

Assigned for All Purposes

Judge Lon F. Hurwitz

CX-103

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DELMY RIVERA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

DELMY RIVERA, an individual, on behalf of
herself and all others similarly situated,

Plaintiffs,

vs.

MARWAY POWER SYSTEMS INC., a
California Corporation; and DOES 1 TO 50

CASE NO.: 30-2024-01449386-CU-OE-CXC

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF:**

**1. CIVIL PENALTIES – THE LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT (“PAGA”)**

[UNLIMITED CIVIL JURISDICTION]

Plaintiffs Delmy Rivera, an individual (“Plaintiff”) brings this action on behalf of the State of California, and all other Aggrieved Employees (as defined below), against Defendant Marway Power Systems Inc. (the “Company”) and Defendants DOES 1 to 50, (collectively referred to herein as “Defendants”).

INTRODUCTION

1. This is a representative action filed by Plaintiff on behalf of the State of California against Defendants pursuant to California's Private Attorney General Act, Labor Code section 2698 et. seq. (“PAGA”), to recover civil penalties (65% payable to the Labor and Workforce Development Agency and 35% payable to Aggrieved Employees) for Defendants' violations of the California Labor Code as alleged below. Plaintiff seeks

injunctive relief including, but not limited to, an injunction prohibited Defendants' unlawful practices and requiring Defendant Marway Power Systems Inc. to post, in a prominent location on its menus and websites, that Defendants have committed serious violations of the California Labor Code against their employees and identifying and describing the nature of those violations.

2. By and through this action, Plaintiff does not allege individual claims; Rather, her claims are representative made on behalf of the State of California for PAGA Violations against themselves and other aggrieved employees. See *Balderas v. Fresh Start Harvesting, Inc.* 2024 WL 167112 “[A]n employee who does not bring an individual claim against her employer may nevertheless bring a PAGA action for herself and other employees of the company”].

PARTIES

3. Plaintiff Delmy Rivera is a natural person and domiciled in California.

4. Defendant Marway Power Systems Inc., a California Corporation, was at all relevant times doing business in Orange County, California.

5. Plaintiff is ignorant of the true names and capacities of the defendants sued under the fictitious names of Does 1 through 50. Plaintiff will amend this Complaint to show their true names and capacities when the same have been ascertained. Plaintiff is informed and believe that each of the fictitiously named Doe Defendants is legally responsible in some manner for the occurrences alleged and that Plaintiff's injuries and damages, as alleged, were proximately caused by these Doe Defendants' actions.

6. Marway Power Systems, Inc. and Doe Defendants 1 through 50, inclusive, are referred to herein collectively as “Defendants.” Plaintiff is informed and believes and thereon alleges that at all times pertinent hereto, each Defendant was the agent and employee of each of its co-Defendants, and in doing the things described herein, was acting within the course and scope of his/her authority as such agent and employee, and each Defendant ratified and approved the acts of his/her agents and employees. Defendants acted as Plaintiff's “employer” and are responsible for any and all damages

1 claimed by Plaintiff in this action under Labor Code section 558.

2 **PAGA ALLEGATIONS**

3 7. Plaintiff brings this action under the PAGA on behalf of the State of California
4 and other Aggrieved Employees, regarding violations of the California Labor Code as set
5 forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

6 "All individuals who worked for any one or more of the
7 Defendants at any location in California within one year plus 65
8 days from the filing of the initial Complaint through the present
9 ("PAGA Period" or "Class Period")."

10 8. Plaintiff is "aggrieved employee," as that term is defined under Labor Code
11 section 2699(c), as Plaintiff was employed by Defendant during the applicable statutory
12 limitations period and suffered one or more of the Labor Code violations set forth herein.
13 Accordingly, Plaintiff seeks to recover on behalf of the State of California, and all
14 Aggrieved Employees, the civil penalties provided by PAGA, plus reasonable attorney's
15 fees and costs.

16 **COMPLIANCE WITH PAGA'S NOTIFICATION REQUIREMENTS**

17 9. Plaintiff, through counsel, gave written notice by online filing with the
18 California Labor and Workforce Development Agency ("LWDA") informing it that
19 Defendant failed to comply with California's labor laws with regard to the allegations
20 alleged in this Complaint ("PAGA Notice").

21 10. The PAGA Notice outlined Plaintiff's claims for violations of the California
22 Labor Code and the applicable wage orders on behalf of the State of California and all
23 Aggrieved Employees.

24 11. The LWDA did not provide notice of its intention to investigate Defendant's
25 violations after expiration of the 65-day waiting time period, or at any time. To the extent
26 any of the alleged violations were curable, Defendant failed to cure within the time allotted
27 by PAGA. Accordingly, Plaintiff has exhausted the administrative remedies as required by
28 Labor Code section 2699.3. Consequently, Plaintiff's right to file the instant lawsuit against

Defendant has duly accrued.

12. Plaintiff seeks to recover the PAGA civil penalties through a representative action permitted by California law.

GENERAL FACTUAL ALLEGATIONS

13. Plaintiff worked for Marway Power Systems Inc. from approximately August 2021 through April 2024, in its assembly department.

14. Plaintiff was paid on an hourly basis, and generally began her workday prior to 6am. Plaintiff and similarly situated employees were generally not provided with a meal period until after their fifth hour of work (as reflected in employee time records).

15. On Sunday April 14, 2024, Plaintiff fell ill and requested sick leave. Plaintiff's supervisor approved Plaintiff's absence and requested a doctor's note from Plaintiff. On April 17, 2024, Plaintiff provided Defendant with a physician's note placing her off work from April 16, 2024, to April 21, 2024, due her medical condition. Upon Plaintiff's return to work on April 22, 2024, Plaintiff was terminated.

A. Failure to Provide Meal Periods

16. During the Class Period, Plaintiff, like other members of the Class, was discouraged from taking code compliant meal breaks and Company did not authorize or permit code compliant meal breaks. For example, Class Members were generally provided with one thirty-minute meal period at 11:00am, after the fifth hour of work. During the Class Period, Plaintiff, like other members of the Class, was not paid one hour of premium pay for missed or delayed meal breaks.

B. Failure to Issue Accurate Itemized Wage Statements

17. During the Class Period, Plaintiff, like other Class Members, was never issued accurate or itemized wage statements reflecting all wages earned.

C. Failure to Pay All Wages Upon Separation

18. During the Class Period, Plaintiff separated from employment with the Company. However, and like other Subclass Members, she was not paid all wages owed to her at the time of separation, including meal premiums. On information and belief, the

Company's refusal to pay all wages owed to former employees continues, and none of the Subclass Members have been paid all wages owed, despite weeks, months, and years since their respective employment separations.

FIRST CAUSE OF ACTION
CIVIL PENALTIES – THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT
(“PAGA”)
(Plaintiff Against All Defendants)

19. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if they were re-alleged and set forth herein.

20. Plaintiffs bring this cause of action on behalf all other aggrieved current and former employees of Defendant Buckeye Roadhouse, Inc. and seek civil penalties for each and every violation alleged herein. Plaintiffs are aggrieved employees. Plaintiffs were employed by Defendants and the violations alleged herein were committed against Plaintiffs. At the time of each violation, Defendants employed one or more employees.

21. On August 27, 2024, Plaintiff filed a PAGA Notice with the California Labor and Workforce Development Agency (hereafter, “LWDA”) and provided a copy by certified mail to Defendant. A true and correct copy of the PAGA Notice and Certified Mail Receipts are attached hereto as **Exhibit 1**.

22. Plaintiff complied with all procedural requirements of Labor Code § 2699.3 before filing this Complaint. The LWDA did not respond to Plaintiff's notice of the alleged violations within the statutory timeframe, and Plaintiff has therefore exhausted administrative remedies.

23. As a result of the aforesaid wrongful and illegal conduct of the Defendants, and each of them, Plaintiff is entitled to civil penalties in an amount to be determined at trial, costs, and attorney's fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment solely on behalf of other Aggrieved Employees and the State of California as follows:

1. For civil penalties under Labor Code Section 2699 (75% payable to

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- the LWDA and 25% payable to Aggrieved Employees);
2. For an order temporarily, preliminarily and permanently enjoining and restraining Defendant from engaging in similar unlawful conduct as set forth herein;
3. For an order requiring Defendant Marway Power Systems Inc. to post in a prominent location in its place of business and its website(s), a notice stating that it has committed serious violations of the Labor Code, and to identify those violations, and to keep the notice posted for a period of no less than one year after judgment;
3. For reasonable attorney's fees and costs of suit; and
4. For such other and further relief that the Court deems just and proper.

Dated: December 30, 2024

HAULK & HERRERA LLP

By: _____



Matthew A. Haulk, Esq.
Jose M. Herrera, Esq.
Attorneys for Plaintiff and all others
similarly situated