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Attorneys for Plaintiff,
ANNA VALDEZ on behalf of
herself, all aggrieved employees, and the State
of California as a Private Attorneys General

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ANNA VALDEZ, an individual, on behalf of
herself, all aggrieved employees, and the State
of California as a Private Attorneys General,

Plaintiffs,

vs.

HUY FONG FOODS, INC., a California
corporation and DOES 1-50, inclusive,

Defendants.

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Case No.: **20STCV43037**

**REPRESENTATIVE ACTION
COMPLAINT**

**Violation of the Private Attorneys General
Act of 2004, Cal. Labor Code §2698 *et seq.***

Plaintiff ANNA VALDEZ brings this PAGA representative action complaint on behalf of
herself, all aggrieved employees, and the State of California as a Private Attorneys General, and
alleges as follows:

NATURE OF THE ACTION

1. Plaintiff ANNA VALDEZ worked for HUY FONG FOODS, INC. and DOES 1-50 (collectively “Defendants”) in a hot sauce manufacturing facility in Irwindale, California, until May 11, 2020. Plaintiff brings this action pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Cal. Labor Code §2698 *et seq.*, on a representative basis. All current and former employees of Defendants within one year of serving notice on the LWDA to the present are aggrieved employees.

2. Defendants failed to comply with California Labor Code requirements due to erroneous, willful and intentional employment practices and policies. Plaintiff brings this representative action on behalf of herself, all other similarly situated aggrieved employees, and the State of California, based upon the claims articulated below. Plaintiff provided notice of her claims pursuant to §2698 *et. seq.*, to the Labor and Workforce and Development Agency (“LWDA”) as illustrated by the attached Exhibit. The LWDA has not provided any notice to Plaintiff following the exhaustion of the 65-day notice period required by §2699.3(a)(2)(B). Accordingly, Plaintiff now brings this Complaint for civil penalties under the Private Attorneys General Act (“PAGA”), Labor Code §2698 *et seq.*

3. Defendants have had a consistent policy and/or practice of: (1) failing to comply with California law concerning payment of lawful wages for all hours worked, including overtime hours worked; (2) failing to pay minimum wage; (3) failing to provide timely, uninterrupted meal breaks; (4) failing to provide safe working conditions; (5) failing to provide compliant rest breaks and cool-down rest periods; (6) failing to timely pay all wages owed; and (7) failing to provide accurate itemized wage statements and maintain accurate records.

THE PARTIES

7. Plaintiff ANNA VALDEZ is a resident of the State of California and was employed as an hourly, nonexempt employee of Defendants until May 11, 2020.

8. Defendant HUY FONG FOODS, INC. is doing business in California with the capacity to sue and to be sued in the county of Los Angeles, State of California.

9. Plaintiff is unaware of the true names, capacities, relationships, and extent of participation in the conduct alleged herein, of the Defendants sued as DOES 1 through 50, but is informed and believes and thereon alleges that said Defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names, Plaintiffs will amend this complaint when their true names and capabilities are ascertained.

10. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and other aggrieved employees of the representative class, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon allege that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.

JURISDICTION AND VENUE

11. Venue is proper in this judicial district because Defendants conduct business in this county and each defendant has legal obligations to Plaintiff and many of the aggrieved employees in this case that arose in this county.

12. The statutory penalties sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial. Based on information, investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars (\$25,000).

13. The California Superior Court has jurisdiction in this matter because Plaintiff is a resident of California and Defendants are qualified to do business in California and regularly conduct business in California. Further, there is no federal question at issue as the claims herein are based solely on California law.

PAGA REPRESENTATIVE ACTION ALLEGATIONS

14. During the relevant time-period, Defendants committed various violations of the California Labor Code as alleged below in more detail. Defendants enforced multiple policies

1 that violate state law, which are intended to increase profits to the detriment of aggrieved
2 employees.

3 15. This representative action represents dozens of current and former aggrieved
4 employees.

5 16. For at least one (1) year prior to the date of service notice on the LWDA, and continuing
6 to the present, Defendants engaged in unlawful employment practices that resulted in violations of
7 numerous Labor Code sections, as set forth more fully below.

8 17. Plaintiff and all current and former employees within one year of filing this action to
9 the present are aggrieved employees within the meaning of Labor Code 2699, *et seq.* (See Labor
10 code §2699(c)).

11 18. Defendants, and each of them, have committed the following violations of the
12 California Labor Code:

13 **Failure to Comply with California Law Concerning Payment of Lawful Wage for All**

14 **Hours Worked, Including Overtime Hours Worked**

15 (Cal. Labor Code §§218, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*)

16 19. Plaintiff reasserts and alleges all preceding paragraphs as if fully set forth and
17 incorporates said paragraphs herein by reference.

18 20. Section 2(H) of Wage Order 1 defines “hours worked” as “the time during which an
19 employee is subject to the control of an employer, and including all the time the employee is
20 suffered or permitted to work, whether or not required to do so.” When employers require
21 employees who are already paid at or near minimum wages to wait in long lines to clock in and
22 out, the result is underpayment for hours worked each pay period, including overtime hours
23 worked. Huy Fong has also failed to pay the required minimum wage for all hours worked, and
24 has failed to pay all wages owed twice per month.

25 21. Off-the-Lock Hours Worked – Waiting in Required Lines & Off the Clock Work.
26 Plaintiff and aggrieved employees frequently worked off the clock and were routinely subjected
27 to periods wherein they were under the Defendants’ control but not compensated for their time.
28 Plaintiff and aggrieved employees came on and off shift and breaks at the same time. This meant

1 that there were numerous people waiting to clock in and out at the same time, resulting in long
2 lines at the company's one and only biometric timeclock. This time spent waiting in these
3 required lines was required by Defendants and was essential and required before employees
4 could begin and/or resume working on the clock. Plaintiff and aggrieved employees were often
5 required to don and doff their protective apparel before clocking in from lunch. Defendants have
6 violated Labor Code §§510 1194, 1198, 1199 and Wage Order 1. Defendants are liable for civil
7 penalties pursuant to Labor Code §§558 and 2698 et seq.

8 22. Failure to Pay All Wages Owed Twice Per Month. Defendants were required to pay
9 Plaintiff and aggrieved employees all wages earned twice during each calendar month pursuant
10 to Labor Code § 204(a). Defendants failed to pay all wages earned to employees as a result of the
11 unlawful employment policies and practices discussed herein. As a result of these practices,
12 employees were underpaid for hours worked, including penalty wages, and this underpayment
13 resulted in a failure to pay all wages owed twice per month.

14 **Failure to Pay Minimum Wage**

15 (Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 et seq.)

16 23. Plaintiff reasserts and alleges all preceding paragraphs as if fully set forth and
17 incorporates said paragraphs herein by reference.

18 24. Pursuant to Labor Code sections 1194, 1194.2, and 1197, it is unlawful for an
19 employer to suffer or permit a California employee to work without paying wages at the proper
20 minimum wage for all time worked as required by the applicable IWC Wage Order.

21 25. Defendants failed to pay Plaintiff and aggrieved employees for all hours worked as a
22 result of Defendants' practices described above, including forcing employees to wait in long
23 lines before clocking in and other off the clock tasks. During this time spent waiting, employees
24 were paid zero wages. Defendants' failure to pay for all hours worked, including overtime,
25 resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor
26 Code §§1197, 1197.1, 1199 and Wage Order 9-2001 4(B). Defendants are liable for civil
27 penalties pursuant to Labor Code §§558 and 2699 et seq.

28 ///

1 **Failure to Provide Timely, Uninterrupted Meal Breaks**

2 (Cal. Labor Code §§226, 226.7, 512, 1199, 2698 *et seq.*)

3 26. Plaintiff reasserts and alleges all preceding paragraphs as if fully set forth and
4 incorporate said paragraphs herein by reference.

5 27. During Plaintiff's employment, Defendants failed to maintain a complaint meal
6 period policy and practice. Defendants failed to provide all of its hourly employees with their
7 right to take an off-duty unpaid 30-minute meal period. Labor Code §512 provides, "[a]n
8 employer may not employ an employee for a work period of more than five hours per day
9 without providing the employee with a meal period of not less than 30 minutes . . ."

10 28. Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work
11 during any meal . . . period mandated by an applicable order of the Industrial Welfare
12 Commission." Paragraph 11(A) of the Wage Order provides, in pertinent part, "[u]nless an
13 employee is relieved of all duty during a 30-minute meal period, the meal period shall be
14 considered an 'on duty' meal period and counted as time worked." Labor Code §1198 makes it
15 unlawful for an employer to employ an employee for longer hours than those fixed by the wage
16 order or under conditions of labor prohibited by the order.

17 29. Plaintiff and aggrieved employees were required to wait in line to clock back in at the
18 end of their meal period. In order to be clocked back in on-time, employees had to join the line
19 early, resulting in time spent under the employer's control doing a required task while unpaid
20 and off the clock. Meal breaks were also late, short, and sometimes missed. For example,
21 Plaintiff's meal break was late on 10/4/19, 10/2/19, 9/6/19, 8/16/19. On 12/4/2019, her meal
22 break was short. However, there was no meal period premium paid on the corresponding
23 paycheck dated 12/11/2019.

24 30. Defendants failed to permit Plaintiff and others to take timely, off-duty, meal breaks
25 of "not less than 30 minutes" for each five consecutive hours of work in violation of Labor Code
26 §§226.7, 512, and 1198. As a derivative claim, Plaintiff alleges that pay statements were
27 inaccurate, failing to include required meal period penalties, thus failing the requirements of
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1 Labor Code §226(a). As a result of these violations, Employer is liable for civil penalties
2 pursuant to Cal. Labor Code §558 and §2698 et. seq.

3 **Failure to Provide Safe Working Conditions**

4 (Cal. Labor Code §1198, Wage Order 1 ¶15)

5 31. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
6 incorporate said paragraphs herein by reference.

7 32. Defendants' warehouse is located in Irwindale, California, in a manufacturing facility
8 that only had air conditioning in limited locations. The part of the facility where Plaintiff worked
9 did not have air conditioning, and she worked in unbearable heat and found herself sweating
10 while working.

11 33. The only climate control solutions provided to employees in many places in the
12 facility were industrial fans that just recirculated the heat. Plaintiff and her coworkers worked in
13 unbearable heat and humidity in the facility. Wage Order 1, ¶15 requires:

14 (A) The temperature maintained in each work area shall provide reasonable comfort
15 consistent with industry-wide standards for the nature of the process and the work
16 performed.

17 (B) If excessive heat or humidity is created by the work process, the employer shall take
18 all feasible means to reduce such excessive heat or humidity to a degree providing
19 reasonable comfort.

20 34. Labor Code §1198 makes it unlawful to employ employees in conditions prohibited
21 by the wage order. By violating the wage order, Defendants are liable for civil penalties pursuant
22 to §2698 et seq.

23 **Failure to Provide Compliant Rest Breaks and Cool-Down Rest Periods**

24 (Cal. Labor Code §§226, 226.7, 512, 1198, 2698 et seq., 8 CCR 3202, Wage Order 9 ¶15.)

25 35. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
26 incorporate said paragraphs herein by reference.

27 36. Defendants have failed to maintain a policy and practice that provides or permits its
28 employees to take off-duty rest periods as required by California law. Employees are entitled to

1 at least a ten-minute rest period in which they are relieved of all duties, as required by Cal. Lab.
2 Code §§226.7, 512 and Wage Order 1

3 37. Defendants require employees to clock in and out for rest breaks. When employees
4 work over 10 hours, they frequently do not receive third rest breaks, including Plaintiff on the
5 following dates: 10/4/19, 10/2/19, 8/26/19, 8/22/19, 8/20/19. On occasion, Plaintiff has been
6 denied her second rest break. However, no breaks received were compliant with California law
7 because Plaintiff and her coworkers were required to take off their safety apparel after they
8 clocked out and put it back on before they clocked in. This resulted in breaks that were under the
9 required 10 minutes free of all duties.

10 38. Title 8 of the California Code of Regulations covers standards for indoor heat
11 exposure. Section 3203 requires that employers take the steps necessary to protect employees'
12 health and safety when the temperature exceeds 85 degrees in the workplace. Labor Code §226.7
13 requires that breaks comply with requirements of the wage orders, OSHA, and the DOSHA. If
14 breaks do not comply, the employer has violated California's rest break requirements.

15 39. Defendants failed to pay Plaintiff and similarly situated employees all premium
16 compensation (one hour of pay at the employee's regular rate of pay for missed or untimely rest
17 periods) mandated by Labor Code §226.7(b) for these uncompliant rest periods. As a derivative
18 claim, Plaintiff alleges that pay statements were inaccurate, failing to include required rest period
19 penalties, thus failing the requirements of Labor Code §§226(a) and 1198. As a result of these
20 violations, Defendants are liable for civil penalties pursuant to Cal. Labor Code §§558 and 2698
21 *et seq.*

22 **Failure to Timely Pay All Wages Owed**

23 (Cal. Labor Code §§201, 202, 203, 1199 and 2698 *et seq.*)

24 40. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
25 incorporate said paragraphs herein by reference.

26 41. Defendants knowingly and willfully failed to pay all compensation due and owing to
27 Plaintiff and aggrieved employees at the time employment terminated. Because of Defendants'
28

1 unlawful timekeeping practices, Plaintiff and employees were underpaid and those amounts
2 remained due and owing when they separated from the company.

3 42. Defendants willfully failed to pay employees who are no longer employed by it all
4 compensation due upon termination of employment within the time periods required by Cal. Lab.
5 Code §§201 and 202. Pursuant to §203, Plaintiff and similarly situated individuals are now also
6 entitled to recover up to thirty (30) days of wages due to Defendants' "willful" failure to comply
7 with the statutory requirements of §§201 and 202 of the Labor Code. Moreover, because
8 Defendants violated §§201, 202, and 203, Defendants are liable for civil penalties pursuant to
9 Cal. Lab. Code §2698 *et seq.*

10 **Failure to Provide Accurate Itemized Wage Statements**

11 (Cal. Labor Code §§226, 226.3, 1174, 1199, 2699 *et seq.*)

12 43. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
13 incorporate said paragraphs herein by reference.

14 44. California Labor Code §226(a) provides that "[e]very employer shall, semimonthly or
15 at the time of each payment of wages, furnish each of his or her employees . . . an accurate
16 itemized statement in writing showing (1) gross wages earned, (2) total hours worked . . . , (3) the
17 number of piece-rate units earned and any applicable piece rate if the employee is paid on a
18 piece-rate basis, (4) all deductions . . . , (5) net wages earned, (6) the inclusive dates of period for
19 which the employee is paid, (7) the name of the employee and his or her social security number .
20 . . . , (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly
21 rates in effect during the pay period and the corresponding number of hours worked at each
22 hourly rate by the employee."

23 45. Labor Code §1174 provides that "[e]very employer employing labor in this state shall
24 . . . (c) [k]eep a record showing the names and addresses of all employees employed and the ages
25 of all minors [and] (d) [k]eep at a central location in the state or at the plants or establishments at
26 which employees are employed, payroll records showing the hours worked daily by and the
27 wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to,
28 employees employed at the respective plants or establishments. These records shall be kept in

1 accordance with rules established for this purpose by the commission, but in any case, shall be
2 kept on file for not less than two years.”

3 46. Defendants knowingly and intentionally failed to provide timely, accurate, itemized
4 wage statements to Plaintiff and the aggrieved employees in accordance with Labor §§226 and
5 1174. As a result of the unlawful employment practices discussed herein, the statements
6 provided to Plaintiff and aggrieved employees have not accurately reflected actual gross wages
7 earned, including overtime and meal/rest premiums and total regular and overtime hours worked.

8 47. Wage statements were also insufficient and records kept by the company were
9 incorrect because they do not show the beginning date and the dollar amounts do not add up,
10 including on Plaintiff’s 12/18/2019 wage statement.

11 48. Such failures caused injury to Plaintiff and others, by, among other things, impeding
12 them from knowing the total hours worked and the amount of wages to which they are and were
13 entitled. Defendants’ unlawful employment practices were knowing and intentional, and thus
14 Defendants knowingly and intentionally failed to itemize the gross wages earned, net wages
15 earned, penalty pay, and total hours worked. Defendants are liable for civil penalties pursuant to
16 Labor Code §2699 *et seq.*

17 49. Through this representative action, Plaintiff will advance the interests of dozens of
18 current and former employees, such that joinder is impracticable. These current and former
19 employees can be readily identified through a review of Defendants’ payroll records and the
20 records of the company that handles payroll for Defendants.

21 50. Plaintiff seeks to recover the PAGA civil penalties through a representative action
22 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
23 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

24 **FIRST CAUSE OF ACTION**

25 **Against All Defendants for Violation of the Private Attorneys General Act (“PAGA”)**
26 **(California Labor Code §2698 *et seq.*)**

27 51. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
28 incorporate said paragraphs herein by reference.

1 52. Plaintiff is an “aggrieved employee” under PAGA, as he was employed by
2 Defendants during the applicable statutory period and suffered one or more of the Labor Code
3 violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of herself and all
4 other current and former aggrieved employees of Defendants, the civil penalties provided by
5 PAGA, plus reasonable attorneys’ fees and costs.

6 53. Plaintiff seeks to recover the PAGA civil penalties through a representative action
7 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
8 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

9 54. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor
10 Code provisions:

- 11 a. Failure to Comply with California Law Concerning Payment of Lawful Wage for
12 All Hours Worked, Including Overtime Hours Worked (Cal. Labor Code §§218,
13 510, 558, 1194, 1197, 1998, 1999, 2698 *et seq.*);
- 14 b. Failure to Pay Minimum Wage (Cal. Labor Code §§200, 218.5, 226, 558, 1194,
15 1194.2, 1197, 1197.2, 1198, 1999, 2698 *et seq.*);
- 16 c. Failure to Provide Timely, Uninterrupted Meal Breaks (Cal. Labor Code §§226,
17 226.7, 512, 1199, 2698 *et seq.*);
- 18 d. Failure to Provide Safe Working Conditions (Cal. Labor Code §1198, Wage
19 Order 9 ¶ 15);
- 20 e. Failure to Provide Compliant Rest Breaks and Cool-Down Rest Periods (Cal.
21 Labor Code §§226, 226.7, 512, 1198, 2698 *et seq.*, 8 CCR 3202, Wage Order 9
22 ¶15);
- 23 f. Failure to Timely Pay All Wages Owed (Cal. Labor Code §§210, 202, 203, 1199
24 and 2698 *et seq.*); and
- 25 g. Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code §§226,
26 1174, 1199, 2699 *et seq.*).

27 55. With respect to violations of Labor Code §226(a), Labor Code §226.3 imposes a civil
28 penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per
aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved
employee for each subsequent violation of Labor Code §226(a).

56. With respect to violations of Labor Code §512, Labor Code §558 imposes a civil penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations for each underpaid employee for each pay period for which the employee was underpaid, and one hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay period for which the employee was underpaid.

57. Labor Code §2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

58. Plaintiff and the other current and former employees of Defendants are aggrieved employees. They were or are employed by Defendants, and each of them, and the violations alleged herein were committed against them. Plaintiff brings this action on behalf of herself and all other current and former aggrieved employees.

59. At the time of each violation, Defendants employed one or more employees.

60. As a result of the aforesaid wrongful and illegal conduct of Defendants, and each of them, Plaintiff and aggrieved employees are entitled to civil penalties in an amount to be determined at trial, pre-judgment interest, costs and attorneys' fees.

61. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the Labor and Workforce Development Agency (“LWDA”) and served by certified mail upon Defendants, Plaintiff through counsel notified the LWDA and Defendants of the specific Labor Code provisions that Defendants have violated. The LWDA did not respond to Plaintiff’s Notice within the statutory timeframe, and Plaintiff has therefore exhausted administrative remedies. Pursuant to Labor Code §2699.3, Plaintiff may now pursue her PAGA claims in this action on behalf of aggrieved employees and the State of California.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the aggrieved employees, prays for judgement against Defendants as follows:

1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be determined at trial, but at least the jurisdictional amount of this Court;
2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code §2699(g) and/or other applicable law;
3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other applicable law;
4. Pre-judgement and post-judgement interest as provided by law; and
5. Such other and further relief that the Court may deem just and proper.

DATED: November 6, 2020

**KOUL LAW FIRM
LAW OFFICES OF SAHAG MAJARIAN II**



BY: Nazo Koulloukian, Esq.
Attorneys for Plaintiff ANNA VALDEZ, and all
aggrieved employees

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EXHIBIT 1



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

August 28, 2020

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail and Email:

Donna Lam
Huy Fong Foods, Inc.
4800 Azusa Canyon Road
Irwindale, CA 91706-1938

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimant: Anna Valdez
Employer: Huy Fong Foods, Inc.

Dear Sir or Madam:

Anna Valdez (hereafter “Valdez” or “Claimant”) has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM, and Sahag Majarian of Law Offices of Sahag Majarian II, to represent her, and all other aggrieved employees, for wage and hour claims against her employer Huy Fong Food, Inc. (“Huy Fong” or “Employer”).

Huy Fong is food and hot sauce manufacturing company (www.HuyFong.com) that employed Ms. Valdez in Huy Fong’s manufacturing facility in Irwindale, CA, where she worked until 5/11/2020.

Employer has violated, and/or has caused to be violated, several Labor Code provisions and it is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below or permit Claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Comply with California Law Concerning Payment of Lawful Wage For All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§ 218, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*)

Section 2(H) of Wage Order 1 defines “hours worked” as “the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so.” When employers require employees who are already paid at or near minimum wages to wait in long lines to clock in and out, the result is underpayment for hours worked each pay period, including overtime hours worked. Huy Fong has also failed to pay the required minimum wage for all hours worked, and has failed to pay all wages owed twice per month.

Off-the-Clock Hours Worked- Waiting in Required Lines & Off the Clock Work

Claimant and aggrieved employees frequently worked off the clock and were routinely subjected to periods wherein they were under the Employer’s control but not compensated for their time.

Claimant and aggrieved employees came on and off shift and breaks at the same time. This meant that there were numerous people waiting to clock in and out at the same time, resulting in long lines at the company’s one and only biometric timeclock. This time spent waiting in these required lines was required by Huy Fong and was essential and required before employees could begin and/or resume working on the clock. Employees were often required to don and doff their protective apparel before clocking in from lunch. Huy Fong has violated Labor Code §§510 1194, 1198, 1199 and Wage Order 1. Huy Fong is liable for civil penalties pursuant to Labor Code §§558 and 2698 *et seq.*

Failure to Pay All Wages Owed Twice Per Month

Huy Fong was required to pay Valdez and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a). Huy Fong failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, Valdez and aggrieved employees were underpaid for hours worked, including penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

Failure to Pay Minimum Wage

(Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*)

Pursuant to Labor Code sections 1194, 1194.2 and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked as required by the applicable IWC Wage Order.

Huy Fong failed to pay Claimant and aggrieved employees for all hours worked as a result of Huy Fong’s practices described above, including forcing employees to wait in long lines before clocking in and other off the clock tasks. During this time spent waiting, employees were paid

zero wages. Moreover, because Claimant and aggrieved employees were already employed at or near minimum wage, any failure to pay for any minutes worked resulted to, on average, a failure to pay minimum wage for all hours worked. Employer's failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and Wage Order 1-2001 4(B). Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Provide Timely, Uninterrupted Meal Breaks

(Cal. Labor Code §§226, 226.7, 512, 1199, 2698 *et seq.*)

During Claimant's employment, Huy Fong failed to maintain a compliant meal period policy and practice, failing to provide all its hourly employees with their right to take a timely, off-duty unpaid 30-minute meal period. Labor Code §512 provides, "[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes..."

Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission." Wage Order 1 provides, in pertinent part, "[u]nless an employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked." Labor Code §1198 makes it unlawful for an employer to employ an employee for longer hours than those fixed by the wage order or under conditions of labor prohibited by the order.

Employees were required to wait in line to clock back in at the end of their meal period. In order to be clocked back in on-time, employees had to join the line early, resulting in time spent under the employer's control doing a required task while unpaid and off the clock. Meal breaks were also late, short, and sometimes missed. For example, Claimant's meal break was late on 10/4/19, 10/2/19, 9/6/19, 8/16/19. On 12/4/2019, her meal break was short. However, there was no meal period premium paid on the corresponding paycheck dated 12/11/2019.

Employer failed to permit Claimant and others to take timely, off-duty, meal breaks of "not less than 30 minutes" for each five consecutive hours of work in violation of Labor Code §§226.7, 512, and 1198. As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et seq.*

Failure to Provide Safe Working Conditions

(Cal. Labor Code §1198, Wage Order 9 ¶15.)

Employer's warehouse is located in Irwindale, California, in a manufacturing facility that only had air conditioning in limited locations. The part of the facility where Claimant worked did not have air conditioning, and she worked in unbearable heat and found herself sweating while working.

The only climate control solutions provided to employees in many places in the facility were industrial fans that just recirculated the heat. Claimant and her coworkers worked in unbearable heat and humidity in the facility.

Wage Order 1 ¶15 requires:

(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort.

Labor Code 1198 makes it unlawful to employ employee in conditions prohibited by the wage order. By violating the wage order, Employer is liable for civil penalties pursuant to §2698 *et seq.*

Failure to Provide Compliant Rest Breaks

(Cal. Labor Code §§226, 226.7, 512, 1198, 2698 et seq.,

8 CCR 3202, Wage Order 9 ¶15.))

Huy Fong has failed to maintain a policy and practice that provides or permits its employees to take off-duty rest periods as required by California law. Employees are entitled to at least a ten minute rest period in which they are relieved of all duties, as required by Cal. Lab. Code §226.7, §512 and Wage Order 9.

Huy Fong has employees clock in and out for rest breaks. When employees work over 10 hours, they frequently do not receive third rest breaks, including on the following dates: 10/4/19, 10/2/19, 8/26/19, 8/22/19, 8/20/19. On occasion, Claimant has been denied her second rest break. However, no breaks received were compliant with California law because Claimant and her coworkers were required to take off their safety apparel after they clocked out and put it back on before they clocked in. This resulted in breaks that were under the required 10 minutes free of all duties.

Title 8 of the California Code of Regulations cover standards for indoor heat exposure. Section 3203 requires that employers take the steps necessary to protect employees' health and safety when the temperature exceeds 85 degrees in the workplace. Labor Code 226.7 requires that breaks comply with requirements of the wage orders, OSHA, and the DOSHA. If breaks don't comply, Employer has violated California's rest break requirements.

Employer failed to pay Claimant and similarly situated employees all premium compensation (one hour of pay at the employee's regular rate of pay for missed or untimely rest periods) mandated by Labor Code §226.7 (b) for these uncompliant rest periods. As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include required rest period penalties, thus failing the requirements of Labor Code §226(a) and §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et seq.*

Failure to Timely Pay All Wages Owed

(Cal. Lab. Code §§201, 202, 203, 1199 and 2698 *et seq.*)

Huy Fong knowingly and willfully failed to pay all compensation due and owing to Claimant and aggrieved employees at the time employment terminated. Because of Huy Fong's unlawful timekeeping practices, Claimant and employees were underpaid and those amounts remained due and owing when they separated from the company.

Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment within the time periods required by Cal. Lab. Code §§201 and 202. Pursuant to §§203, Claimant and similarly situated individuals are now also entitled to recover up to thirty (30) days of wages due to Employer's "willful" failure to comply with the statutory requirements of §§201 and 202 of the Labor Code. Moreover, because Employer violated §§201, 202 and 203, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Failure to Provide Accurate Itemized Wage Statements and Maintain Accurate Records

(Cal. Labor Code §§ 226, 1174, 1199 2699 *et seq.*)

California Labor Code § 226(a) provides that "[e]very employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees...an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked..., (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions ... , (5) net wages earned, (6) the inclusive dates of period for which the employee is paid, (7) the name of the employee and his or her social security number..., (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee."

Labor Code § 1174 provides that "[e]very employer employing labor in this state shall ... (c) [k]eep a record showing the names and addresses of all employees employed and the ages of all minors [and] (d) [k]eep at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years."

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226 and 1174. As a result of the unlawful employment practices discussed herein, the statements provided to Claimant and aggrieved employees have not accurately reflected actual gross wages earned, including overtime and meal/rest premiums and total regular and overtime hours worked.

Wage statements were also insufficient and records kept by the company were incorrect because they do not show the beginning date and the dollar amounts do not add up, including on Claimant's 12/18/2019 wage statement.

Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled. Employer's unlawful employment practices were knowing and intentional, and thus Employer knowingly and intentionally failed to itemize the gross wages earned, net wages earned, penalty pay, and total hours worked. Employer is liable for civil penalties pursuant to Labor Code § 2699 *et seq.*

Conclusion

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform her if it does not intend to investigate these violations so that she may pursue these claims as a representative action in civil court.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nazo Koulloukian', with a long horizontal flourish extending to the left.

Nazo Koulloukian, Esq.

Sahag Majarian, II, Esq.

Attorney for Claimant

cc: Sahag Majarian, Esq.