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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

**NORA BASTIDAS and ALEJANDRO
HERNANDEZ AKA RIGOBERTO
MARTINEZ**, individually and on behalf of other
aggrieved employees,

Plaintiffs,

v.

**SOL Y MAR RESTAURANTS, INC. dba
MARISCOS SOL Y MAR**, a Corporation; and
DOES 1-20, inclusive,

Defendants.

Case No.: **23CMCV00197**

**REPRESENTATIVE ACTION COMPLAINT
FOR :**

1. Civil Penalties Under the Private Attorneys General Act (California Labor Code §§ 2698, et seq.).

Plaintiffs Nora Bastidas and Alejandro Hernandez AKA Rigoberto Martinez bring this action on behalf of the State of California, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act, and allege the following:

I. INTRODUCTION

1. Plaintiffs Nora Bastidas and Alejandro Hernandez AKA Rigoberto Martinez (collectively, "Plaintiffs") bring this representative action to remedy wage-and-hour violations by Defendants Sol Y Mar Restaurants, Inc. and Does 1 through 20 (collectively, "Defendants"). For at least one year prior to the filing of this action and through the present, Defendants have engaged in a uniform policy and systematic scheme of wage abuse against Plaintiffs and other non-exempt employees of Defendants in violation of applicable California laws, including, without limitation, failing to provide meal and rest breaks, failing to pay minimum and overtime wages, and failing to furnish Plaintiffs and other employees with accurate, itemized wage statements. As a result of these violations, Defendants are liable for civil penalties under the California Private Attorneys General Act, California Labor Code §§ 2698, *et seq.* ("PAGA").

II. THE PARTIES

2. Defendant Sol Y Mar Restaurants, Inc. is a restaurant that specializes in the making of Mexican food entrees, such as but not limited to, steak plates with fries, ceviche, shrimp cocktails, etc. and is located in Lynwood, California and conducted and continues to conduct substantial business in the state of California. At all times mentioned herein, Defendant Sol Y Mar Restaurants, Inc. was and is an employer covered by the California Labor Code and the California Industrial Welfare Commission ("IWC") Wage Order.

3. Plaintiffs is unaware and ignorant of the true names and capacities of Defendants sued herein as **Does 1 through 20**, inclusive, and for that reason sues said Defendants by such fictitious names (the "Doe Defendants").

4. At all times herein relevant, Defendants Sol Y Mar Restaurants, Inc. and the Doe Defendants, and each of them, were the agents, partners, joint-venturers, joint employers, alter-egos, representatives, servants, employees, successors-in-interest, co-conspirators and assigns, each of the other, and at times relevant hereto were acting with the course and cope of theirs authority as such

agents, partners, joint-venturers, joint employers, alter-egos, representatives, servants, employees, successors-in-interest, co-conspirators and assigns, and all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization, and consent of each Defendants designated herein. Plaintiffs is informed and believes, and based thereon alleges that the acts of each Defendant are legally attributable to the other Defendants.

5. Plaintiffs is informed and believes, and based thereon alleges that each of the Doe Defendants are legally responsible for the events and happenings referred to in this Complaint, and unlawfully caused the injuries and damages to Plaintiffs and the other aggrieved employees as alleged in this Complaint. Plaintiffs will file and serve an amendment to this Complaint alleging the true names and capacities of the Doe Defendants when such true names, capacities, and involvement is ascertained.

6. **Plaintiff Nora Bastidas** was employed by Defendants as a waitress from approximately January 2016 to September 27, 2022 at Sol Y Mar Restaurants, Inc. in Lynwood, California. Plaintiff Nora Bastidas' tasks included washing dishes, taking orders, cleaning tables, sweeping, mopping, sanitizing, greeting and escorting customers to their tables, and Providing excellent customer service to guests. At all times relevant to this Complaint, Defendants employed Plaintiff Nora Bastidas as a non-exempt employee and Defendants paid Plaintiffs in whole or in part on an hourly basis. Plaintiff Nora Bastidas is an individual residing in the County of Los Angeles.

7. **Plaintiff Alejandro Hernandez AKA Rigoberto Martinez** was employed by Defendants as a cook from approximately May 10, 2018 to December 15, 2021 at Sol Y Mar Restaurants, Inc. in Lynwood, California. Plaintiff Alejandro Hernandez AKA Rigoberto Martinez's tasks included preparing all food, following recipes, baking, ensuring the kitchen area is cleaned, and making a list of vegetables or food that will be needed. At all times relevant to this Complaint, Defendants employed Plaintiff Alejandro Hernandez as a non-exempt employee, and Defendants paid Plaintiff Alejandro Hernandez in whole or in part on an hourly basis. Plaintiff is an individual residing in the County of Los Angeles.

8. At all times relevant to this Complaint, Defendants, and each of them, exercised control over the wages, hours, and working conditions of Plaintiffs and other aggrieved employees;

suffered and permitted Plaintiffs and other aggrieved employees to work; and otherwise engaged Plaintiffs and other aggrieved employees to work, so as to create an employer-employee relationship between Defendants and Plaintiffs and other aggrieved employees. At all relevant times, Defendants were “employer” of Plaintiffs and other aggrieved employees within the meaning of all applicable California state laws.

III. JURISDICTION AND VENUE

9. This Court has jurisdiction over this action under the California Constitution, Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes except those given by statute to other courts. The statutes under which this action is brought do not specifically grant jurisdiction to any other court, and the issues are based solely on California statutes and law, including the California Labor Code, California IWC Wage Orders, California Code of Civil Procedure, California Civil Code, PAGA, and the California Business and Professions Code.

10. The California Superior Court has jurisdiction over Defendants, because they are citizens of California, have sufficient minimum contacts in California, and otherwise intentionally avail themselves to the California market, including establishing their principal place of business and transacting business in California.

11. Venue is proper in this Court, because the Defendants transact business in the County of Los Angeles, including operating its headquarters in the state of California.

IV. FACTUAL BACKGROUND

12. At all relevant times set forth in this Complaint, Defendants jointly employed Plaintiffs and other aggrieved employees as hourly, non-exempt employees.

13. Plaintiffs and other aggrieved employees were covered under one or more IWC Wage Orders, the California Labor Code provisions relating to wage-and-hour laws, and other applicable wage orders, regulations, and statutes, which imposed an obligation on the part of Defendants, among other things, to provide uninterrupted meal and rest periods, to pay overtime wages, to pay wages for all hours worked, to pay all wages due at separation of employment, to reimburse for all necessary business-related expenses, and to provide accurate wage statements.

14. Plaintiffs are informed and believe, and based thereon allege that Defendants engaged

in a uniform policy and systematic scheme of wage abuse against its non-exempt employees, including, without limitation, depriving their employees of uninterrupted thirty-minute meal periods for work periods of at least five hours; depriving their employees of ten-minute rest periods for work periods of four hours or major fractions; failing to compensate employees for all hours worked, including overtime wages; failing to provide timely, accurate itemized wage statements; and failing to pay, within the time constraints imposed by applicable laws, all earned compensation at separation of employment.

15. Plaintiffs are informed and believe, and based thereon alleges that Defendants failed to provide Plaintiffs and other aggrieved employees the required meal periods or payment of one additional hour of pay at Plaintiffs and other aggrieved employees' regular rate of pay when a meal break was missed or was taken after the fifth hour of work. This was a result of Defendants' uniform policy and practice of making Plaintiffs and other aggrieved employees take their 30-minute meal breaks after the fifth hour of work due to being short-staffed. Defendants required Plaintiffs and other aggrieved employees to work an excess of the fifth hour until someone covered their shifts. As a result of Defendants' demanding needs, Plaintiffs and other aggrieved employees were required to perform work as ordered by Defendants for more than five hours during a shift without receiving a meal break and/or more than ten hours in a shift without receiving a second meal break. Defendants had no policy, procedure, or practice for Plaintiffs and other aggrieved employees to report missed meal periods or recover lost wages, and Defendants had no policy, procedure, or practice to provide one hour of additional wages for each workday that the meal breaks were not provided.

16. Plaintiffs are informed and believe, and based thereon allege that Defendants failed to provide Plaintiffs and other aggrieved employees with rest periods of at least ten minutes per four hours worked, or major fraction thereof, and failed to pay Plaintiffs one hour of additional wages at Plaintiffs' and other aggrieved employees' regular rate of pay when a rest break was not provided. Defendants had no policy, procedure, or practice for Plaintiffs and other aggrieved employees to report missed rest breaks or recover lost wages, and Defendants had no policy, procedure, or practice to provide one hour of additional wages for each workday that the rest break was not provided.

17. Plaintiffs are informed and believes, and based thereon alleges that Defendants failed to provide Plaintiffs and other aggrieved employees' wages, including overtime wages, for all hours worked, meaning the time during which Plaintiffs and other aggrieved employees were subject to the control of Defendants, including all the time they were suffered or permitted to work. This was a result of Defendants and other aggrieved employees' uniform policy and practice of requiring Plaintiffs and other aggrieved employees to work off-the-clock without paying them for all the time they were under Defendants' control performing pre-shift and post-shift duties and during purported meal breaks. Additionally, Defendants established a consistent policy and practice of rounding down the hours worked by Plaintiffs and other aggrieved employees to the nearest quarter-hour. In violation of California law, Defendants rounded the actual time worked and recorded by Plaintiffs and other aggrieved employees usually down, so that during their employment, employees were paid far less than they would have been paid had they been paid for actual recorded time. Additionally, Defendants failed to correctly calculate Plaintiffs' and other aggrieved employees' regular rate of pay for overtime payment purposes, by failing to include commissions as part of their regular rate of pay. Plaintiffs and other aggrieved employees are entitled to receive compensation for all hours worked, and that they did not receive compensation for all hours worked. Plaintiffs and other aggrieved employees worked over eight hours in a day, and/or forty hours in a week during their employment with Defendants and Defendants failed to pay overtime wages to Plaintiffs and other aggrieved employees for all hours worked more than eight hours in a day and/or forty hours per week.

18. Plaintiffs are informed and believe, and based thereon allege that Defendants have unlawfully failed to reimburse Plaintiffs and other aggrieved employees for business expenditures and losses, including without limitation, cell phone charges, required tools and equipment, uniform maintenance, and travel expenses.

19. Plaintiffs are informed and believe, and based thereon allege that Defendants have unlawfully failed to provide timely, accurate, itemized wage statements to Plaintiffs.

20. Plaintiffs are informed and believe, and based thereon allege that Defendants have failed to pay all compensation due and owing to Plaintiffs and the other aggrieved employees upon separation.

V. PAGA REPRESENTATIVE ACTION ALLEGATIONS

21. At all relevant times, PAGA was applicable to Plaintiffs and their employment with Defendants. PAGA provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”) for violations of the California Labor Code. As an alternative, these civil penalties may be recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees.

22. Plaintiffs are “aggrieved employees” as defined by PAGA, because they are current employees of Defendants, and one or more of the alleged violations were committed against him.

23. On November 3, 2022 Plaintiffs gave written notice of Defendants’ violations of various provisions of the California Labor Code and IWC Wage Order No. 4-2001 to (a) the LWDA by filing with the LWDA through the LWDA website and (b) to Defendants by certified mail.

24. The LWDA did not provide notice of its intention to investigate Defendants’ violations within 65 calendar days of the November 3, 2022, notice.

25. In doing so, Plaintiffs have satisfied the administrative prerequisites under PAGA to recover civil penalties against Defendants, in addition to the other remedies, for violations of California Labor Code §§ 201-203, 226, 226.7, 510, 511, 526(a), 1194 *et seq.*, 1198, and 2802.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

Private Attorneys General Act

(California Labor Code §§ 2698, *et seq.* [PAGA])

(By Plaintiffs Against Defendants)

26. Plaintiffs incorporate by reference and re-alleges paragraphs set forth above as though set forth fully herein. Plaintiffs alleges as follows as representative cause of action on behalf of himself.

27. PAGA authorizes an aggrieved employee, on behalf of him/himself or other current or former employees, to bring a civil action to recover civil penalties against his or his employer pursuant to the procedures specified in California Labor Code § 2699.3. Plaintiffs are aggrieved employees within the meaning of PAGA, and pursuant to PAGA, Plaintiffs are entitled to recover

1 civil penalties on behalf of themselves and against whom one or more of the alleged violations were
2 committed. If employee prevails as private attorney general, the employer may be subject to civil
3 penalties, of which the aggrieved employee is entitled to 25 percent.

4 28. Plaintiffs have complied with the procedures for bringing suit under PAGA.
5 Specifically, on or about November 3, 2022, Plaintiffs gave written notice of Defendants' violations –
6 including the facts and theories to support the violations – of various provisions of the California
7 Labor Code and IWC Wage Order No. 4-2001 to (a) the LWDA by filing with the LWDA through
8 the LWDA website and (b) to Defendants by certified mail.

9 29. Pursuant to California Labor Code § 2699.3, the LWDA must give written notice by
10 certified mail to the parties that it intends to investigate the alleged violations of the California Labor
11 Code within 60 days of the date of the complainant's written notice and now more than 65 days have
12 passed since the notice and the LWDA did not provide the parties notice that it intended to
13 investigate his claims.

14 30. During the applicable time period preceding the filing of Plaintiffs notice to the
15 LWDA, Defendants violated California Labor Code §§ 201-203, 226, 226.7, 510, 511, 526(a), 1194
16 *et seq.*, 1198, and 2802, and the IWC Wage Order No. 4-2001 provisions, as alleged in more detail
17 above.

18 31. Pursuant to California Labor Code § 2699, Plaintiffs, on behalf of the state of
19 California and other aggrieved employees, requests and is entitled to receive from Defendants
20 statutory penalties against Defendants, including but not limited to:

- 21 a. Penalties under California Labor Code § 2699(f)(2) in the amount of a \$100
22 for each aggrieved employee per pay period for the initial violation, and \$200
23 for each aggrieved employee per pay period for each subsequent violation;
24 b. Penalties under California Code of Regulations Title 8, § 11040 in the amount
25 of \$50 for each aggrieved employee per pay period for the initial violation,
26 and \$100 for each aggrieved employee per pay period for each subsequent
27 violation;
28 c. Pursuant to California Labor Code § 226(e), the greater of all actual damages

or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of \$4,000;

- d. Pursuant to California Labor Code § 558(a), violations of California Labor Code § 526(a) and IWC Wage Order No. 4-2001 shall be subject to a civil penalty as follows: (i) for any initial violation, \$50 for each underpaid employee for each pay period for which the employee was underpaid; (ii) for each subsequent violation \$100 for each underpaid employee for each pay period for which the employee was underpaid; and
- e. Any and all additional penalties and sums as provided by the California Labor Code.

32. Pursuant to California Labor Code § 2699(i), civil penalties recovered by aggrieved employees shall be distributed as follows: “75 percent to the Labor and Workforce Development Agency for enforcement of labor laws, including the administration of this part, and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes; and 25 percent to the aggrieved employees.”

33. Pursuant to California Labor Code §§ 2699(a) and (f), and 2699.5, and 2699(g)(1), Plaintiffs are entitled to an award of reasonable attorneys’ fees and costs. To that end, Plaintiffs seeks all relief entitled under PAGA for any penalties assessed against Defendants as a result of Defendants’ California Labor Code violations, plus attorneys’ fees and costs.

34. Plaintiffs do not seek to recover anything other than penalties as permitted by California Labor Code § 2699. To the extent that statutory violations are mentioned for wage violations, Plaintiffs do not seek underlying general and/or special damages for those violations, but simply the civil penalties permitted by California Labor Code § 2699. Nothing in this complaint should be construed as attempting to obtain any relief that would not be available in a PAGA-only action.

VI. PRAYER FOR RELIEF

Wherefore, Plaintiffs, on behalf of the State of California and other aggrieved employees pursuant to PAGA, prays for an award and judgment against Defendants jointly and severally, as follows:

1. For penalties and attorneys' fees pursuant to PAGA;
2. That the Court declare, adjudge, and decree that Defendants violated California Labor Code §§ 201-203, 226, 226.7, 510, 511, 526(a), 1194 *et seq.*, 1198, and 2802, and IWC Wage Order No. 4-2001 provisions;
3. For civil penalties pursuant to California Labor Code §§ 2699(a), (f), and (g) plus costs and attorneys' fees under California Labor Code § 218.5, 226(e), and 2699(g) for violations of California Labor Code §§ 201-203, 226, 226.7, 510, 511, 526(a), 1194 *et seq.*, 1198, and 2802, and IWC Wage Order No. 4-2001 provisions; and
4. For such other and further relief as the Court deems appropriate.

DATED: February 1, 2023

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