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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By M. Estrada ,Deputy Clerk

8 Attorneys for Plaintiff
9 **NICOLAS VARGAS, in a**
10 **representative capacity, and on behalf**
11 **of other members of the general**
12 **public similarly situated**

3 SUPERIOR COURT OF THE STATE OF CALIFORNIA

4 COUNTY OF SAN DIEGO

11 NICOLAS VARGAS, an individual, and on
12 behalf of other members of the general public
13 similarly situated

) Case No: 25CU033035C

14 Plaintiff,

15 v.

16 O'FRANK LLC dba SAGO, a California Limited
17 Liability Company; SAGO, INC. an unknown
18 business entity; and DALE POLSELLO, an
19 individual; and DOES 1 through 10, inclusive

20 Defendants.

COMPLAINT FOR:

1. RETALIATION PURSUANT TO
LABOR CODE § 1102.5
2. MEAL AND REST PERIOD
VIOLATIONS PURSUANT TO
LABOR CODE § 2698 *et seq.*
3. MINIMUM WAGE VIOLATIONS
PURSUANT TO LABOR CODE §
2698 *et seq.*
4. OVERTIME VIOLATIONS
PURSUANT TO LABOR CODE §
2698 *et seq.*
5. WAGE STATEMENT
VIOLATIONS PURSUANT TO
LABOR CODE § 2698 *et seq.*
6. FAILURE TO PAY WAGES UPON
SEPARATION PURSUANT TO
LABOR CODE § 2698 *et seq.*
7. FAILURE TO TIMELY PAY
WAGES PURSUANT TO LABOR
CODE § 2698 *et seq.*
8. FAILURE TO PROVIDE SICK
PAY PURSUANT TO LABOR
CODE § 2698 *et seq.*

COMES NOW Plaintiff NICOLAS VARGAS (“Plaintiff”), individually, and on behalf of all aggrieved employees allege for his complaint as follows:

PARTIES, JURISDICTION, AND VENUE

1. This Court has jurisdiction over this matter in that all parties are residents of, or do business within, the State of California and the amount in controversy exceeds the statutory minimum limit of this Court. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. Furthermore, there is no federal question at issue as Wage and Hour protections and remedies related thereto are based solely on California Law and Statutes, including the Labor Code, Civil Code, and IWC Wage Order(s). Also, the Ninth Circuit has recently held that, for purposes of establishing federal diversity jurisdiction, penalties pursuant to the Private Attorneys General Act of 2004 (“PAGA”) may not be aggregated. *Urbino v. Orkin Servs. of California, Inc.*, 726 F.3d 1118, 1122 (9th Cir. 2013).
2. Venue before this Court is proper in that certain wrongful acts which gave rise to Plaintiff’ injuries occurred in the County of San Diego, State of California.
3. Plaintiff is informed and believe and thereon allege that at all relevant times mentioned herein, Defendant O’FRANK LLC dba SAGO (“O’FRANK, LLC” or collectively “Defendants” herein) was and is a California Limited Liability Company doing business throughout the state, including the County of San Diego, State of California, and is the alter ego and/or joint venture of other corporations, entities, and business interests, conducting business within the State of California, County of San Diego.
4. Plaintiff is informed and believe and thereon allege that at all relevant times mentioned herein, Defendant SAGO INC. (“SAGO” or collectively “Defendants” herein) was and is an unknown business entity doing business throughout the state, including the County of San Diego, State of California, and is the alter ego and/or joint venture of other corporations, entities, and business interests, conducting business within the State of California, County of San Diego.

- 1 5. Plaintiff is informed and believe and thereon allege that at all relevant times mentioned
2 herein, Defendant DALE POLSELLI (“POLSELLI” or collectively “Defendants” herein)
3 was and is an individual residing in the County of San Diego, State of California.
- 4 6. Plaintiff is presently unaware of the true names, capacities and liability of Defendants
5 named herein as DOES 1 through 10, inclusive. Accordingly, Plaintiff will seek leave of
6 court to amend this complaint to allege their true names and capacities after the same
7 have been ascertained.
- 8 7. Plaintiff is informed and believe and thereon allege that each of the fictitiously named
9 Defendants is responsible in some manner for the wrongs and damages as herein alleged,
10 and in so acting was functioning as the agent, servant, partner, and employee of the co-
11 Defendants, and in doing the actions mentioned below, was acting within the course and
12 scope of his or her authority as such agent, servant, partner, and employee with the
13 permission and consent of the co-Defendants. Plaintiff’s injuries as herein alleged were
14 proximately caused by said Defendants. Wherever it is alleged herein that any act or
15 omission was done or committed by any specially named Defendant or Defendants,
16 Plaintiff intend thereby to allege and does allege that the same act or omission was also
17 done and committed by each and every defendant named as a DOE, both separately and
18 in concert with the named Defendant or Defendants.
- 19 8. Plaintiff is informed and believe and thereon allege that Defendants, and each of them,
20 including DOES 1 through 10, are and at all times herein mentioned were either
21 individuals, sole proprietorships, partnerships, registered professionals, corporations, alter
22 egos or other legal entities which were licensed to do and/or were doing business in the
23 County of San Diego, State of California at all times relevant to the subject matter of this
24 action.

FACTUAL BACKGROUND

- 25 9. In October 2024, Plaintiff Nicolas Vargas commenced working for Defendants.
26 Plaintiff’s employment with Defendants lasted through February 16, 2025.
27
28

10. Throughout the term of his employment, Plaintiff and all other aggrieved employees was denied the benefits and protections of the Labor Code due to the Defendants' institutionalized pay practices, standard as to all of Defendants' California-based employees.

11. Defendant Dale Polselli is the owner of the restaurant Sago. Throughout Plaintiff's employment Defendant Polselli regularly directed and controlled the wages and working conditions of Plaintiff and other aggrieved employees including, *inter alia*, policies, and rates of pay.

Plaintiff Was Hired by Defendants

12. Plaintiff was hired in October 2024 to work for Defendants as a server. Plaintiff had over five years of experience as a Server, and approximately eight years of experience in the service industry. Plaintiff's job duties included taking orders, providing food and drinks to customers, bussing tables, ensuring that customers had adequate silverware and plates, and providing customer service.

13. Throughout his employment with Defendants, Plaintiff performed his job in a capable and competent manner and was commended for doing so. Customers left reviews stating that Plaintiff made their experience enjoyable. Within one month of being hired, Defendants asked Plaintiff to train new employees. Whenever there was a special guest such as a famous football player, or influencer, Plaintiff would be assigned the table, even if it was not in his section, because Plaintiff's supervisors knew Plaintiff would provide excellent service. Often Plaintiff would be sent to tables where other servers made mistakes to mitigate the harm and provide customer satisfaction.

14. During his employment, Plaintiff, and other employees, consistently worked in excess of six hours per day without a Meal or Rest Period. Plaintiff noticed that his clock in times were changed to make it look like a Meal Period was taken when, in fact, no Meal Period would be taken.

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Plaintiff Complained About Meal Periods

15. In October 2024, Plaintiff raised the issue to his supervisor Joey (Last Name Unknown), Plaintiff complained that his time cards were being edited to show that he had taken a break when he had not. Joey told Plaintiff that employees would receive a free meal, in exchange for not receiving a legally-compliant Meal or Rest Period.
16. In or around December 2024, Joey left the company. Plaintiff's new manager, Ahn (Last Name Unknown), continued editing employee timecards to show that a Meal Period had been taken when in fact no Meal Period had been taken. However, Ahn implemented a new requirement that employees must pay for any food from the restaurant.
17. In or around early January 2025, Plaintiff was working on the floor by the bar and complained that he wanted to take a Meal Break, or be paid a Meal Period Premium. Ahn replied that he was not aware that Plaintiff and other employees were not taking Meal Periods. Ahn told Plaintiff that he would talk to Defendant Polselli and get back to Plaintiff. Plaintiff never received a response.
18. Around the same time, Plaintiff also complained to Amanda (Last Name Unknown) another manager, explaining that previously employees used to receive food for missed meal periods and now employees did not receive meal periods, meal period penalties, or free food. Plaintiff explained that he had raised the issue to Ahn but had not heard back. Amanda responded "**Don't tell anyone we used to trade food for hours, it's highly illegal**" or words to that effect. However, Amanda did not ensure that Plaintiff and other employees received breaks or were provided meal period premiums for missed meal periods.

Defendants Retaliated Against Plaintiff

19. Prior to raising complaints, Plaintiff had worked two seven-hour shifts each week. However, immediately upon making complaints Plaintiff's hours were reduced by about half.
20. On February 16, 2025, about one month after his last complaint, Plaintiff received the following text "... I just wanted to inform you that after much discussion, we as a

1 management group have decided it's best for all parties involved to end your employment
2 here at Sago..." from Ahn, terminating his employment. Plaintiff had never been
3 reprimanded during his employment, and he believed he was terminated for complaining
4 about Meal and Rest Period violations. Ahn asked Plaintiff if he would like to pick up his
5 check or have it mailed to him. Plaintiff was stunned by the termination. Plaintiff did not
6 respond, still reeling from the shock of being terminated, and assumed his check would
7 be mailed to him.

8 21. On February 24, 2025, Plaintiff had not received his final paychecks. Plaintiff texted
9 Amanda and asked for his final paychecks, W2, paystubs, and time records. Amanda
10 responded saying she would send Plaintiff a link to a website, iSolve, to access his
11 paystubs. Plaintiff never received the link.

12 22. On March 3, 2025, having not received his final paychecks, W2, paystubs and time
13 records, Plaintiff followed up with Amanda. Amanda created a group chat with Plaintiff
14 and Ahn. Ahn told Plaintiff that he would mail Plaintiffs final checks to him. Plaintiff
15 finally received his final paycheck on or around March 17, 2025, approximately one
16 month after he was terminated. Despite the month-long delay in payment, Plaintiff was
17 not paid any interest or waiting time penalties.

18 **REPRESENTATIVE ALLEGATIONS**

19 23. As more specifically set forth below, Plaintiff brings this action in a representative
20 capacity on behalf of all current and former nonexempt employees of Defendants. Code
21 Civ. Proc. § 2699; *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 980-981. Throughout
22 the operative limitations period, Plaintiff and all other aggrieved employees were denied
23 the protections and benefits of the Labor Code and Industrial Welfare Commission
24 ("IWC") Wage Order(s) due to Defendants' standard practices. Throughout their
25 employment, Plaintiff and the other aggrieved employees were and are denied meal and
26 rest periods and meal and rest period payments, in violation of, Labor Code §§ 226.7 and
27 512. Defendants failed to furnish accurate itemized wage statements in violation of, *inter*
28 *alia*, Labor Code § 226. Defendants failed to provide all compensation due at termination

1 of employment in violation of, *inter alia*, Labor Code §§ 201 through 203. Defendants
2 failed to pay Plaintiff and other aggrieved employees their paid sick leave in violation of,
3 *inter alia*, Labor Code § 246.

4 24. Plaintiff bring this action on the grounds that he and other similarly situated current and
5 former employees of Defendants were and are improperly denied the mandated wages
6 resulting from the above-referenced violations. Code Civ. Proc. § 2699; *Arias*, 46 Cal.
7 4th at 980-981. The number of current and former aggrieved employees is believed to
8 exceed thirty (30) aggrieved employees.

9 25. The approximately thirty (30) aggrieved employees are comprised of all of Defendants'
10 current and former California-based employees, designated as "nonexempt" by
11 Defendants. Defendants' standard policies and practices which lead to Labor Code
12 violations, as alleged herein, applied to all California nonexempt employees.

13 26. There are questions of fact and law common to all aggrieved employees arising from
14 Defendants' actions to include, among others, the following:

- 15 a. Whether Defendants failed to provide their employees with statutorily compliant
16 Meal and/or Rest Periods, in violation of, *inter alia*, California Labor Code §§
17 512 and 226.7, in that Defendants' written policies are not compliant with
18 California law, Defendants do not allow its employees duty-free Meal and/or Rest
19 Periods, and Defendants improperly modify employees' time cards to show that
20 Meal Periods were taken when no Meal Periods were taken;
- 21 b. Whether Defendants failed to properly provide Meal and Rest Period premiums in
22 accordance with law;
- 23 c. Whether Defendants failed to provide all compensation upon termination of
24 employment in violation of Labor Code §§ 201-203, due, in part, to the fact that
25 Defendants failed to provide proper compensation for all hours worked, as
26 discussed above; and
- 27 d. Whether Defendants failed to provide Plaintiff and all other aggrieved employees
28 with accurate itemized wage statements in violation of, among other statutes,
Labor Code § 226.

e. Whether Defendants failed to provide sick time to employees as required by Labor Code § 246.

27. At all times mentioned herein, Defendants were subject to the Labor Code and Industrial Welfare Commission Wage Orders of the State of California, including, but not limited to, California Labor Code § 2698 et seq.

28. At all times mentioned herein, Defendants are and were “employers” as that term is used within the relevant sections of the California Labor Code and the applicable wage order. An employer-employee relationship existed between Plaintiff and Defendants.

29. Plaintiff has exhausted his administrative remedies and pre-filing requirements California Labor Code § 2699.3, and have also fulfilled all notice requirements under the statute. On April 7, 2025, counsel for Plaintiff prepared and electronically submitted a letter to the LWDA via the California Department of Industrial Relations’ “PAGA Filing” website. This letter concerned Defendants O’Frank, LLC dba Sago, Sago, Inc. and Dale Polselli and their Labor Code violations. A copy of this letter was also mailed to Defendants, via USPS Certified Mail. The letter contained the specific provisions of the California Labor Code violated by Defendants, as well as the facts and theories in support of Plaintiff’s claims. (Please see **Exhibit 1**, a true and correct copy of this letter.)

30. The statutory time period for the LWDA to investigate and/or respond, and for the employers to respond, has concluded.

31. Throughout the operative limitations period, Plaintiff and all other aggrieved employees were denied the protections and benefits of the Labor Code and IWC Wage Order(s) due to Defendants’ standard practices. Said violations are set forth below.

FIRST CAUSE OF ACTION

Retaliation

[Cal. Lab. Code § 1102.5]

Individual Action

(By Plaintiff Against Defendant and DOES 1 through 10)

32. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

33. Labor Code section 1102.5 forbids an employer from retaliating against an employee for disclosing information to another employee who has the authority to investigate,

discover, or correct the violation or noncompliance if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.

34. Plaintiff performed work for Defendants, as an employee, as stated herein.

35. Defendants retaliated against Plaintiff for his complaints he made in good faith regarding Defendants' Meal Period Violations and non-payment of Meal Period Premiums.

36. Plaintiff's opposition was a contributory factor in Defendants' decision to retaliate against Plaintiff, including but not limited to terminating Plaintiff's employment.

37. As a direct, foreseeable and proximate result of Defendants' conduct, Plaintiff sustained and continues to sustain substantial losses in earnings, employment benefits, employment opportunities, and Plaintiff has suffered other economic losses in an amount to be determined at the time of trial. Plaintiff has sought to mitigate these damages.

38. As a direct, foreseeable, and proximate result of Defendants' conduct, Plaintiff has suffered and continues to suffer humiliation, emotional distress, loss of reputation, and mental and physical pain and anguish, all to his damage in a sum to be established according to proof.

39. In addition to such other damages as may properly be recovered herein, Plaintiff is entitled to recover prevailing party's attorneys' fees, pursuant to Labor Code section 1102.5 (j).

SECOND CAUSE OF ACTION
Meal and Rest Period Violations
[Cal. Lab. Code §§ 226.7, 512, and 2698 *et seq.*]
Representative and Individual Action
(By Plaintiff against Defendants and DOES 1 through 10)

40. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

41. Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

Defendants violated this section by establishing working conditions below the standard of the applicable Wage Order.

42. Under applicable California law, “An employer may 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 [...] An employer may 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” Lab. Code § 512(a); see also 8 Cal. Code Regs. § 11050 (11); see also Wage Order 5, Section 11.

43. Unless the employee is relieved of all duty during a thirty (30) minute Meal Period, the Meal Period shall be considered an “on duty” Meal Period and counted as time worked. 8 Cal. Code Regs. § 11050 (11).

44. California law requires employers to provide nonexempt employees with a 10-minute Rest Period for every four hours worked, or “major fraction thereof.” 8 Cal. Code Regs. § 11050 (12).

45. An employer who fails to provide Meal or Rest Periods as required by an applicable Wage Order must pay the employee one additional hour of pay at the employee’s regular rate of pay for each workday that the Meal or Rest Period was not provided. Lab. Code § 226.7(b); 8 Cal. Code Regs. § 11050 (11), (12).

46. Within the operative time period, Defendants failed to possess compliant Meal and Rest Period policies and practices.

47. For example, Defendants failed to provide compliant Meal Periods in violation of, *inter alia*, Labor Code sections 226.7, 512, and IWC Wage Order 5, or any other applicable wage orders. For example, Defendants set Meal Periods for Plaintiff and other employees more than five and sometimes six hours into the workday. Defendants did not ensure their employees are either timely or wholly provided Meal Periods. Defendants provided Plaintiff and other employees untimely Meal Periods. Over the course of their employment, Plaintiff and other employees were instructed on numerous occasions to remain available during their Meal Periods. Moreover, Plaintiff and other employees’

1 time records were routinely edited by management to show that a Meal Period had been
2 taken when in fact no Meal Period had been taken. Additionally, Defendants illegally
3 retained control over Plaintiff and other employees during rest periods. For example,
4 Defendants did not provide Plaintiff and other employees uninterrupted Rest Periods.
5 Rest Periods were also often improperly merged with Meal Periods which took place 5
6 hours and up to 6 hours into a work shift.

7 48. Defendants' Meal and Rest Period policy also assumes that employees have "waived" the
8 right to a legally compliant Meal or Rest Period, or a Meal or Rest Period penalty
9 payment, unless the employees complete a very specific process of formal notification to
10 the Defendant.

11 49. Moreover, Defendants' policies and practices preclude "duty-free" Meal and Rest
12 Periods. These institutional and established practices of Defendants are illegal, in that
13 Plaintiff and all other employees were denied proper and/or timely Meal and Rest
14 Periods.

15 50. These violations are due, in part, to the fact that Defendants do not possess a legal Rest
16 Period policy or practice, as their Rest Period policy lacks required language, resulting in
17 employees failing to receive all Rest Periods legally due. Defendants do not provide Rest
18 Periods, as defined by California law. For example, Plaintiff and other employees would
19 often (a) miss a Rest Period entirely, (b) be provided a short or untimely Rest Period, or
20 (c) be provided only one Rest Period, even when they were working an excess of 8 hours
21 a day. Defendants have not provided a compliant Rest Period Penalty Payment to any
22 employee as to the above-referenced issues. Finally, Defendants illegally retained control
23 over their employees during Rest Periods. For example, Defendants did not provide
24 uninterrupted Rest Periods to employees despite Plaintiff and other employees working
25 shifts of six to eight hours. Further, Defendants have never provided a Rest Period
26 penalty payment to Plaintiff or any other employee.

27 51. Defendants also do not possess a legal Meal Period policy and make no attempt to ensure
28 that its employees are either timely or wholly provided Meal Periods. The employees

1 would often be provided a short or late Meal Period, or be provided only one Meal
2 Period, even when they were working more than 10 hours a day. Additionally,
3 Defendants failed to accurately record its employees actual start and stop times of Meal
4 Periods, in violation of the IWC Wage Orders. 8 Cal. Code Regs. § 11050.

5 52. Moreover, Defendants' policies and practices preclude "duty-free" Meal and Rest
6 Periods, in that the employees are required to always remain "On Call", including during
7 the Meal and Rest Periods. These institutional and established practices of Defendants are
8 illegal, in that Plaintiff and all other aggrieved employees were denied proper and/or
9 timely Meal and Rest Periods.

10 53. Defendants willfully failed and refused to pay Plaintiff and all other aggrieved employees
11 one additional hour of pay at their regular rate of pay for all workdays that a Meal or Rest
12 Period was not provided, as required by Labor Code § 226.7 and IWC Wage Order 5
13 (11).

14 54. Any payments made by Defendants for missed or late Meal Periods were not paid at an
15 employee's regular rate in violation of Labor Code § 226.7 and IWC Wage Order 5 (11).
16 Instead, these payments were made at an employee's base rate and did not include the
17 value of, *inter alia*, additional compensation and/or employee benefits.

18 55. As a direct result of Defendants' failure to comply with the foregoing provisions of the
19 Labor Code, Plaintiff and all other aggrieved employees have been damaged in an
20 amount to be proven at trial.

21 56. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on
22 behalf of himself and all other aggrieved employees by and through Labor Code §
23 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may
24 recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in
25 the below Prayer For Relief.

26 57. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of
27 Defendants pursuant to Labor Code § 2699(a) for each of these employees.
28

58. Plaintiff also seeks an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

SECOND CAUSE OF ACTION
Minimum Wage Violations
[Cal. Labor Code §§ 1194, 1197, and 2698 *et seq.*]
Representative and Individual Action
(By Plaintiff against Defendants and DOES 1 through 10)

59. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

60. Defendants failed to pay their employees all compensation due in violation of, among other statutes, Labor Code § 1197. California law holds that the failure to pay for any work time constitutes a violation of minimum wage laws. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 323. These violations were caused by and through Defendants' failure to maintain accurate Time Records (as required by California law), to the detriment of the employees. Specifically, although Defendants would receive "to-the-minute" start and end times (from their employees' mandated timekeeping practices), Defendants would thereafter alter - and deduct time from - the Time Records, prior to payment of compensation to the employees. Defendants would instruct supervisors to modify and under-report work hours, resulting in a loss of compensation. Plaintiff and other employees' time entries were often edited by management to inaccurately reflect the employee worked less hours. Defendants also required Plaintiff and other employees to work extended hours (beyond their scheduled hours) without compensation. Additionally, the right to receive the proper minimum wage compensation was impacted by Defendants' knowingly failing to consider other work performed by the employees, including all time employees were under Defendants' control. These actions, and instructions, caused the employees to lose compensation, including proper minimum wage compensation and overtime compensation. Defendants also instructed their employees to limit the recording of their hours to that of the employee's work schedules only.

61. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

62. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code § 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer For Relief. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code § 2699(a) for each of these employees.

63. Plaintiff seeks compensation they are owed due to Defendants' underpayment.

64. Plaintiff also seeks an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

THIRD CAUSE OF ACTION

Overtime Violations

[Cal. Lab. Code §§ 510, and 2698 *et seq.*]

Representative and Individual Action

(By Plaintiff against Defendants and DOES 1 through 10)

65. Plaintiff hereby incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

66. Defendants failed to pay Plaintiff and all other aggrieved employees all compensation, including Overtime Compensation, due in violation of, among other statutes, Labor Code § 510. Defendants would instruct supervisors to modify and under-report work hours, resulting in a loss of compensation. Plaintiff and other employees' time entries were often edited by management to inaccurately reflect the employee worked less hours. Defendants also required Plaintiff and other employees to work extended hours (beyond their scheduled hours) without compensation. Additionally, the right to receive the proper minimum wage compensation was impacted by Defendants' knowingly failing to consider other work performed by the employees, including all time employees were under Defendants' control. Defendants were actively directing supervisors of Plaintiff

1 and other employees to reduce overtime to uniformly, and illegally undercompensate
2 Plaintiff and other aggrieved employees. These violations occurred due to Defendants'
3 illegal policies, referenced above, whereby employees experienced monetary under-
4 compensation. Given the length of Plaintiff' and other employees' shifts, the unpaid work
5 time often would have been owed at the overtime rate of pay. These systematic failures to
6 provide proper overtime compensation are in violation of California law.

7 67. As a direct result of Defendants' failure to comply with the foregoing provisions of the
8 Labor Code, Plaintiff and all other aggrieved employees have been damaged in an
9 amount to be proven at trial.

10 68. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on
11 behalf of himself and all other aggrieved employees by and through Labor Code §
12 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may
13 recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in
14 the below Prayer For Relief. Plaintiff seeks an award of statutory civil penalties for each
15 underpaid employee of Defendants pursuant to Labor Code § 2699(a) for each of these
16 employees.

17 69. Plaintiff seeks compensation they are owed due to Defendants' underpayment.

18 70. Plaintiff also seeks an award of reasonable attorney's fees and costs pursuant to Labor
19 Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

20 **THIRD CAUSE OF ACTION**
21 **Wage Statement Violations**
22 **[Cal. Lab. Code §§ 226, and 2698 *et seq.*]**
23 **Representative and Individual Action**
24 **(By Plaintiff against Defendants and DOES 1 through 10)**

25 71. Plaintiff hereby incorporate by reference each and every allegation contained in the
26 preceding paragraphs as though fully set forth herein.

27 72. Defendants willfully failed to provide Plaintiff and all other aggrieved employees with
28 accurate itemized wage statements in violation of, among other statutes, Labor Code §
226. These violations include, but are not limited to, Defendants' failure to accurately
identify all applicable regular and overtime rates of pay in violation of section 226(a)(9),

1 and providing inaccurate representations of both "gross" and "net wages." For example,
2 Plaintiff and the other employees were not compensated for all hours worked (due in part
3 to Defendants requiring supervisors and employees to list only *scheduled* work time, not
4 actual work time. Therefore, Defendants failed to provide a showing of the "total hours
5 worked" by its employees pursuant to section 226(a)(2). Defendants also failed to
6 provide an accurate showing of the "total hours worked," in violation of Labor Code §
7 226(a)(2).

8 73. Defendants violated Labor Code § 226(a)(1) by failing to furnish an accurate showing of
9 the gross wages earned by its employees. For example, Defendants (a) would not provide
10 compensation for all hours and minutes worked, (b) would use an improper (and lesser)
11 Overtime Rate of Pay, and (c) would fail to pay Meal and/or Rest Period Penalties when
12 due.

13 74. Defendants violated Labor Code § 226(a)(2) by failing to furnish an accurate showing of
14 all hours worked at each hourly rate by the employee. Plaintiff and the other employees
15 were not compensated for all hours worked. Plaintiff and other employees were not
16 compensated for all hours worked (due in part to Defendants' requirement that
17 supervisors modify employees' actual hours to conform with scheduled work times).
18 Defendants actively directed supervisors to lessen the pay and exclude regular and
19 overtime for Plaintiff and other employees.

20 75. Defendants violated Labor Code § 226(a)(5) by willfully failing to furnish an accurate
21 showing of the gross and net wages earned by its employees. For example, Defendants
22 (a) would not provide compensation for all hours and minutes worked, (b) would use an
23 improper (and lesser) Overtime Rate of Pay, and (c) would fail to pay Meal and/or Rest
24 Period penalties when due.

25 76. Defendants violated Labor Code § 226(a)(9) by failing to furnish an accurate showing of
26 all applicable hourly rates, in effect during the pay period and the corresponding number
27 of hours worked at each hourly rate by the employee. Plaintiff and the other aggrieved
28 employees were not compensated for all hours worked (Defendants would require

employees to list only their scheduled work-times, and failed to pay employees for the actual work-times.)

77. Defendants' failure to include the above information in its calculation of Plaintiff and other aggrieved employees', gross and net wages subjects Defendants to liability under Labor Code § 226.

78. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

79. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code § 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer For Relief.

80. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code § 2699(a) for each of these employees.

81. Plaintiff also seeks an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

FOURTH CAUSE OF ACTION

Failure to Pay Wages Upon Separation

[Cal. Lab. Code §§ 201-203, 2698 *et seq.*]

Representative and Individual Action

(By Plaintiff Representatives against Defendants and DOES 1 through 10)

82. Plaintiff hereby incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

83. Defendants willfully failed to provide Plaintiff and other aggrieved employees with all wages earned and unpaid at termination in violation of, among other statutes, Labor Code §§ 201 through 203. These violations resulted from, among other unlawful actions, Defendants' willful failure to provide accurate and complete compensation to aggrieved employees under Labor Code §§ 226.7, 510, 512, and 1197.

84. Defendants failed to provide all compensation upon termination of employment in violation of Labor Code §§ 201-203. Defendants failed to provide Plaintiff and other employees all compensation upon termination of employment in violation of Labor Code §§ 201-203, due in part, to the fact that Defendants failed to provide proper compensation for all hours worked, and failed to pay full Rest Period penalties, as discussed above. Plaintiff ceased employment with Defendants in or around February 2025 and did not receive all wages due and owed to them.

85. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

86. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code § 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer For Relief.

87. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code § 2699(a) for each of these employees.

88. Plaintiff also seeks an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

FIFTH CAUSE OF ACTION

Failure to Timely Pay Wages

[Cal. Lab. Code §§ 204, 2698 *et seq.*]

Representative Action

(By Plaintiff Representative against Defendant and DOES 1 through 10)

89. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

90. Plaintiff and all other aggrieved employees performed work for Defendants, as an employee of Defendants, as stated herein. Throughout Plaintiff's and all other aggrieved employees' employment, they earned wages that were not paid to them, as stated herein, in an amount according to proof at trial.

91. California Labor Code § 204, applicable at all times relevant herein to Plaintiff's and all other aggrieved employees' employment by Defendants, provides that all wages earned by any person in any employment are due and payable twice during each calendar month. Defendants failed to pay Plaintiff and all other aggrieved employees the wages they were entitled to under the Code.

92. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

93. As a result of Defendants' willful failure to pay wages, in addition to such other damages and penalties as may properly be recovered herein, Plaintiff and all other aggrieved employees are entitled to back pay, waiting time penalties, interest, costs, and attorneys' fees pursuant to Labor Code §§ 206, 218.5, 218.6, 558, 1194.2, and 1197.1.

94. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code § 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer For Relief.

95. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendant pursuant to Labor Code § 2699(a) for each of these employees.

96. Plaintiff also seeks an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

SIXTH CAUSE OF ACTION

Failure to Provide Sick Pay

[Cal. Lab. Code §§ 246, and 2698 *et seq.*]

Representative Action

(By Plaintiff against Defendants and DOES 1 through 10)

97. Plaintiff hereby incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

98. Labor Code § 246 (a)-(b) states that an employee who has worked for the same employer for 30 days or more within a calendar year is entitled to "paid sick days at the rate of one

1 hour per every 30 hours worked [...] provided that the accrual is on a regular basis so that
2 an employee has no less than 24 hours of accrued pick leave or paid time off by the 120th
3 calendar day of employment or each calendar year, or in each 12-mon period.”

4 99. Labor Code § 246 (c) further states that “An employee shall be entitled to use accrued
5 paid sick days beginning on the 90th day of employment, after which day the employee
6 may use paid sick days as they are accrued.”

7 100. Labor Code 246 (n) states, “An employer shall provide payment for sick leave taken by
8 an employee no later than the payday for the next regular payroll period after sick leave
9 was taken.”

10 101. As set forth herein, Plaintiff and other aggrieved employees worked the requisite amount
11 of days for sick time to accrue. However, Defendants did not permit their employees to
12 take sick time, and did not pay their employees sick time when it was taken.

13 102. As a direct result of Defendants’ violations alleged herein, Plaintiff and other aggrieved
14 employees have suffered and continue to suffer, substantial losses related to the use and
15 enjoyment of such sick wages, including lost interest on such monies and expenses, and
16 attorney’s fees in seeking to compel Defendants to fully perform its obligation under state
17 law, all to their respective damage in amounts according to proof at trial.

18 103. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on
19 behalf of himself and all other aggrieved employees by and through Labor Code §
20 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may
21 recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in
22 the below Prayer For Relief.

23 104. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of
24 Defendants pursuant to Labor Code § 2699(a) for each of these employees.

25 105. Plaintiff also seeks an award of reasonable attorney's fees and costs pursuant to Labor
26 Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff on their own behalf and on behalf of all aggrieved employees, pray for judgment as follows:

1. For compensatory damages according to proof, as set forth under Labor Code §§ 510, 1194, and 2802, among other statutes;
2. For penalties and restitution of wages according to proof, as set forth under Labor Code §§ 201, 202, 203, 221, 223, 226, 246, 226.7, 450, 512, and 1197.1, 2699 *et seq.* among other statutes;
3. For special damages in an amount according to proof;
4. For mental and emotional distress damages;
5. For punitive damages in an amount necessary to make an example of and to punish defendants, and to deter future similar misconduct;
6. For penalties pursuant to Title 8, California Code of Regulations, Wage Order 5 (or any applicable Wage Order);
7. For lost back pay in an amount to be proven;
8. Where available, for liquidated damages pursuant to Labor Code § 1194.2;
9. Where available, for an award of interest, including prejudgment interest, pursuant to Labor Code § 218.6;
10. For an award of attorneys' fees and costs of suit herein pursuant to Labor Code §§ 218.5, 226, 1194, 1102.5, 2802 and Code of Civil Procedure § 1021.5; and
11. For such other relief as the Court deems just and proper.

DATED: June 24, 2025

GRUENBERG LAW



JOSHUA D. GRUENBERG, ESQ.

KATHERINE D. KREBS, ESQ.

Attorneys for Plaintiff

NICOLAS VARGAS, in a representative capacity, and on behalf of other members of the general public similarly situated

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EXHIBIT 1

(1) PLAINTIFF' LETTER FILED WITH THE LABOR AND WORKFORCE
DEVELOPMENT AGENCY



April 7, 2025

Labor and Workforce Development Agency
Attn. PAGA Administrator

Re: Nicolas Vargas v. O'Frank LLC dba Sago , "Sago , Inc." and Dale Polselli

Dear Administrator:

Please allow this correspondence to serve as "written notice," as required by California Labor Code section 2699.3(a)(1), of the specific provisions of the California Labor Code believed to have been violated by O'Frank LLC dba Sago, "Sago, Inc."¹, and Dale Polselli (collectively "Sago "), in the above-referenced matter. This "written notice" is filed on behalf of Nicolas Vargas, and all current and former non-exempt employees employed by Sago. Thank you for your assistance and instruction on this issue.

The specific provisions alleged to have been violated by Sago are as follows:

CALIFORNIA LABOR CODE SECTIONS 201-203, 204, 226, 226.7, 512, 510, 1197, 2802 as well as IWC Wage Order 5, and any other applicable wage orders, codified as Title 8, California Code of Regulations, section 11050 et seq.

Facts and theories supporting the allegations: Our client, Nicolas Vargas, worked as a non-exempt employee employed by Sago from approximately October 2024, until approximately February 16, 2025.

Throughout the term of Mr. Vargas's employment, Sago required Mr. Vargas and all other non-exempt employees to experience actions illegal under the California Labor Code, including the following:

Minimum Wage and Overtime Violations

Sago failed to provide all compensation, including minimum wage and overtime compensation, as well as compensation for work performed inside of Meal and Rest Periods, to its employees in violation of, *inter alia*, Labor Code sections 1194, 510, as well as IWC Wage Order 5, and any other applicable wage orders. This illegal action is due, in part, to Sago's policies of (1) failing to properly retain accurate time records, in violation of California law, and

¹ Sago , Inc. is the entity listed on the pay statements with an address (485 S Coast Hwy 101, Encinitas, CA 92024). However, the fictitious business name "Sago " is registered in the County of San Diego as belonging to O'Frank, LLC.

(2) failing to provide compensation (including both minimum and overtime compensation) for all time worked by the employees, or in control of the employer. For instance, Sago would instruct Mr. Vargas to report scheduled (as opposed to *actual*) work hours, resulting in a loss of compensation. Additionally, Sago would often require Mr. Vargas to work extended hours (beyond his scheduled hours) without compensation.

Additionally, among other issues, Sago has notice of Mr. Vargas, and others, working outside of their scheduled and/or reported hours, as well as *within* meal and rest periods, but fails to compensate Mr. Vargas for this work time.

Finally, Sago failed to properly calculate and pay overtime at the actual overtime rate of pay, as Sago ignores certain compensation when calculating the regular rate of pay.

Failure to Provide Compliant Meal Periods

Sago failed to provide compliant meal periods in violation of, *inter alia*, Labor Code 226.7, 512, as well as IWC Wage Order 5, or any other applicable wage orders. For example, Sago does not possess a legal meal period policy and makes no attempt to ensure that its employees are either timely or wholly provided meal periods. The employees would often either miss a meal period entirely or be provided a short or untimely meal period. Whether or not an employee was provided a meal period was often contingent upon how busy Sago was on a given day.

Sago would pressure its employees to either skip, or cut short, a meal period as employees were expected to respond to supervisors at all times. Finally, on the rare occasions when employees *were* paid meal period penalties (i.e. California Meal Period Premiums), such payments do not “cure” the stated Labor Code violation under section 226.7. The California Supreme Court held that “An employer’s failure to provide an additional hour of pay does not form part of a section 226.7 violation, and an employer’s provision of an additional hour of pay does not excuse a section 226.7 violation. The failure to provide required meal and rest breaks is what triggers a violation of 226.7.” (*Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, 1256.) Even more recently, a 2020 California Supreme Court ruling stated that, “The remedy for a Labor Code violation, through settlement or other means, is distinct from the fact of the violation itself. For example, employers can pay an additional hour of wages as a remedy for failing to provide meal and rest breaks (§ 226.7, subd. (c).) But we have held that payment of this statutory remedy ‘does not excuse a 226.7 violation.’” *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73. To be clear, payment of a meal period penalty to employees does not rectify the violation, it is in fact an admission of a Labor Code violation. Finally, Sago failed to pay Meal Period Premiums at the proper rate, as Sago fails to either (1) pay a full hour’s worth of pay, or (2) properly calculate the regular rate of pay for purposes of determining the premium rate owed. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 864.

Finally, Sago illegally retained control over its employees during meal period. For example, Sago required its employees to “remain on the premises” (i.e. at the restaurant) and to remain “on call” (i.e. monitor their telephones) at all times, including during meal periods.

Failure to Provide Compliant Rest Periods

Sago failed to provide compliant rest periods or requisite rest period penalty payments, in violation of, *inter alia*, Labor Code sections 226.7, 512, and IWC Wage Order 5, and any other applicable wage orders. For example, Sago does not possess a legal rest period policy, as its rest period policy lacks required language under California law. Sago makes no attempt to ensure that its employees are either timely or wholly provided rest periods. Sago would pressure its employees to either skip, or cut short, a rest period as employees were expected to respond to supervisors at all times. Sago has never provided a compliant rest period penalty payment to any employee as to the above-referenced issues. Finally, on the rare occasions in which Sago would provide a rest period penalty, it would pay said penalty at an improper (and *lesser*) rate, due to the failure to properly calculate the regular rate of pay.

Sago required its employees to constantly monitor their cell phones and be “on-call” at all times, specifically during rest periods. On occasion, Sago would interrupt, or cut short, its employees’ rest periods and require them to return to work.

Finally, Sago illegally retained control over its employees’ rest periods. For example, Sago required its employees to “remain on the premises,” (i.e. stay at the restaurant) and to remain “On Call” (i.e. monitor their telephones) at all times, including during rest periods.

Wage Statement Violations

Sago violated Labor Code section 226 (a)(1) by failing to provide accurate wage statements to its employees. Additionally, Sago violated Labor Code section 226 (a)(1) by failing to furnish an accurate showing of the gross wages earned by its employees. For example, Sago **(a)** would not provide compensation for all hours and minutes worked, **(b)** would use improper (and lesser) minimum wage and overtime rates of pay, and **(c)** would fail to pay meal and/or rest period penalties when due.

Sago violated Labor Code section 226(a)(2) by failing to furnish an accurate showing of all hours worked at each hourly rate by the employee. Mr. Vargas and the other employees were not compensated for all hours worked (due in part to Sago’s requirement that employees list only *scheduled* work times, not actual work times). Furthermore, Sago failed to state the overtime rate of pay on its earning records.

Sago violated Labor Code section 226(a)(5) by failing to furnish an accurate showing of the net wages earned by its employees. For example, Sago **(a)** would not provide compensation

for all hours and minutes worked, **(b)** would use an improper (and lesser) overtime rate of pay, and **(c)** would fail to pay meal and/or rest period penalties when due. Further, on the rare occasions in which Sago would provide a meal or rest period penalty, it would pay said penalty at an improper (and lesser) rate, due to the failure to properly calculate the regular rate of pay.

Sago violated Labor Code section 226(a)(8) by failing to furnish an accurate showing of name of the legal entity that is the employer. For example, Sago, Inc. is the entity listed on the pay statements. However “Sago, Inc. is a terminated business according to the California Secretary of State.

Sago violated Labor Code section 226 (a)(9) by failing to furnish an accurate showing of all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Additionally, Mr. Vargas, and the other employees, were not compensated for all hours worked (due in part to Sago requiring employees to list only *Scheduled* work time, not actual work times to include “on-call” hours). In fact, the wage statements only list the type of work performed and not the total amount. The wage statements do not state the hourly rates for any work. Therefore, Sago failed to provide a showing of the “total hours worked” by its employees pursuant to section 226(a)(2).

Failure to Provide Compliant Expense Reimbursement Payments

Sago failed to provide compliant expense reimbursement payments in violation of, *inter alia*, Labor Code section 2802 by failing to provide payments for expenses incurred by Mr. Vargas, and other non-exempt employees, including expenses for cell-phone costs, other necessary work supplies, and mileage.

Failure to Provide Sick Time

Sago failed to provide accrued sick hours in violation of, *inter alia*, Labor Code § 246. Moreover, Sago failed to accurately list the amount of sick time earned on its employees’ wage statements, or on a written notice. For example, although there is a space for leave accrual on non-exempt employees’ wage statements, that section is blank. Additionally, Mr. Vargas and other non-exempt employees did not receive a written notice with their accrued sick leave.

Willful Failure to Provide All Compensation to Current Employees

Sago failed to timely provide all compensation owed during employment in violation of Labor Code sections 204, due in part, to the fact that Sago failed to provide proper compensation for all hours worked and failed to pay full meal and rest period penalties, as discussed above.

Willful Failure to Provide All Compensation to Ex-Employees

we
know
work

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Sago failed to provide all compensation upon termination of employment in violation of Labor Code sections 201-203, due in part, to the fact that Sago failed to provide proper compensation for all hours worked and failed to pay full meal and rest period penalties, as discussed above.

To confirm, Sago, Inc. is a “person” as defined within California Labor Code section 18.

To confirm, O’Frank, LLC is a “person” as defined within California Labor Code section 18.

To confirm, Dale Polselli is a “person” as defined within California Labor Code section 18.

Again, thank you for your assistance and instruction with this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very Truly Yours,



Katherine D. Krebs, Esq.
krebs@gruenberglaw.com
619-452-3635

cc: Via Certified U.S. Mail

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