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LABOR AND WORKFORCE DEVELOPMENT AGENCY
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Return Receipt Requested

Wiseguys Custom Home Theater, L.L.C.
3405 North Belmont Mine Place
Tucson, AZ 85745

Re: *Daniel Morales v. Wiseguys Custom Home Theater, L.L.C.*

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

To: California Labor and Workforce Development Agency; Wiseguys Custom Home Theater, L.L.C.

From: Daniel Morales, on behalf of himself and aggrieved employees who were subject to the employer's wage and hour policies as set forth below.

Factual Statement

Please note that this firm, Mahoney Law Group, APC, represents the interests of Mr. Daniel Morales ("Mr. Morales" or "Employee"), who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code sections 2698 et seq. ("PAGA"), on behalf of himself and all other aggrieved employees.

Theories of Labor Code Violations and Remedies

Wiseguys Custom Home Theater, L.L.C. ("Wiseguys" or "Employer") is an Arizona limited liability company operating as a Dish Network retailer of custom home theater setups. The Employer operates in both California and Arizona. Mr. Morales began his employment with Employer in or around July 2017 as a Satellite Technician until his termination in or around May 2019.

Mr. Morales alleges Employer violated various sections of the Labor Code, including sections 201, 202, 203, 226, 226.7, 227.3, 510, 512, 1174, 1194, and 2802, as well as violations of

the applicable Wage Order, by failing to provide Mr. Morales and all other aggrieved employees with meal and rest periods and premium pay, failing to pay all wages owed, including minimum wage and overtime, failing to reimburse all necessary business expenditures, unlawfully deducting employee wages, failing to provide accurate wage statements and maintain accurate payroll records, and failing to provide all wages earned at end of employment. Mr. Morales and similarly aggrieved employees consist of identifiable, current, and/or former similarly situated persons who worked for Employer in non-exempt positions in California during the liability period of one year prior to the filing of a complaint alleging a PAGA cause of action.

Wiseguys failed to provide Mr. Morales and other aggrieved employees with meal and rest periods, or premium compensation in lieu thereof, in accordance with California law.

Mr. Morales alleges that he and other aggrieved employees were often precluded from taking timely and uninterrupted meal and rest breaks in accordance with California law due to the nature of their shifts. Mr. Morales and other aggrieved employees allege that they did not receive at least one duty-free, uninterrupted meal period within the first five (5) hours worked, and a second meal period before the start of the 11th hour of work. (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1041-42.) Mr. Morales specifically was told by Employer that “Your lunch break is on the drive from one job to another.” However, Mr. Morales and other aggrieved employees did not agree to take on-duty meal periods, and their job functions do not warrant such an agreement.

As further support for their inability to take meal breaks, Mr. Morales and other aggrieved employees were required to clock in and out using a phone application called “When I Work.” However, for most, if not all, of the relevant time period, “When I Work” lacked a function to clock in and out for meal periods.

When employees were prevented from taking timely and complete meal periods, they did not receive premium pay as compensation for the missed meal period.

Mr. Morales further alleges that he and other aggrieved employees did not receive at least one duty-free, uninterrupted rest period for every four (4) hours worked, or major fraction thereof, as required by the Labor Code. Mr. Morales and other aggrieved employees were generally precluded from taking rest periods due to Employer’s failure to sufficiently staff shifts to provide relief and thereby allow Mr. Morales and other aggrieved employees the opportunity to take rest breaks. When employees were prevented from taking rest breaks, they did not receive premium pay for the missed rest break.

Employer’s failure to provide meal and rest periods, or premium compensation in lieu thereof, is actionable under PAGA as violations of Labor Code sections 226.7 and 512, and the applicable Wage Order.

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Wiseguys failed to pay Mr. Morales and other aggrieved employees for all hours worked, in accordance with California law, including both minimum wage and overtime

Employer failed to pay Mr. Morales and other aggrieved employees at the legally mandated wage rates for all hours worked in violation of California law. Mr. Morales and other aggrieved employees allege that Employer would clock Mr. Morales and other aggrieved employees out if they were not actively working (for example, using the restroom or waiting between job assignments), despite still being under the direction and control of Employer. This is contrary to California law, which requires employees to be compensated for all time – even *de minimis* amounts – which they are under the employer’s control. (*Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829, 845 [rejecting the Federal *de minimis* doctrine].)

Additionally, Employer required Mr. Morales and other aggrieved employees to work varying degrees of “off the clock” work outside of when Mr. Morales and other aggrieved employees were clocked in, thereby failing to compensate Mr. Morales and other aggrieved employees for these hours worked. For example, Mr. Morales and other aggrieved employees were occasionally required by Employer to make deliveries outside of their regularly-scheduled shifts, while clocked out. Additionally, Mr. Morales and other aggrieved employees were required to wear company uniforms, but were not compensated for the time spent donning and doffing these uniforms.

As a result of the above, Employer failed to provide compensation at least at a minimum wage rate for all hours worked as required by the Labor Code. Employer’s failure to provide Mr. Morales and other aggrieved employees pay for all hours worked is a violation of California’s minimum wage laws, as Mr. Morales and other aggrieved employees should have been provided at least the applicable minimum wage for all hours worked.

Further, for any and all shifts in which Mr. Morales and other aggrieved employees worked at least eight (8) hours per day and/or weeks in which Mr. Morales and other aggrieved employees worked at least forty (40) hours per week, and/or all hours worked up to eight (8) on the seventh consecutive day of work, all hours worked but not compensated were required to be compensated at a rate of at least one-and-a-half times each employee’s base rate of pay. To the extent such hours exceeded twelve (12) in one day and/or eight (8) on the seventh consecutive day worked, such hours were required to be compensated at a rate of at least two times each employee’s base rate of pay. Employer’s failure to provide Mr. Morales and other aggrieved employees *any* pay whatsoever for the above violations therefore necessarily resulted in overtime violations, in addition to the minimum wage violations described above.

Employer’s failure to pay minimum wage and applicable overtime rates to Mr. Morales and other aggrieved employees as detailed above is actionable under PAGA as a violation of Labor Code sections 227.3, 510 and 1194, and the applicable Wage Order.

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Wiseguys failed to compensate Mr. Morales and other aggrieved employees for all necessary business expenditures incurred during their employment

Mr. Morales and other aggrieved employees were required during most, if not all, of the relevant time period to use their personal phone in order to communicate with Employer (e.g. to receive work assignments). Additionally, personal phones were used for the “When I Work” app for functions such as clocking in and out of shifts. However, Mr. Morales and other aggrieved employees did not receive reimbursement for the reasonable cost of using their personal phones for these necessary business purposes.

Mr. Morales and other aggrieved employees were also required to purchase their own tools used for their employment (including, but not limited to, tools used for satellite installation). However, Employer failed to reimburse Mr. Morales and other aggrieved employees for the cost of these purchases.

Mr. Morales and other aggrieved employees were also required to purchase and maintain uniforms bearing Employer’s logo, which they were required to wear as a condition of their employment. However, Employer failed to reimburse the purchase price and maintenance of these uniforms.

Finally, as above, Mr. Morales and other aggrieved employees were also occasionally required to perform “off the clock” work such as performing deliveries. However, Mr. Morales and other aggrieved employees were required to utilize their personal vehicles for all “off the clock” work. Employer failed to reimburse the reasonable cost of using personal vehicles for these necessary business purposes.

Employer’s failure to provide complete – or indeed *any* – compensation for all necessary business expenditures incurred by Mr. Morales and other aggrieved employees in direct consequence of their duties to Employer is actionable under PAGA as a violation of Labor Code section 2802 and the applicable Wage Order.

Wiseguys unlawfully deducted Mr. Morales and other aggrieved employees’ wages

During Mr. Morales’ and other aggrieved employees’ employment, Mr. Morales and other aggrieved employees occasionally lost and/or damaged equipment during the regular course and scope of their employment. However, even when such losses and damages were not dishonest, willful, or grossly negligent – as was the case for most, if not all such losses and damages – Employer nonetheless deducted the cost to repair or replace equipment from Mr. Morales’ and other aggrieved employees’ wages.

Employer’s unlawful deduction is a direct violation of the applicable Wage Order (*see, e.g.,* Wage Order 4-2001, subd. (8)) and therefore actionable under PAGA.

Wiseguys failed to provide Mr. Morales and other aggrieved employees compliant wage statements, and failed to pay all wages earned at the time their employment ended

By failing to include on Mr. Morales' and other aggrieved employees' pay stubs all rest and meal break premium wages, reimbursement for all necessary business expenditures, and full compensation for all hours worked, and by unlawfully deducting wages as described above, Employer failed to keep accurate payroll records and failed to provide Mr. Morales and other aggrieved employees with complete and accurate wage statements. This conduct is in violation of Labor Code sections 226 and 1174 and is actionable under PAGA.

As a further result of Employer's failure to pay all wages owed as described herein, Employer also violated Labor Code sections 201, 202, and 203, due to its uniform policy, practice, and procedure of failing to pay all wages earned to former employees at the time their employment ended.

Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Mr. Morales becomes aware of additional compensation owed or losses incurred by Mr. Morales or by any other aggrieved employee of the Employer, Mr. Morales expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please provide notice via certified mail to:

Mahoney Law Group, APC
Joshua D. Klein, Esq.
249 E. Ocean Blvd., Suite 814
Long Beach, CA 90802
Tel: (562) 590-5550
Email: jklein@mahoney-law.net

Sincerely,



Joshua D. Klein, Esq.

MAHONEY LAW GROUP, APC