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Attorneys for Plaintiff JUAN CARLOS ALEJO,
on behalf of himself and current and former aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES CENTRAL DISTRICT**

JUAN CARLOS ALEJO, on behalf of himself
and other aggrieved employees,

Plaintiff,

vs.

ISLANDS RESTAURANTS, LLC; ISLANDS
RESTAURANTS, L.P.; and DOES 1 to 100,
inclusive,

Defendants.

Case No.: **23STCV05891**

PAGA ACTION

**PLAINTIFF JUAN CARLOS
ALEJO'S COMPLAINT FOR:**

- CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTIONS 2698, ET SEQ.**

COMES NOW Plaintiff JUAN CARLOS ALEJO ("Plaintiff"), who alleges and
complains against Defendants ISLANDS RESTAURANTS, LLC; ISLANDS RESTAURANTS,
L.P; and DOES 1 to 100, inclusive (collectively "Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*
("PAGA") representative action brought by Plaintiff on behalf of the State of California, himself
and other current and former aggrieved employees of Defendants who worked as hourly non-
exempt employees in California during the relevant time period seeking civil penalties associated
with Defendants' violation of the Labor Code based on Defendants' failure to include all

1 remuneration when calculating the applicable overtime rate of pay; failure to meal period premium
2 wages at the regular rate of compensation; failure to pay rest period premium wages at the regular
3 rate of compensation; statutory penalties for failure to timely pay earned wages during
4 employment; statutory penalties for failure to provide accurate wage statements; statutory waiting
5 time penalties in the form of continuation wages for failure to timely pay employees all wages due
6 upon separation of employment. Plaintiff seeks on a representative basis, following notice to the
7 Labor and Workforce Development Agency, civil penalties, reasonable attorneys' fees pursuant to
8 Labor Code section 2699(g)(1) and costs brought on behalf of Plaintiff, the State of California,
9 and others aggrieved.

10 **II. JURISDICTION AND VENUE**

11 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
12 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
13 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
14 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
15 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
16 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
17 aggrieved California-based hourly non-exempt employees occurred in locations throughout
18 California, including but not limited to Los Angeles County, at 11400 Porter Ranch Drive,
19 Northridge, California 91326.

20 3. In response to the COVID-19 pandemic, the Judicial Council of California enacted
21 Emergency Rule 9 to the California Rules of Court, which provided that, notwithstanding any
22 other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are
23 tolled from April 6, 2020, until October 1, 2020.

24 **III. PARTIES**

25 4. Plaintiff brings this action as a representative of the Labor and Workforce
26 Development Agency on behalf of himself and other current and former employees subject to
27 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
28 filed include current, former and/or future employees of Defendants who work, worked, or will

1 work for Defendants as direct employees as well as temporary employees employed through temp
2 agencies as hourly non-exempt employees in California. At all times mentioned herein, the
3 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
4 employed by Defendants in an hourly position at Defendants' location in Los Angeles from in or
5 around November 13, 2015, until on or about July 29, 2022.

6 5. Plaintiff is informed and believes and thereon alleges that Defendant ISLANDS
7 RESTAURANTS, LLC is authorized to do business within the State of California and is doing
8 business in the State of California and/or that Defendants DOES 1-50 are, and at all times relevant
9 hereto were persons acting on behalf of Defendant ISLANDS RESTAURANTS, LLC in the
10 establishment of, or ratification of, the aforementioned illegal wage and hour practices or policies.
11 Defendant ISLANDS RESTAURANTS, LLC operates in Los Angeles County and employed
12 Plaintiff and aggrieved employees in Los Angeles County, including but not limited to, at 11400
13 Porter Ranch Drive, Northridge, California 91326.

14 6. Plaintiff is informed and believes and thereon alleges that Defendant ISLANDS
15 RESTAURANTS, L.P is authorized to do business within the State of California and is doing
16 business in the State of California and/or that Defendants DOES 1-50 are, and at all times relevant
17 hereto were persons acting on behalf of Defendant ISLANDS RESTAURANTS, L.P in the
18 establishment of, or ratification of, the aforementioned illegal wage and hour practices or policies.
19 Defendant ISLANDS RESTAURANTS, L.P operates in Los Angeles County and employed
20 Plaintiff and aggrieved employees in Los Angeles County, including but not limited to, at 11400
21 Porter Ranch Drive, Northridge, California 91326.

22 7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
23 through 50 are corporations, or are other business entities or organizations of a nature unknown to
24 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
25 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
26 working conditions of employment of Plaintiff and aggrieved employees.

27 8. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
28 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued

1 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
2 supervisor, independent contractor and/or employee of each defendant who violated or caused to
3 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of
4 the Industrial Welfare Commission's wage orders regulating hours and days of work.

5 9. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
6 sues said defendants by said fictitious names, and will amend this complaint when the true names
7 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
8 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
9 named defendants is in some manner responsible for the events and allegations set forth in this
10 complaint.

11 10. Plaintiff makes the allegations in this complaint without any admission that, as to
12 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and
13 Plaintiff reserves all of Plaintiff's right to plead in the alternative.

14 **FIRST CAUSE OF ACTION**

15 **CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS**

16 **GENERAL ACT OF 2004, LABOR CODE SECTIONS 2698, ET SEQ.**

17 **(Against all Defendants by Plaintiff)**

18 11. Plaintiff incorporates all paragraphs above as though fully set forth herein.

19 12. During the period beginning one (1) year preceding Plaintiff sending the initial
20 PAGA Claim Notice to the LWDA to the present, Defendants violated Labor Code sections 201,
21 202, 203, 204, 226, 226.7, 510, 512, 1194, and Sections 14 and 15 of the applicable Wage Orders.

22 13. Specifically, Defendants have committed the following violations of California
23 Labor Code:

24 14. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
25 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
26 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
27 which includes all time that an employee is under control of the employer and all time the
28 employee is suffered and permitted to work. This includes the time an employee spends, either

1 directly or indirectly, performing services that inure to the benefit of the employer.’

2 15. Labor Code sections 510 and 1194 require an employer to compensate employees a
3 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty
4 (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

5 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40)
6 hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of
7 work in any one (1) workweek, shall be compensated at the rate of no less than one-and-
8 one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve
9 (12) hours in one (1) day shall be compensated at the rate of no less than twice the regular
rate of pay for an employee. In addition, any work in excess of eight (8) hours on any
seventh day of a workweek shall be compensated at the rate of no less than twice the
regular rate of pay of an employee.

10 Labor Code section 510.

11 16. Overtime is based upon an employee’s regular rate of pay. “The regular rate at
12 which an employee is employed shall be deemed to include all remuneration for employment paid
13 to, or on behalf, of the employee.” See Division of Labor Standards Enforcement – Enforcement
14 Policies and Interpretations Manual, Section 49.1.2.

15 17. In this case, Plaintiff alleges that when he and other current and former aggrieved
16 California-based hourly non-exempt employees earned overtime wages, Defendants failed to pay
17 them overtime wages at the proper overtime rate of pay due to Defendants’ failure to include all
18 remuneration when calculating the overtime rate of pay. Specifically, Defendants maintained a
19 policy, practice, and/or procedure of failing to include all remuneration for example, “Special Pay”
20 when calculating Plaintiff and other current and former aggrieved California-based hourly non-
21 exempt employees regular rate of pay for the purpose of calculating and paying overtime wages.

22 18. The foregoing policies, practices, and/or procedures resulted in time during each
23 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
24 employees were under the control of Defendants but were not compensated. To the extent that the
25 foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved
26 California-based hourly non-exempt employees worked more than eight (8) hours in a workday,
27 more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed
28 to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code

1 sections 510 and 1194 and the applicable Wage Order.

2 19. **Failure to pay wages to hourly non-exempt employees for workdays that**
3 **Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other
4 current and former aggrieved California-based hourly non-exempt employees regularly worked
5 shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

6 20. California law requires an employer to authorize or permit an employee an
7 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of
8 all duties and the employer relinquishes control over the employee's activities prior to the
9 employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 5 at §11; *Brinker*
10 *Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an
11 employee for a work period of more than ten (10) hours per day without providing the employee
12 with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh
13 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period
14 shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal
15 period is only permitted when: (1) the nature of the work prevents an employee from being
16 relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

17 21. If an employer fails to provide an employee a meal period in accordance with the
18 law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay
19 for each workday that a legally required and compliant meal period was not provided. Labor Code
20 section 226.7; Wage Order 5 at §11.

21 22. In this case, on occasions when Defendants paid Plaintiff and other current and
22 former aggrieved California-based hourly non-exempt employees a "premium" wage for late,
23 missed, short, on-premises, on-duty, and/or interrupted meal periods, Defendants failed to pay the
24 one (1) additional hour of pay at Plaintiff and other current and former aggrieved California-based
25 hourly non-exempt employees regular rate of compensation. Specifically, Defendants maintained a
26 policy, practice, and/or procedure of failing to include all remuneration such as, for example,
27 "Special Pay" when calculating Plaintiff and other current and former aggrieved California-based
28 hourly non-exempt employees regular rate of compensation for purposes of calculating and paying

1 meal period premium wages.

2 23. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
3 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
4 based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each
5 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
6 employees did not receive legally required and compliant meal periods, in violation of Labor Code
7 section 226.7.

8 24. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
9 and other current and former aggrieved California-based hourly non-exempt employees not
10 receiving wages to compensate them for workdays during which Defendants did not provide them
11 with meal periods in compliance with California law.

12 25. **Failure to pay wages to hourly non-exempt employees for workdays that**
13 **Defendants failed to provide legally required and compliant rest periods:** Plaintiff and other
14 current and former aggrieved California-based hourly non-exempt employees regularly worked
15 shifts of more than three-and-a-half (3.5) hours.

16 26. California law requires every employer to authorize and permit an employee a rest
17 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
18 Code section 226.7; Wage Order 5 at §12. Under California law, "[e]mployees are entitled to 10
19 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more
20 than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so
21 on." *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code
22 section 226.7; Wage Order 5 at §12. Rest periods, insofar as practicable, shall be in the middle of
23 each work period. Wage Order 5 at §12. Additionally, the rest period requirement "obligates
24 employers to permit – and authorizes employees to take – off-duty rest periods." *Augustus v. ABM*
25 *Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must
26 relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

27 27. If the employer fails to authorize or permit a required rest period, the employer
28 must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday

1 the employer did not authorize or permit a legally required rest period. Labor Code section 226.7;
2 Wage Order 5 at § 12.

3 28. In this case, on occasions when Defendants did pay Plaintiff and other current and
4 former aggrieved California-based hourly non-exempt employees a “premium” wage for late,
5 missed, short, on-premises, on-duty, and/or interrupted rest periods, Defendants failed to pay the
6 one (1) additional hour of pay at Plaintiff and other current and former aggrieved California-based
7 hourly non-exempt employees regular rate of compensation. Specifically, Defendants maintained a
8 policy, practice, and/or procedure of failing to include all remuneration such as, for example,
9 “Special Pay” when calculating Plaintiff and other current and former aggrieved California-based
10 hourly non-exempt employees regular rate of compensation for purposes of calculating and paying
11 rest period premium wages.

12 29. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
13 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
14 based hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each
15 workday they did not receive legally required and compliant rest periods, in violation of Labor
16 Code section 226.7.

17 30. Defendants’ foregoing policies, practices, and/or procedures resulted in Plaintiff
18 and other current and former aggrieved California-based hourly non-exempt employees not
19 receiving wages to compensate them for workdays in which Defendants did not provide them with
20 rest periods in compliance with California law.

21 31. **Failure to timely pay earned wages during employment:** In California, wages
22 must be paid at least twice during each calendar month on days designated in advance by the
23 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
24 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
25 16th and the 26th day of that month and wages earned between the 16th and the last day,
26 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
27 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
28 paid within seven (7) calendar days following the close of the payroll period in which wages were

1 earned. Labor Code section 204(d).

2 32. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
3 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-
4 exempt employees' earned wages (overtime wages at the proper overtime rate of pay, meal period
5 premium wages at the proper rate, and/or rest period premium wages at the proper rate), in
6 violation of Labor Code section 204. Defendants' aforementioned policies, practices, and/or
7 procedures resulted in their failure to pay Plaintiff's and other current and former aggrieved
8 California-based hourly non-exempt employees' their earned wages within the applicable time
9 frames outlined in Labor Code section 204.

10 33. **Failure to provide complete and accurate wage statements:** Labor Code section
11 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
12 employee his or her wages, the employer must "furnish each of his or her employees ... an
13 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
14 employee, except for any employee whose compensation is solely based on a salary and who is
15 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
16 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
17 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
18 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
19 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
20 name of the employee and his or her social security number, (8) the name and address of the legal
21 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
22 the corresponding number of hours worked at each hourly rate by the employee."

23 34. As a derivative of Plaintiff's allegations above, Defendants' failure to pay Plaintiff
24 and other current and former aggrieved California-based hourly non-exempt employees all wages
25 earned (overtime wages at the proper overtime rate of pay, meal period premium wages at the
26 proper rate, and/or rest period premium wages at the proper rate) rendered Plaintiff's and other
27 current and former aggrieved California-based hourly non-exempt employees' wage statements
28 inaccurate, in violation of Labor Code section 226.

1 35. **Failure to pay employees all wages due at time of termination/resignation:** An
2 employer is required to pay all unpaid wages timely after an employee's employment ends. The
3 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
4 hours of resignation (Labor Code section 202).

5 36. As a derivative of Plaintiff's allegations above, because Defendants failed to pay
6 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
7 all their earned wages (overtime wages at the proper overtime rate of pay, meal period premium
8 wages at the proper rate, and/or rest period premium wages at the proper rate), Defendants failed
9 to pay those employees timely after each employee's termination and/or resignation, in violation
10 of Labor Code sections 201, 202, and 203.

11 37. Defendants' violations of Wage Order 5 constituted violations of Labor Code
12 section 1198, which prohibits employment under conditions of labor that violate the Wage Orders.

13 38. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
14 employee, on behalf of himself or herself and other current or former employees, to bring a civil
15 action to recover civil penalties against all Defendants pursuant to the procedures specified in
16 Labor Code section 2699.3.

17 39. Plaintiff has complied with the procedures for bringing suit specified in Labor
18 Code section 2699.3. On January 10, 2023, Plaintiff filed a PAGA Claim Notice with the LWDA
19 and provided notice to Defendants by certified mail which provided notice of the specific
20 provisions of the Labor Code alleged to have been violated, including the facts and theories to
21 support the violations alleged.

22 40. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
23 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
24 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
25 parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends
26 to investigate Plaintiff's claims.

27 41. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
28 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510,

1 512, 1194, beginning one (1) year preceding Plaintiff sending the initial PAGA Claim Notice to
2 the LWDA to the present, in the following amounts:

3 a. For violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510,
4 512, 1194, one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
5 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
6 subsequent violation [penalty amounts established by Labor Code section 2699(f)(2)].

7 b. For violations of Labor Code section 226, two hundred fifty dollars (\$250)
8 for each employee for each pay period for the initial violation, and for each subsequent violation,
9 one thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts
10 established by Labor Code section 226.3].

11 c. For violations of Labor Code section 510, fifty dollars (\$50) for each
12 employee for each pay period for the initial violation, and for each subsequent violation, one
13 hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts
14 established by Labor Code section 558] and any unpaid wages.

15 d. For violations of Labor Code section 1194, one hundred dollars (\$100) for
16 each underpaid employee for each pay period for the initial violation, and for each subsequent
17 violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay period
18 [penalty amounts established by Labor Code section 1197.1] and any unpaid wages.

19 42. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of
20 reasonable attorneys' fees and costs in connection with his claims for civil penalties.

21 **PRAYER FOR RELIEF**

22 **WHEREFORE, PLAINTIFF, ON BEHALF OF HIMSELF AND ON OTHER**
23 **AGGRIEVED EMPLOYEES, PRAYS AS FOLLOWS:**

24 **ON THE FIRST CAUSE OF ACTION:**

25 1. That Defendants be found to have violated the provisions of the Labor Code and
26 the IWC Wages Orders as to the Plaintiff and aggrieved employees;

27 2. For any and all legally applicable penalties during the relevant statute of limitations
28 subject to any permissible tolling, including but not limited to those recoverable under the

1 California Labor Code, including but not limited to section 2699(f);

2 3. For attorneys' fees and costs of suit, including but not limited to those recoverable
3 under California Labor Code section 2699(g); and

4 4. For such and other further relief, in law and/or equity, as the Court deems just or
5 appropriate

6
7 Dated: March 16, 2023

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

8
9 By:



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