclusive. Plaintiff will seek leave to amend this Complaint for Enforcement of the California Labor Code Under the Private Attorneys General Act of 2004 (“Complaint”) once their true and correct names are ascertained.

5. Upon information and belief, at all relevant times, one or more of each of the named Defendants, or all of them, were in some fashion—by contract or otherwise—the managing agents, predecessors, affiliates, alter egos, assigns, joint venturers, co-venturers, and/or partners of one or more of the remaining and/or unnamed defendants, and was acting within that respective capacity.

6. Upon information and belief, at all relevant times, one or more the remaining named and/or unnamed defendants are the successors of one or more of the remaining named and/or unnamed defendants. Such successors are liable for the transactions, occurrences, series of

1 transactions, and/or Plaintiff's and/or the aggrieved employees' damages and injuries arising from
2 the same extent of those successors' predecessors.

3 7. Upon information and belief, at all relevant times, the Defendants were and/or are
4 the alter egos of all defendants in this pending civil action. Defendants each acted for their own
5 benefit and/or the benefit of one or more of the remaining named and/or unnamed defendants.
6 Defendants were acting on behalf of each other in the establishment of, ratification of, and/or
7 execution of the illegal practices and policies described in this Complaint.

8 8. Upon information and belief, at all relevant times, Defendants had decision-making
9 authority, responsibility, oversight, and influence for the establishment and execution of
10 Defendants' illegal employment practices and policies. Accordingly, the Defendants—individually
11 and all named and/or unnamed defendants collectively—are liable for each of the causes of action
12 alleged in this Complaint.

13 9. Upon information and belief, at all relevant times, there existed and/or exists a unity
14 of interest and ownership between each DOE defendant and the Defendants, jointly and severally,
15 such that their individuality and separateness ceased to exist. More specifically, the business affairs
16 of the Defendants and all named and/or unnamed defendants could not be segregated, and were
17 and/or are inextricably intertwined, commingled, and combined.

18 10. Defendants DOES 1-25, inclusive, were and/or are still used as mere shells and
19 conduits for the Defendants' business affairs individually and/or collectively. The recognition of
20 the separate existence of each such DOE defendant would not promote justice because it would
21 permit Defendants to insulate themselves from individual liability as to Plaintiff, the aggrieved
22 employees, and the State of California. Defendants constitute the alter egos of each other, and the
23 fiction of their separate existence must be disregarded at law and equity to avoid fraud and injustice
24 to Plaintiff, the aggrieved employees, and the State of California.

25 **JURISDICTION AND VENUE**

26 11. This Court has original jurisdiction over this pending civil action under Article VI,
27 section of the California Constitution, exercisable under Code of Civil Procedure section 410.10.
28 This Court has subject matter jurisdiction.

1 12. This Court has personal jurisdiction over Defendants because they were/are citizens
2 of and/or residents of the State of California during all relevant time periods. This Court's exercise
3 of personal jurisdiction over Defendants comports with traditional notions of fair play and
4 substantial justice.

5 13. Venue is proper under Code of Civil Procedure section 395 because Defendants'
6 place of business were/are located in this judicial district during all relevant time periods. Venue is
7 also proper because this Court has personal jurisdiction over Defendants.

8 **FACTUAL ALLEGATIONS**

9 14. CBC hired Plaintiff as Dock Staff on or around February 1, 2020. Plaintiff's job
10 duties included confirming boat reservations, checking-out boats to customers, and inspecting,
11 washing, cleaning, fueling, and covering-up boats in connection with CBC's boat rental business.

12 15. CBC classified Plaintiff as an independent contractor. However, Plaintiff performed
13 no work outside CBC's boat rental business during the Employment Period. Plaintiff is informed
14 and believes that CBC classified him as an independent contractor to evade payment of employer
15 funded payroll taxes and unemployment insurance premiums. Moreover, Plaintiff was not
16 customarily engaged in any independently established trade, occupation, or business let alone a
17 boat rental trade, occupation, or business during the Employment Period.

18 16. Plaintiff's initial rate of pay was \$13 per hour. By January 2024, Plaintiff's base rate
19 of pay was increased to \$20 per hour. Indeed, Plaintiff's final rate of pay on November 6, 2024 was
20 \$20 per hour.

21 17. Upon hire, Carlos Roman, Plaintiff's manager, expressly instructed Plaintiff to
22 download multiple software applications on his personal cell phone. Specifically, Mr. Roman
23 instructed Plaintiff to download and use ADP, RingCentral, and Resnet for work.

24 18. CBC used ADP for time tracking and IRS Form 1099 issuance to the aggrieved
25 employees, including Plaintiff. CBC used RingCentral for incoming and outgoing telephone calls.
26 And CBC used Resnet to manage its boat reservations.

27 19. Accordingly, Plaintiff downloaded ADP, RingCentral, and Resnet on his personal
28 cellphone. During the Employment Period, Plaintiff used his personal cell phone—namely, the

ADP, RingCentral, and Resnet software applications—for work. However, during the Employment Period, CBC did not reimburse Plaintiff for using his personal cell phone for work.

20. During the Employment Period, Plaintiff’s work schedule varied depending on the time of year. For example, during the boating “off-season” (i.e., November through April of each year), Plaintiff was typically assigned to work from 8:00 a.m. to 1:00 p.m., Friday through Monday. During the remainder of each calendar year (i.e., the “boating season”), Plaintiff was typically assigned to work from 7:00 a.m. to 10:00 p.m., seven days a week.

21. During the “boating season,” Plaintiff worked more than eight hours in a workday, 40-hours in a workweek, and seven consecutive days in a workweek. In fact, during this busy season, it was not unusual for Plaintiff to work more than 12 hours in a workday and/or 13 consecutive days in a row. Yet, CBC did not pay Plaintiff overtime or double-time wages. Specifically, CBC did not pay Plaintiff overtime wages when he worked more than eight hours in a workday, 40-hours in a workweek, or seven consecutive days in a workweek. CBC also did not pay Plaintiff double-time wages when he worked 12 or more hours in a workday.

22. Worse, during this busy season, Plaintiff would occasionally be required to work off-the-clock without any compensation at all. For example, Plaintiff would often be required to perform four hours of uncompensated off-the-clock work to communicate with Mr. Roman, co-workers, and CBC’s customers.

23. During each boating season in the Employment Period, Plaintiff was also generally not authorized or permitted to take 30-minute duty-free uninterrupted meal periods after each five hours of work. This was due to CBC’s pattern and practice of understaffing to shift variable operating costs to the aggrieved employees. On those occasions, CBC did not pay Plaintiff a meal period wage in the form of an additional hour of pay at his regular rate of pay for those workdays.

24. Similarly, during each boating season in the Employment Period, Plaintiff was never allowed to take 10-minute duty-free uninterrupted rest periods after each four hours of work or major fraction thereof. CBC did not pay Plaintiff a rest period wage in the form of an additional hour of pay at his regular rate of pay for those workdays either.

25. Plaintiff is informed and believes that he was required to report to work on 50 separate occasions during the Employment Period but was not actually put to work. On those occasions, CBC did not pay Plaintiff reporting time pay.

26. CBC did not furnish Plaintiff with accurate or itemized wage statements. In particular, CBC did not furnish Plaintiff wage statements with at least true and correct figures about the total actual hours worked and the total actual gross wages earned. In turn, Plaintiff was often confused about CBC computed his wages and work hours.

27. On November 6, 2024, CBC terminated Plaintiff. CBC did not pay Plaintiff all of his earned but unpaid wages immediately upon termination. CBC did not pay Plaintiff all of his earned but unpaid wages from off-the-clock work, overtime and/or double-time hours, and/or his meal and rest period wages. In fact, CBC has not paid Plaintiff all of his earned but unpaid wages to-date, either.

28. On November 18, 2024, through counsel, Plaintiff requested copies of Plaintiff's payroll records and personnel file. CBC received the letter on November 21, 2024. The last day for CBC to produce Plaintiff's payroll records was December 9, 2024; the last day for CBC to produce Plaintiff's personnel file was December 21, 2024. To-date, CBC has not produced Plaintiff's payroll records or personnel file.

PAGA ALLEGATIONS

29. Plaintiff is informed and believes that from January 30, 2024 to the present ("PAGA Period," CBC employed more than 10 workers who are/were "aggrieved employees" under PAGA.

30. Plaintiff is informed and believes CBC misclassified all of its workers as independent contractors instead of employees during the PAGA Period. Plaintiff is further informed and believes that CBC's pattern and practice of misclassifying its workers was an effort to shift variable operating costs to the aggrieved employees.

31. Plaintiff is informed and believes that, during the PAGA Period, CBC expressly instructed all of its workers to download multiple software applications on their respective personal cell phones upon hire. Plaintiff is informed and believes that all of the aggrieved employees downloaded at least ADP, RingCentral, and Resnet for work on their personal cell phones. Plaintiff

1 is further informed and believes that CBC did/does not reimburse all of the aggrieved employees
2 for using their personal cell phones for work during the PAGA Period.

3 32. Plaintiff is informed and believes that the aggrieved employees were required to
4 work more than eight hours in a workday, 40-hours in a workweek, and seven consecutive days in
5 a workweek in the boating season during the PAGA Period. Plaintiff is further informed and
6 believes that CBC did/does not pay the aggrieved employees overtime wages on those occasions.

7 33. Plaintiff is informed and believes that the aggrieved employees were required to
8 work more than 12-hours in a workday in the boating season during the PAGA Period. Plaintiff is
9 further informed and believes that CBC did/does not pay the aggrieved employees double-time
10 wages on those occasions.

11 34. Plaintiff is informed and believes the aggrieved employees were required to work-
12 off-the-clock without any compensation during the PAGA Period.

13 35. Plaintiff is informed and believes the aggrieved employees were not authorized or
14 permitted to take compliant meal periods after each five hours of work during the PAGA Period.
15 Plaintiff is further informed and believes that CBC did/does not pay the aggrieved employees meal
16 period wages in the form of an additional hour of pay for those workdays at their respective regular
17 rates of pay.

18 36. Plaintiff is informed and believes the aggrieved employees were not authorized or
19 permitted to take compliant rest periods after each four hours of work or major fraction thereof
20 during the PAGA Period. Plaintiff is further informed and believes that CBC did/does not pay the
21 aggrieved employees rest period wages in the form of an additional hour of pay for those workdays
22 at their respective regular rates of pay.

23 37. Plaintiff is informed and believes that a subset of the aggrieved employees was
24 required to report to work during the PAGA Period but was not actually put to work. On those
25 occasions, CBC did/does not pay the aggrieved employees reporting time pay.

26 38. Plaintiff is informed and believes the aggrieved employees did/do not receive
27 compliant, accurate and sufficiently itemized wage statements during the PAGA Period. Plaintiff is
28

1 further informed and believes the aggrieved employees were confused about the way CBC
2 calculated their wages and working hours as a result.

3 39. Plaintiff is informed and believes that a subset of aggrieved employees who were
4 terminated by CBC were not paid all earned but unpaid wages immediately upon termination
5 during the PAGA Period.

6 40. Plaintiff is informed and believes that a subset of aggrieved employees requested
7 their payroll records and personnel file during the PAGA Period but that CBC did not timely
8 produce them to the requesting aggrieved employees.

9 **ADMINISTRATIVE EXHAUSTION**

10 41. On January 30, 2025, Plaintiff electronically notified the California Labor
11 Workforce Development Agency (“LWDA”) of Defendants’ Labor Code violations during the
12 PAGA Period.

13 42. On January 31, 2025, Plaintiff also served a copy of the January 30, 2025 letter to
14 Defendants via Certified Mail, Return Receipt Requested.

15 43. The last day for Defendants to confidentially propose a cure to LWDA was March
16 5, 2025. Upon information and belief, Defendants have not made any such proposals to LWDA.
17 Defendants have not notified Plaintiff of their intent to cure any of the Labor Code violations
18 enumerated in the January 30, 2025 letter.

19 44. The last day for LWDA to set a conference to discuss any confidential proposal by
20 Defendants to cure the violations enumerated in the January 30, 2025 letter was March 19, 2025.
21 LWDA has not notified Plaintiff of any such conference.

22 45. The last day for LWDA to notify Plaintiff of its intent to investigate his claims was
23 April 1, 2025. To date, LWDA has not communicated with Plaintiff following his January 30, 2025
24 letter.

25 **FIRST CAUSE OF ACTION**

26 **Violation of Private Attorney General Act of 2004 (Cal. Lab. Code §§ 2698, et seq.)**

27 46. Plaintiff repeats and incorporates by reference all previous allegations and further
28 alleges the following:

1 47. PAGA permits the California Labor Workforce Development Agency (“LWDA”) to
2 assess and collect civil penalties under PAGA for violating California’s Labor Code. Alternatively,
3 PAGA also permits an aggrieved employee like Plaintiff to recover civil penalties, in a civil action,
4 on behalf of himself, the other aggrieved employees, and the State of California, pursuant to the
5 procedures enumerated in Labor Code section 2699.3.

6 48. Under PAGA, a civil action that alleges a PAGA cause of action may be brought by
7 an “aggrieved employee.” An “aggrieved employee” is any person that was employed by the
8 alleged violator against whom one or more of the alleged violations was committed.

9 49. Misclassification. Defendants violated Labor Code sections 226.8 by misclassifying
10 Plaintiff and the aggrieved employees as independent contractors instead of employees.

11 50. Minimum Wage Violations. Defendants violated Labor Code sections 1182.12, 8
12 CCR 11090(4), and MW-2023 for requiring Plaintiff and the aggrieved employees to perform
13 “trial” work without any compensation during the PAGA Period.

14 51. Overtime Violations. Defendants violated Labor Code section 510 by not paying
15 Plaintiff and the aggrieved employees one-and-one-half times their respective regular rates of pay
16 when they worked more than eight hours in a workday, 40-hours in a workweek, and/or seven
17 consecutive days in a workweek during the PAGA Period.

18 52. Double-Time Violations. Defendants violated Labor Code section 510 by not
19 paying Plaintiff and the aggrieved employees twice their respective regular rates of pay when they
20 worked more than 12-hours in a workday during the PAGA Period.

21 53. Meal Period Violations. Defendants violated Labor Code section 226.7, 512, 1198,
22 1199, and 8 CCR 11090(11) for not authorizing and/or permitting Plaintiff and the aggrieved
23 employees to take timely, 30-minute uninterrupted duty-free meal periods after each five hours of
24 work during the PAGA Period. Defendants further violated Labor Code sections 226.7, 512 1198,
25 1199, and 8 CCR 11090(11) by not paying Plaintiff and the aggrieved employees a meal period
26 wage during the PAGA Period.

27 54. Rest Period Violations. Defendants violated Labor Code section 226.7, 1198, 1199,
28 and 8 CCR 11090(12) for not authorizing and/or permitting Plaintiff and the aggrieved employees

1 to take timely, 10-minute uninterrupted duty-free rest periods after each four hours of work or
2 major fraction thereof during the PAGA Period. Defendants further violated Labor Code sections
3 226.7, 1198, 1199, and 8 CCR 11090(12) by not paying Plaintiff and the aggrieved employees a
4 rest period wage during the PAGA Period.

5 55. Reporting Time Pay. Defendants did not pay Plaintiff and/or the aggrieved
6 employees reporting time pay when they were required to report to work, actually reported to
7 work, and was not put to work or was furnished less than half the usual or scheduled day's work
8 during, in violation of California, during the PAGA Period.

9 56. Failure to Pay Wages Due Upon Separation. Defendants violated Labor Code
10 sections 201-203 because Defendants failed and/or refused to timely pay Plaintiff and the
11 aggrieved employees all of their earned but unpaid wages upon termination and/or voluntary
12 resignation during the PAGA Period.

13 57. Failure to Reimburse Necessary Business Expenses. Defendants violated Labor
14 Code sections 2800-2802 because Defendants failed and/or refused to reimburse Plaintiff and the
15 aggrieved employees for all necessary business expenses, including but not limited to necessary
16 business expenses associated with personal cell phone usage for work purposes, that Plaintiff
17 and/or the aggrieved employees incurred on behalf of Defendants during the PAGA Period.

18 58. Willful Failure to Maintain Records. Defendants violated Labor Code section 1174
19 because Defendants willfully failed and/or refused to maintain accurate payroll records for Plaintiff
20 and the aggrieved employees during the PAGA Period.

21 59. Failure to Produce Payroll Records. Defendants violated Labor Code section 226 by
22 failing and/or refusing to timely produce Plaintiff's payroll records upon valid written request on
23 November 18, 2024. Upon information and belief, Defendants failed and/or refused to timely
24 produce the respective payroll records of the aggrieved employees during the PAGA Period.

25 60. Failure to Produce Payroll Records. Defendants violated Labor Code section 226 by
26 failing and/or refusing to timely produce Plaintiff's and/or the aggrieved employees' respective
27 payroll records upon request during the PAGA Period.
28

61. Failure to Produce Personnel File. Defendants violated Labor Code section 1198.5 by failing and/or refusing to timely produce Plaintiff's and/or the aggrieved employees' respective personnel file upon request during the PAGA Period.

62. Wage Statement Violations. Defendants violated Labor Code section 226 by failing and/or refusing to furnish Plaintiff and the aggrieved employees with accurate and sufficiently itemized wage statements during the PAGA Period. During the PAGA Period, Plaintiff, and upon information and belief, the aggrieved employees were confused by Defendants' inaccurate and insufficiently itemized wage statements.

63. Defendants' myriad Labor Code violations make it liable to Plaintiff and the aggrieved employees for civil penalties under PAGA.

64. Plaintiff complied with PAGA's administrative exhaustion requirements. LWDA did not investigate Plaintiff's claims within the PAGA statutory period. Defendants failed to cure and provide notice within the PAGA statutory period.

65. Defendants are liable to Plaintiff and the aggrieved employees for civil penalties under PAGA for the Labor Code violations alleged in the Complaint.

66. Plaintiff seeks civil penalties in the amounts set forth in each statute allegedly violated in the Complaint, for all statutes that lack a specified penalty, and seeks default penalties under PAGA.

67. Plaintiff also seeks an award of reasonable attorney's fees and costs in connection with his claims for civil penalties under PAGA.

PRAYER FOR RELIEF

68. Plaintiff requests the following:

- A. Civil penalties in an amount to be proven at trial;
- B. Accrued interest at the maximum legal rate in an amount to be proven at trial;
- C. Reasonable attorney's fees and costs;
- D. All other remedies this Court deems just and proper.

LAW OFFICE OF SHAFIEL A. KARIM, P.C.



Shafiel A. Karim

Date: April 7, 2025

Attorney for Plaintiff Marcelino Nunes, an individual, on behalf of himself and all others aggrieved employees and the State of California pursuant to the Private Attorney General Act of 2004