

MAYALL HURLEY
A Professional Corporation
2453 Grand Canal Boulevard
Stockton, California 95207
Telephone (209) 477-3833
Facsimile (209) 473-4818
WILLIAM J. GORHAM III
CA State Bar No. 151773
VLADIMIR J. KOZINA
CA State Bar No. 284645

Attorneys for Plaintiff, Athena Hoa Nguyen

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN JOAQUIN – UNLIMITED JURISDICTION

ATHENA HOA NGUYEN,

Plaintiff,

vs.

ANDY TRUONG NGUYEN, an individual;
LOAN LE, an individual; and DOES 1-100,
inclusive,

Defendants.

Case No.: STK-CV-UOE-2020-849

FIRST AMENDED COMPLAINT FOR
PENALTIES AND DAMAGES

1. VIOLATION OF LABOR CODE §§ 98.6, 1102.5 (RETALIATION),
2. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY (TAMENY v. ARCO)
3. VIOLATION OF LABOR CODE § 1197 (FAILURE TO PAY MINIMUM WAGE)
4. VIOLATION OF LABOR CODE § 201 (FAILURE TO PAY WAGES DUE AT CESSATION OF EMPLOYMENT)
5. VIOLATION OF LABOR CODE § 226 (FAILURE TO FURNISH ACCURATE WAGE STATEMENTS);
6. VIOLATION OF LABOR CODE § 226 (FAILURE TO MAINTAIN ACCURATE WAGE STATEMENTS)
7. VIOLATIONS OF LABOR CODE § 2698 ET SEQ. (PAGA)

JURY TRIAL DEMANDED

1 Plaintiff Athena Hoa Nguyen (“plaintiff” or “AHN”) brings this action against defendants
2 for compensatory damages, general damages, penalties, interest, costs, and attorneys’ fees
3 resulting from the defendants’ unlawful conduct, and as grounds therefore alleges:

4 **PARTIES**

5 1. Plaintiff AHN is and, at all times relevant herein, was an individual residing in
6 San Joaquin County, California; and was employed by defendants in San Joaquin County,
7 California.

8 2. Defendant Andy Truong Nguyen (“Nguyen”) is an individual residing in San
9 Joaquin County, State of California, and does business as Pho Rice & Roll’d, a restaurant in
10 Tracy, California.

11 3. Defendant Loan Le (“Le”) is an individual residing in San Joaquin County, State
12 of California, and does business as Pho Rice & Roll’d, a restaurant in Tracy, California.

13 4. AHN is not aware of the true names and capacities of the defendants sued herein
14 as Does 1-100, whether individual, corporate, associate, or otherwise, and therefore sues such
15 defendants by these fictitious names. AHN will amend this complaint to allege their true names
16 and capacities when ascertained. AHN is informed and believes, and on that basis alleges, that
17 each of the fictitiously named defendants is responsible in some manner for the occurrences
18 herein alleged and that AHN’s injuries herein alleged were legally caused by such defendants.
19 Unless otherwise indicated, each defendant was acting within the course and scope of said
20 agency and/or employment, with the knowledge and/or consent of said co-
21 defendant. Collectively, Defendants Nguyen, Le and DOES 1-100 are referred to herein as
22 “Defendants.”

23 **VENUE AND JURY TRIAL DEMAND**

24 5. Venue is proper in this Court because the unlawful acts alleged herein as to AHN
25 took place in San Joaquin County, which is also the location of the place of business of
26 defendants, and their restaurant Pho Rice & Roll’d. AHN hereby demands a jury trial.

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7. As a matter of policies followed by Defendants, Defendants took and kept tips or gratuities left by Defendants' customers for plaintiff and other former and current servers and employees of Defendants. This practice was in direct contravention of Labor Code § 351, which provides: "No employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Every gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for. An employer that permits patrons to pay gratuities by credit card shall pay the employees the full amount of the gratuity that the patron indicated on the credit card slip, without any deductions for any credit card payment processing fees or costs that may be charged to the employer by the credit card company. Payment of gratuities made by patrons using credit cards shall be made to the employees not later than the next regular payday following the date the patron authorized the credit card payment."

9. On information and belief, Defendants also failed to keep records of the tips or gratuities as required by Labor Code § 353.

10. Defendants not only kept the tips left by its customers for Plaintiff and other former and current servers but paid Plaintiff and other former and current servers less than

1 minimum wage for all hours worked by counting the tips collected as part of the minimum wage
2 paid to its employees.

3 11. When Plaintiff AHN complained of Defendants' unlawful practice regarding it
4 keeping tips left by customers on Friday, January 10, 2020, Defendants' retaliated against
5 plaintiff by taking her off of the schedule for the rest of the weekend. Defendants attempted to
6 defend their practice by claiming that tips were not employees' property because, Defendants
7 claimed, Pho Rice & Roll'd was "a kitchen," and that service was not the same as for a
8 restaurant. It then justified the policy by claiming that tips were part of the minimum wage it
9 paid to its service employees. This practice is a violation of the Labor Code § 351, and Labor
10 Code § 1197 because the employees' own money is being used to pay his or her wages.

11 12. The next day, on January 11, 2020, Defendants further retaliated by terminating
12 plaintiff.

13 13. At no time during her employment with Defendants did Defendants ever issue to
14 Plaintiff a wage statement or any accounting regarding tips.

15 14. Upon her termination, Defendants willfully and intentionally failed to pay to
16 Plaintiff all wages that she earned during her employment. In particular, it failed to pay her at
17 least minimum wage for all hours worked or all tips that she earned for the month and one-half
18 that she worked for Defendants.

19 15. The list of misconduct by Defendants set forth above is a partial list only, and by
20 way of example.

21 **FIRST CAUSE OF ACTION**
22 **VIOLATION OF LABOR CODE § 98.6, 1102.5**
23 **(Retaliation)**
Against All Defendants

24 16. Plaintiff AHN hereby realleges and incorporates by reference Paragraphs 1
25 through 14 above as though fully set forth herein, except as said paragraphs are inconsistent with
26 the allegations of this cause of action.

27 17. Pursuant to Labor Code § 98.6, no person shall discharge an employee or in any
28 manner discriminate against any employee because the employee engaged in any conduct

1 delineated in Chapter 4 of the Labor Code, including the conduct described in 96(k), and Chapter
2 5 of the Labor Code (Labor Code §§ 1101-1105), or because of the exercise by the employee on
3 behalf of himself, herself, or others of any rights afforded him or her under the Labor Code.

4 18. Labor Code section 1102.5(b) makes expressly unlawful any form of retaliation
5 against an employee for disclosing to any person with authority over the employee information
6 that the employee has reasonable cause to believe is a violation of a state or federal statute, or
7 local, state, or federal rule or regulation.

8 19. As set forth above, Plaintiff AHN protested and complained to Defendants, who
9 had authority over Plaintiff, that their policy of taking customer tips was unlawful.

10 20. In retaliation, Defendants first suspended and then terminated Plaintiff AHN's
11 employment.

12 21. As a result of Defendants' conduct, Plaintiff AHN has suffered compensatory
13 damages, including special and general damages.

14 22. Wherefore, Plaintiff AHN seeks \$75,000.00 on her First Cause of Action.

15 **SECOND CAUSE OF ACTION**
16 **WRONGFUL TERMINATION IN VIOLAITON OF PUBLIC POLICY**
17 **Against All Defendants**

18 23. Plaintiff AHN hereby realleges and incorporates by reference Paragraphs 1
19 through 21 above as though fully set forth herein, except as said paragraphs are inconsistent with
20 the allegations of this cause of action.

21 24. In *Tameny v. ARCO, Inc.* (1980) 27 Cal.3d 167, the California Supreme Court an
22 action lies in tort for an employee who has been terminated in contravention to the fundamental
23 principles of public policy.

24 25. When Defendants terminated Plaintiff AHN, they intentionally and willfully
25 violated the fundamental principles of public policy, including those set forth in Labor Code §§
26 351, 356, 1197 and 98.6.

27 26. As a result of Defendants' conduct, Plaintiff AHN has suffered compensatory
28 damages, including special and general damages.

1 27. Wherefore, Plaintiff AHN seeks \$75,000 on her Second Cause of Action.

2 **THIRD CAUSE OF ACTION**
3 **VIOLATION OF LABOR CODE § 1197**
4 **(Failure to Pay Minimum Wage)**
5 **Against All Defendants**

6 28. Plaintiff AHN hereby realleges and incorporates by reference Paragraphs 1
7 through 26 above as though fully set forth herein, except as said paragraphs are inconsistent with
8 the allegations of this cause of action.

9 29. Labor Code section 1197 provides that the minimum wage for employees fixed by
10 the commission is the minimum wage to be paid to employees, and the payment of a lesser wage
11 is unlawful.

12 30. Labor Code § 351 provides that tips are the property of employees, may not be
13 shared with management or owners, and may not be used by employers as a credit against the
14 minimum wage owed to employees, and requires that tips by credit or debit payments be issued
15 to employees on the next regular pay day.

16 31. As set forth above, during her employment, Defendants violated Labor Code §
17 351 by taking and keeping tips, and by paying part or all of the hourly wages earned by Plaintiff
18 AHN through her tips.

19 32. The result of Defendants' unlawful practice is that Plaintiff's own money in tips
20 was being used to pay some or all of her earned hourly wages. Consequently, Defendants failed
21 to pay Plaintiff AHN the minimum wage due and payable pursuant to Labor Code § 1197.

22 33. The remedy set forth for a violation of Labor Code § 1197 is provided at Labor
23 Code § 1194.2(a), which provides, in pertinent part: "In any action under Section 1193.6 or
24 Section 1194 to recover wages because of the payment of a wage less than the minimum wage
25 fixed by an order of the commission, an employee shall be entitled to recover liquidated damages
26 in an amount equal to the wages unlawfully unpaid and interest thereon."

27 34. In addition, Labor Code § 1194(a) entitles Plaintiff AHN for an award of
28 reasonable attorneys' fees and costs.

 35. Wherefore, Plaintiff AHN seeks \$4,000.00 on her Third Cause of Action.

FOURTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 201 ET SEQ.
(Failure to Pay Wages upon Cessation of Employment)
Against All Defendants

36. Plaintiff AHN hereby realleges and incorporates by reference Paragraphs 1 through 35 above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

37. Labor Code § 201 requires an employer to pay an employee all wages earned and unpaid at the time the employer discharges the employee.

38. Nevertheless, Defendants did not pay to Plaintiff AHN all wages due when it terminated her because it had reduced her hourly wages below minimum wage through an unlawful practice of attempting to use her tips as credit against the minimum wage, and had therefore not paid her the legally required minimum wage for each hour she worked.

39. Labor Code § 203 provides: "If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days".

40. Had she been properly compensated for tips and wages, she would have averaged income of \$200 a day.

41. As a result of Defendants' conduct, Plaintiff AHN has been damaged as set forth above. Plaintiff AHN hereby requests the applicable statutory penalty under Labor Code § 203 and costs of suit.

42. Wherefore, Plaintiff AHN seeks \$6,000.00 in damages on her Fourth Cause of Action.

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FIFTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 226
(Failure to Furnish Accurate Itemized Wage Statements)
Against All Defendants

43. Plaintiff AHN hereby realleges and incorporates by reference Paragraphs 1 through 41 above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

44. Pursuant to Labor Code § 226(a), every employer shall furnish each of his or her employees an accurate itemized statement in writing showing, amongst other things, total hours worked, gross and net wages earned, and each applicable rate and the total hours worked at each rate.

45. Nevertheless, as set forth above, defendants intentionally and willfully failed to furnish accurate itemized wage statements to Plaintiff AHN and to other former and current employees, in violation of Labor Code § 226(a).

46. Labor Code § 226(e)2(A) provides that an employee that does not receive a wage statement is deemed to suffer an injury.

47. The penalty for failure to furnish a wage statement is all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period pursuant to Labor Code § 226(e)(1).

48. Labor Code § 226(e)(1) entitles Plaintiff AHN to an award of fees and costs.

49. Wherefore, Plaintiff AHN seeks \$2,000 on her Fifth Cause of Action.

SIXTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 226
(Failure to Maintain Accurate Itemized Wage Statements)
Against All Defendants

50. Plaintiff AHN hereby realleges and incorporates by reference Paragraphs 1 through 48 above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

51. Pursuant to Labor Code § 226(a), defendants were required to maintain copies of accurate wage statements issued to employees for a period of not less than three years.

1 52. Nevertheless, as set forth above, Defendants intentionally and willfully failed and
2 continue to fail to maintain accurate itemized wage statements because Defendants never created
3 any wage statements in violation of Labor Code § 226(a).

4 53. The penalty for failure to maintain a wage statement all actual damages or fifty
5 dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100)
6 per employee for each violation in a subsequent pay period pursuant to Labor Code § 226(e)(1).

7 54. Labor Code § 226(e)(1) entitles Plaintiff AHN to an award of fees and costs.

8 55. Wherefore, Plaintiff AHN seeks \$2,000 on her Sixth Cause of Action.

9 **SEVENTH CAUSE OF ACTION**
10 **VIOLATIONS OF LABOR CODE § 2698 *ET SEQ.***
11 **(Private Attorneys General Act)**
 Against All Defendants

12 56. Plaintiff AHN hereby realleges and incorporates by reference Paragraphs 1
13 through 54 above as though fully set forth herein, except as said paragraphs are inconsistent with
14 the allegations of this cause of action.

15 57. Pursuant to the provisions of Labor Code § 2699.3, an aggrieved employee may
16 pursue a civil action arising under the California Private Attorneys General Act of 2004
17 (“PAGA”) after the following requirements have been met:

- 18 a. The aggrieved employee shall give written notice by certified mail to the LWDA
19 and the employer (hereinafter “Employee’s Notice”) of the specific provisions of
20 the Labor Code alleged to have been violated, including the facts and theories to
21 support the alleged violations;
- 22 b. The LWDA shall provide notice (hereinafter “LWDA’s Notice”) to the employer
23 and the aggrieved employee by certified mail that it does not intend to investigate
24 the alleged violation within 60 calendar days of the postmark date of the
25 Employee’s Notice. Upon receipt of the LWDA’s Notice, or if the LWDA does
26 not provide notice within 65 calendar days of the postmark date of the
27 Employee’s Notice, the aggrieved employee may commence a civil action
28

pursuant to Labor § 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

58. On January 14 and January 15, 2020, AHN provided written notice by online submission to the LWDA, and by certified mail to Defendants of Defendants' violations of the Labor Code set forth below, including the facts and theories to support the alleged violations. These notices are attached as Exhibits 1 and 2, respectively, and are hereby incorporated by this reference as though set forth in full. As of today's date, more than 65 days have passed without the LWDA providing written notices that it intends to investigate the allegations in the notices. Accordingly, AHN has satisfied the administrative prerequisites under Labor Code § 2699.3 in effect at the time of the postmark of his notice to bring a civil action to recover penalties against Defendants under PAGA.

59. As set forth in detail in Exhibits 1 and 2, within the relevant time period, including the past year and 65 days and continuing, and in accordance with a uniform policy, Defendants have violated the Labor Code as to AHN and other former and current employees, including Labor Code Sections 351 (misappropriation of tips), 353 (failure to make and maintain records of tips), 204 (untimely payment of wages), 201 (pay all wages due at termination of employment), 202 (pay all wages due at termination of employment), 226(a) (furnish and maintain wage statements), 226.7 (furnish meal and rest breaks), 512 (furnish meal and rest breaks), 1197 (failure to pay minimum wage for all time worked).

60. On information and belief, a real and actual controversy exists over the magnitude of the Labor Code violations as set forth in Paragraph 59 above regarding other former and current employees of Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff AHN prays judgment against each defendant as follows.

As to the First Cause of Action:

1. For compensatory damages of \$75,000;

2. For statutory attorneys' fees and costs, including but not limited to those available under Code of Civil Procedure § 1021.5;
3. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including but not limited to that available under Civil Code §§ 3287(a) and 3289(b);
4. For costs of suit;
5. For such other and further relief as the court deems just and proper.

As to the Second Cause of Action:

1. For compensatory damages of \$75,000;
2. For statutory attorneys' fees and costs, including but not limited to those available under Code of Civil Procedure § 1021.5;
3. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including but not limited to that available under Civil Code §§ 3287(a) and 3289(b);
4. For costs of suit;
5. For such other and further relief as the court deems just and proper.

As to the Third Cause of Action:

1. For compensatory damages of \$4,000;
2. For statutory attorneys' fees and costs, including but not limited to those available under Labor Code §§ 218.5, and 1194;
3. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including but not limited to that available under Civil Code §§ 3287(a) and 3289(b), Labor Code §§ 218.6 and 1194; and
4. For such other and further relief as the court deems just and proper.

As to the Fourth Cause of Action:

1. For statutory penalties of \$6,000;
2. For costs of suit; and

- 1 3. For such other and further relief as the court deems just and proper.

2 **As to the Fifth Cause of Action:**

- 3 1. For statutory penalties of \$2,000;
- 4 2. For attorneys' fees and costs under Labor Code § 226(e);
- 5 3. For prejudgment and post-judgment interest according to any applicable provision
- 6 of law or as otherwise permitted by law, including but not limited to that available
- 7 under Civil Code §§ 3287(a) and 3289(b), Labor Code §§ 218.6 and 1194; and
- 8 4. For such other and further relief as the court deems just and proper.

9 **As to the Sixth Cause of Action:**

- 10 1. For statutory penalties of \$2,000;
- 11 2. For attorneys' fees and costs under Labor Code § 226(e);
- 12 3. For prejudgment and post-judgment interest according to any applicable provision
- 13 of law or as otherwise permitted by law, including but not limited to that available
- 14 under Civil Code §§ 3287(a) and 3289(b), Labor Code §§ 218.6 and 1194; and
- 15 4. For such other and further relief as the court deems just and proper.

16 **As to the Seventh Cause of Action:**

- 17 1. For a declaration that Plaintiff is an aggrieved employee within the meaning of
- 18 Labor Code sections 2699(a) and (c);
- 19 2. For a declaration that Defendants have violated Labor Code sections 201, 202,
- 20 204, 226, 226.7, 512, and 1197;
- 21 3. For a declaration that Defendants are liable for civil penalties under the PAGA for
- 22 violations of Labor Code section 201, 202, 204, 226, 226.7, 512, and 1197;
- 23 4. For statutory attorneys' fees and costs, including but not limited to those available
- 24 under Code of Civil Procedure § 1021.5 and Labor Code § 2699(g);
- 25 5. For prejudgment and post-judgment interest according to any applicable provision
- 26 of law or as otherwise permitted by law, including those available under Civil
- 27 Code §§ 3287(a) and 3289(b); and
- 28

6. For such other and further relief as the court deems just and proper.

DATED: July 21, 2020

MAYALL HURLEY, P.C.

By_

WILLIAM J. GORHAM III

VLADIMIR J. KOZINA

Attorneys for Plaintiff Athena Hoa Nguyen

Exhibit 1

LAW OFFICES
MAYALL HURLEY
A PROFESSIONAL CORPORATION

SOUTHERN CALIFORNIA OFFICE
450 N. BRAND BLVD., SUITE 600
GLENDALE, CALIFORNIA 91203
(818) 646-6440
MAILING ADDRESS:
2453 GRAND CANAL BLVD.
STOCKTON, CALIFORNIA 95207

2453 GRAND CANAL BOULEVARD
STOCKTON, CALIFORNIA 95207-8253
FAX (209) 473-4818
TELEPHONE (209) 477-3833
WWW.MAYALLLAW.COM

VLADIMIR F. KOZINA
STEVEN A. MALCOUN
MARK E. BERRY
WILLIAM J. GORHAM III
NICHOLAS F. SCARDIGLI
ROBERT J. WASSERMAN
JENNY D. BAYSINGER
JOHN P. BRISCOE
VLADIMIR J. KOZINA
ANGELA C. RUSSELL
RACHAEL ALLGAIER
OF COUNSEL
J. ANTHONY ABBOTT

January 14, 2020

SUBMITTED VIA ONLINE CLAIM NOTICE
<https://dir.tfaforms.net/260>

The State of California Labor and Workforce Development Agency

SENT VIA CERTIFIED MAIL

Andy Truong Nguyen and Loan Le, d.b.a. Pho Rice & Roll'd
2725 Naglee Rd.
Tracy, CA 95304

Re: Athena Hoa Nguyen

To Whom It May Concern:

This firm represents Athena Hoa Nguyen relating to her former employment as a server for Andy Truong Nguyen and Loan Le, d.b.a. Pho Rice & Roll'd ("Employer"), a restaurant in Tracy, California. Ms. Nguyen's employment with Employer was from December 3, 2019, and was terminated by Employer on January 11, 2020, after she complained of various labor code violations by Employer. In accordance with California Labor Code § 2699.3, this letter shall serve as Ms. Nguyen's written notice regarding the following violations, and facts and theories supporting the violations, on her behalf and, as a proxy for the Labor and Workforce Development Agency ("LWDA"), on behalf of current and other former California employees of Employer. Notice to the LWDA has been submitted online, in accordance with the process described on the California Department of Industrial Relations' website at <http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>. The \$75.00 filing fee pursuant to Labor Code § 2699.3 is being sent concurrently by separate letter.

During Ms. Nguyen's employment, she and other former and current employees of Employer were paid on a cash basis, were not permitted to keep customer tips given to them, were not timely paid wages, were not furnished wage statements, were not paid overtime, were not provided uninterrupted meal or rest breaks, were not paid wages due at the end of the employment relationship, and the employer did not maintain wage statements or records of tips by customers as required by law.

Within the last year and beyond, and continuing to date, as to Ms. Nguyen, and other former and current employees, Employer has failed to do the following, in violation of the California Labor Code:

1. Permit employees to keep their tips in violation of Labor Code § 351.
 - a. Specifically, Labor Code § 351 provides: "No employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Every gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for. An employer that permits patrons to pay gratuities by credit card shall pay the employees the full amount of the gratuity that the patron indicated on the credit card slip, without any deductions for any credit card payment processing fees or costs that may be charged to the employer by the credit card company. Payment of gratuities made by patrons using credit cards shall be made to the employees not later than the next regular payday following the date the patron authorized the credit card payment." Yet, Employer kept tips left by credit card and whenever possible, in cash, and explained this by telling employees the restaurant was a "kitchen," and "that it was included in employees' wages."
2. Keep records of tips in violation of Labor Code § 353.
 - a. Specifically, Labor Code § 353 provides: "Every employer shall keep accurate records of all gratuities received by him, whether received directly from the employee or indirectly by means of deductions from the wages of the employee or otherwise. Such records shall be open to inspection at all reasonable hours by the department." On information and belief, Employer did not keep accurate records of tips left by customers.
3. Timely pay wages to employees in compliance with Labor Code § 204, which provides: "(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and

15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. However, salaries of executive, administrative, and professional employees of employers covered by the Fair Labor Standards Act, as set forth pursuant to Section 13(a)(1) of the Fair Labor Standards Act, as amended through March 1, 1969, in Part 541 of Title 29 of the Code of Federal Regulations, as that part now reads or may be amended to read at any time hereafter, may be paid once a month on or before the 26th day of the month during which the labor was performed if the entire month's salaries, including the unearned portion between the date of payment and the last day of the month, are paid at that time."

...

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

- a. Specifically, because employees were not provided their tips left by customers, they were not timely paid wages in violation of Labor Code § 204.
4. Furnish accurate wage statements as required by Labor Code § 226(a).
 - a. Specifically, Employer did not furnish **any** wage statements as required by Labor Code § 226(a).
 5. Maintain, for a period of 3 years, copies of accurate itemized wage statements, in violation of Labor Code § 226(a).
 - a. Specifically, because Employer failed to furnish **any** wage statements as set forth above (1.a.), it also failed to maintain accurate wage statements.
 6. Furnish meal and rest breaks, in violation of Labor Code §§226.7, 512 and applicable IWC wage orders.
 - a. Specifically, Employer, as a matter of practice, did not provide former and current employees a minimum of ten net consecutive minutes rest break for each four hours worked or major fraction thereof, which is considered to be anything more than two hours.
 - b. Additionally, Employer, as a matter of practice, did not provide current and former employees an uninterrupted 30-minute meal break

Labor and Workforce Development Agency
Andy Truong Nguyen and Loan Le, d.b.a. Pho Rice & Roll'd
Re: Athena Hoa Nguyen
January 14, 2020
Page 4 of 4

by the completion of the fifth hour of work, nor were they provided a second meal period of not less than 30 minutes by completion of the tenth hour of work. None of Employer's employees executed valid waivers of meal breaks.

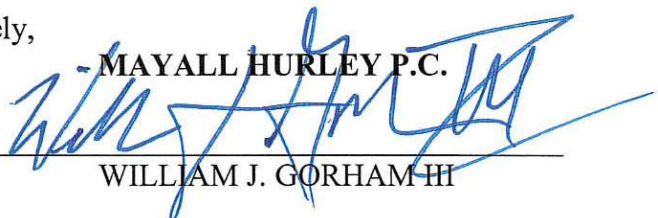
7. Employer did not pay, as is required by Labor Code § 226.7 its current or former employees, an hour's wage for each day in which a meal break was not furnished, nor did they pay an hour's wage for each day in which a rest break was not furnished.
8. Pay all wages earned but unpaid at termination or resignation, in violation of Labor Code §§201, 202.
 - a. Specifically, because Employer did not pay Ms. Nguyen, or its other former employees, wages for tips in violation of Labor Code §§201, 202.

If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or my client.

If the LWDA does not intend to investigate these violations, Ms. Nguyen intends to file a civil complaint against Employers pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code §§ 2698 – 2699.5), on her behalf and, as a proxy for the LWDA, on behalf of all aggrieved current and former employees. Thank you for your attention in this matter.

Sincerely,

By


- MAYALL HURLEY P.C.
WILLIAM J. GORHAM III

LAW OFFICES
MAYALL HURLEY
A PROFESSIONAL CORPORATION
2453 GRAND CANAL BOULEVARD
SECOND FLOOR
STOCKTON, CALIFORNIA 95207-8253



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Pitney Bowes



U.S. POSTAGE >> PITNEY BOWES



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02 4W
0000369527 JAN 14 2020

Andy Truong Nguyen and Loan Le,
d.b.a. Pho Rice & Roll'd
2725 Naglee Rd.
Tracy, CA 95304



January 16, 2020

Dear Julie Zeyen:

The following is in response to your request for proof of delivery on your item with the tracking number:
9489 0090 0027 6174 2000 68.

Item Details

Status:	Delivered, Front Desk/Reception/Mail Room
Status Date / Time:	January 16, 2020, 12:27 pm
Location:	TRACY, CA 95304
Postal Product:	First-Class Mail®
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Exhibit 2

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GLENDALE, CALIFORNIA 91203
(818) 646-6440
MAILING ADDRESS:
2453 GRAND CANAL BLVD.
STOCKTON, CALIFORNIA 95207

2453 GRAND CANAL BOULEVARD
STOCKTON, CALIFORNIA 95207-8253
FAX (209) 473-4818
TELEPHONE (209) 477-3833
WWW.MAYALLLAW.COM

VLADIMIR F. KOZINA
STEVEN A. MALCOUN
MARK E. BERRY
WILLIAM J. GORHAM III
NICHOLAS F. SCARDIGLI
ROBERT J. WASSERMAN
JENNY D. BAYSINGER
JOHN P. BRISCOE
VLADIMIR J. KOZINA
ANGELA C. RUSSELL
RACHAEL ALLGAIER
OF COUNSEL
J. ANTHONY ABBOTT

January 15, 2020

SUBMITTED VIA ONLINE CLAIM NOTICE
<https://dir.tfaforms.net/201>

The State of California Labor and Workforce Development Agency

SENT VIA CERTIFIED MAIL

Andy Truong Nguyen and Loan Le, d.b.a. Pho Rice & Roll'd
2725 Naglee Rd.
Tracy, CA 95304

Re: Athena Hoa Nguyen
LWDA Case No. LWDA-CM-766807-20

To Whom It May Concern:

This firm represents Athena Hoa Nguyen relating to the above-referenced case. On January 14, 2020, and pursuant to California Labor Code section 2699.3, this firm provided notice of violations by Andy Truong Nguyen and Loan Le, d.b.a. Pho Rice & Roll'd ("Employer"), to the Labor and Workforce Development Agency ("LWDA") and to Employer. That letter is attached as **Exhibit A** and is incorporated by this reference. We write to supplement the January 14, 2020 notice as set forth below. Again, this notice is made on Ms. Nguyen behalf and, as a proxy for the LWDA, on behalf of current and other former employees of Employer. In a separate correspondence with the LWDA, Ms. Nguyen is providing the \$75 filing fee for this notice of claim.

According to statements made by Employer, the minimum wage paid to Employer's employees was in part based on tips left by Employer's customers. This practice is prohibited by Labor Code § 351, which provides, in pertinent part: "No employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer."

Labor and Workforce Development Agency
Andy Truong Nguyen and Loan Le, d.b.a. Pho Rice & Roll'd
Re: Athena Hoa Nguyen
January 15, 2020
Page 2 of 2

At all times, Employer paid Ms. Nguyen (along with other similarly situated other former and current employees) was paid at or near the minimum wage required by law for each hour she worked. She also received tips that as a server that were, as customary, approximately 15%. Whenever payments and tips were made by credit or debit, which was common, and also at times when tips were in cash, Employer took the tips. As said, Employer claims tips were used to pay hourly wages to Ms. Nguyen and other employees, both current and former. Therefore, by using tips (which is solely the employees' property) as a component part of the minimum wage paid to Ms. Nguyen, and other current and former employees, Employer is failing to pay a minimum wage for each hour worked as required by Labor Code § 1197.

If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or my client.

For the reasons set forth in this letter, as well as the reasons set forth in my letter dated January 14, 2020 letter (**Exhibit A**), if the LWDA does not intend to investigate these violations, Ms. Nguyen intends to file a civil complaint against Employer pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code §§ 2698 – 2699.5), on his behalf and, as a proxy for the LWDA, on behalf of all aggrieved current and former employees. Thank you for your attention in this matter.

Sincerely,

MAYALL HURLEY P.C.

By



WILLIAM J. GORHAM III

Enc.: Exhibit "A" January 14, 2020 notice letter to LWDA and Employer

Exhibit A

LAW OFFICES
MAYALL HURLEY

A PROFESSIONAL CORPORATION

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VLADIMIR J. KOZINA
ANGELA C. RUSSELL
RACHAEL ALLGAIER

OF COUNSEL
J. ANTHONY ABBOTT

January 14, 2020

SUBMITTED VIA ONLINE CLAIM NOTICE

<https://dir.tfaforms.net/260>

The State of California Labor and Workforce Development Agency

SENT VIA CERTIFIED MAIL

Andy Truong Nguyen and Loan Le, d.b.a. Pho Rice & Roll'd
2725 Naglee Rd.
Tracy, CA 95304

Re: Athena Hoa Nguyen

To Whom It May Concern:

This firm represents Athena Hoa Nguyen relating to her former employment as a server for Andy Truong Nguyen and Loan Le, d.b.a. Pho Rice & Roll'd ("Employer"), a restaurant in Tracy, California. Ms. Nguyen's employment with Employer was from December 3, 2019, and was terminated by Employer on January 11, 2020, after she complained of various labor code violations by Employer. In accordance with California Labor Code § 2699.3, this letter shall serve as Ms. Nguyen's written notice regarding the following violations, and facts and theories supporting the violations, on her behalf and, as a proxy for the Labor and Workforce Development Agency ("LWDA"), on behalf of current and other former California employees of Employer. Notice to the LWDA has been submitted online, in accordance with the process described on the California Department of Industrial Relations' website at <http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>. The \$75.00 filing fee pursuant to Labor Code § 2699.3 is being sent concurrently by separate letter.

During Ms. Nguyen's employment, she and other former and current employees of Employer were paid on a cash basis, were not permitted to keep customer tips given to them, were not timely paid wages, were not furnished wage statements, were not paid overtime, were not provided uninterrupted meal or rest breaks, were not paid wages due at the end of the employment relationship, and the employer did not maintain wage statements or records of tips by customers as required by law.

Labor and Workforce Development Agency
Andy Truong Nguyen and Loan Le, d.b.a. Pho Rice & Roll'd
Re: Athena Hoa Nguyen
January 14, 2020
Page 2 of 4

Within the last year and beyond, and continuing to date, as to Ms. Nguyen, and other former and current employees, Employer has failed to do the following, in violation of the California Labor Code:

1. Permit employees to keep their tips in violation of Labor Code § 351.
 - a. Specifically, Labor Code § 351 provides: "No employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Every gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for. An employer that permits patrons to pay gratuities by credit card shall pay the employees the full amount of the gratuity that the patron indicated on the credit card slip, without any deductions for any credit card payment processing fees or costs that may be charged to the employer by the credit card company. Payment of gratuities made by patrons using credit cards shall be made to the employees not later than the next regular payday following the date the patron authorized the credit card payment." Yet, Employer kept tips left by credit card and whenever possible, in cash, and explained this by telling employees the restaurant was a "kitchen," and "that it was included in employees' wages."
2. Keep records of tips in violation of Labor Code § 353.
 - a. Specifically, Labor Code § 353 provides: "Every employer shall keep accurate records of all gratuities received by him, whether received directly from the employee or indirectly by means of deductions from the wages of the employee or otherwise. Such records shall be open to inspection at all reasonable hours by the department." On information and belief, Employer did not keep accurate records of tips left by customers.
3. Timely pay wages to employees in compliance with Labor Code § 204, which provides: "(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and

15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. However, salaries of executive, administrative, and professional employees of employers covered by the Fair Labor Standards Act, as set forth pursuant to Section 13(a)(1) of the Fair Labor Standards Act, as amended through March 1, 1969, in Part 541 of Title 29 of the Code of Federal Regulations, as that part now reads or may be amended to read at any time hereafter, may be paid once a month on or before the 26th day of the month during which the labor was performed if the entire month's salaries, including the unearned portion between the date of payment and the last day of the month, are paid at that time."

...

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

- a. Specifically, because employees were not provided their tips left by customers, they were not timely paid wages in violation of Labor Code § 204.
4. Furnish accurate wage statements as required by Labor Code § 226(a).
 - a. Specifically, Employer did not furnish *any* wage statements as required by Labor Code § 226(a).
 5. Maintain, for a period of 3 years, copies of accurate itemized wage statements, in violation of Labor Code § 226(a).
 - a. Specifically, because Employer failed to furnish *any* wage statements as set forth above (1.a.), it also failed to maintain accurate wage statements.
 6. Furnish meal and rest breaks, in violation of Labor Code §§226.7, 512 and applicable IWC wage orders.
 - a. Specifically, Employer, as a matter of practice, did not provide former and current employees a minimum of ten net consecutive minutes rest break for each four hours worked or major fraction thereof, which is considered to be anything more than two hours.
 - b. Additionally, Employer, as a matter of practice, did not provide current and former employees an uninterrupted 30-minute meal break

Labor and Workforce Development Agency
Andy Truong Nguyen and Loan Le, d.b.a. Pho Rice & Roll'd
Re: Athena Hoa Nguyen
January 14, 2020
Page 4 of 4

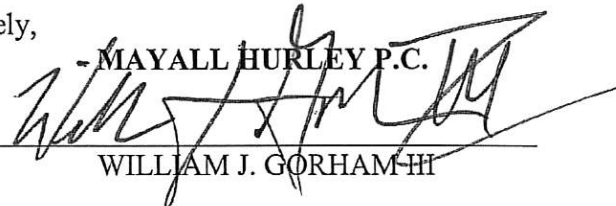
by the completion of the fifth hour of work, nor were they provided a second meal period of not less than 30 minutes by completion of the tenth hour of work. None of Employer's employees executed valid waivers of meal breaks.

7. Employer did not pay, as is required by Labor Code § 226.7 its current or former employees, an hour's wage for each day in which a meal break was not furnished, nor did they pay an hour's wage for each day in which a rest break was not furnished.
8. Pay all wages earned but unpaid at termination or resignation, in violation of Labor Code §§201, 202.
 - a. Specifically, because Employer did not pay Ms. Nguyen, or its other former employees, wages for tips in violation of Labor Code §§201, 202.

If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or my client.

If the LWDA does not intend to investigate these violations, Ms. Nguyen intends to file a civil complaint against Employers pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code §§ 2698 – 2699.5), on her behalf and, as a proxy for the LWDA, on behalf of all aggrieved current and former employees. Thank you for your attention in this matter.

Sincerely,

- MAYALL HURLEY P.C.
By 
WILLIAM J. GORHAM-III

LAW OFFICES
MAYALL HURLEY
A PROFESSIONAL CORPORATION
2453 GRAND CANAL BOULEVARD
SECOND FLOOR
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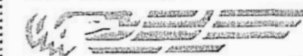


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Tracy, CA 95304

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January 17, 2020

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