

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Michael Linfield

Jeremy F. Bollinger (SBN 240132)
Dennis F. Moss (SBN 77512)
Ari E. Moss (SBN 238579)
Kiara Bramasco (SBN 322600)
MOSS BOLLINGER LLP
15300 Ventura Blvd., Ste. 207
Sherman Oaks, California 91403
Telephone: (310) 982-2984
Facsimile: (818) 963-5954
jeremy@mossbollinger.com
dennis@mossbollinger.com
ari@mossbollinger.com
kiara@mossbollinger.com

Attorneys for Plaintiff
JUAN MIRELES

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

JUAN MIRELES, individually and on behalf
of other similarly aggrieved employees, and the
State of California,

Plaintiff,

vs.

**DIMENSION DEVELOPMENT
COMPANY, INC.; G & B HOTEL
EMPLOYEE LEASING, LLC, and DOES 1-
50,**

Defendants.

Case No. **21STCV17037**

**COMPLAINT FOR CIVIL PENALTIES
PURSUANT TO PRIVATE ATTORNEY
GENERAL ACT OF 2004 (LABOR CODE
§§ 2698 ET SEQ.)**

1 Plaintiff JUAN MIRELES (“PLAINTIFF”), on behalf of himself, other similarly aggrieved
2 employees of Defendants Dimension Development Company, Inc., and G & B Hotel Employee
3 Leasing, LLC, and on behalf of the State of California, hereby complains and alleges as follows:

4 **INTRODUCTION**

5 1. This is a representative action by PLAINTIFF on behalf of himself, other similarly
6 aggrieved employees, and the State of California against Defendants Dimension Development
7 Company, Inc., and G & B Hotel Employee Leasing, LLC and Doe Defendants 1-50 (collectively,
8 “DEFENDANTS”), pursuant to the California Private Attorney General Act, Labor Code sections
9 2698 *et seq.* (“PAGA”) to recover civil penalties (75% payable to the Labor Workforce
10 Development Agency and 25% payable to aggrieved employees) for failure to pay all gratuities left
11 for, given to and paid to employees, failure to provide adequate rest breaks, failure to pay rest break
12 premiums, failure to provide accurate wage statements and failure to timely pay all wages upon
13 cessation of employment to PLAINTIFF and other similarly aggrieved employees of
14 DEFENDANTS in California.

15 **JURISDICTION AND VENUE**

16 2. This Court has jurisdiction over PLAINTIFF’s claims for penalties pursuant to
17 PAGA.

18 3. Venue is proper in this judicial district and the County of Los Angeles pursuant to
19 California Code of Civil Procedure § 395.5 because DEFENDANTS employed PLAINTIFF at its
20 facility in Valencia, California, in the County of Los Angeles, and the acts, omissions, and conduct
21 alleged by PLAINTIFF herein occurred in this county.

22 **PARTIES**

23 4. DEFENDANTS operate hundreds of hotels throughout various states and at least
24 fifteen hotels in California, including Hyatt Regency in Valencia California.

25 5. Plaintiff JUAN MIRELES is a resident of Los Angeles County, California.
26 PLAINTIFF is an employee who was hired by Defendants Dimension Development Company. Inc.,
27 and G & B Hotel Employee Leasing, LLC, as a room service waiter at its Hyatt Regency hotel in
28

Valencia, California, in 2016. He was laid off in March 2020 and has yet to be returned to work.

6. PLAINTIFF is informed and believes that DOES 1 through 50 are corporations, individuals, limited liability partnerships, limited liability companies, general partnerships, sole proprietorships or are other business entities or organizations of a nature not currently known to PLAINTIFF.

7. PLAINTIFF is unaware of the true names of Defendant DOES 1 through 50. PLAINTIFF sues said Defendants by said fictitious name, and will amend this complaint when the true names and capacities are ascertained or when such facts pertaining to liability are ascertained, or as permitted by law or by the Court. PLAINTIFF is informed and believes that each of the fictitiously named Defendants is in some manner responsible for the events and allegations set forth in this complaint.

8. PLAINTIFF is informed and believes, and thereon alleges, that at all times herein mentioned each Defendant, including all Defendants sued under fictitious names, was the employee, or representative of each of the remaining Defendants, and in doing the things hereinafter alleged, was at times acting within the course and scope of this employment, and at other times, acting in his or her own individual capacity. In the alternative, each of the individually named Defendants, acted in concert and in furtherance of a fraudulent plan and scheme and each actively participated in the wrongful acts alleged in this complaint.

FACTUAL BACKGROUND

9. At all times during the liability period, DEFENDANTS employed PLAINTIFF and other similarly situated employees at DEFENDANTS' hotels in California.

10. When working in one of DEFENDANTS' hotels, including during the one year period before PLAINTIFF notified DEFENDANTS and the LWDA of his claims, PLAINTIFF and the other similarly situated aggrieved employees that performed food and beverage services for hotel guests at hotels in California operated by DEFENDANTS did not receive all gratuities. DEFENDANTS included a mandatory service charge when billing hotel guests for food and beverage services. Plaintiff is informed and believes and thereon alleges that patrons of

1 DEFENDANTS’ hotels consider the service charges gratuities for employees, and intend that they
2 be treated as such. These aggrieved employees receive at the direction of DEFENDANTS, per
3 DEFENDANTS’ policy, only a percentage of the service charges charged for the services they
4 provide. DEFENDANTS take, collect and receive the remaining percentage of the mandatory
5 service charge in violation of Labor Code Section 351. See *O’Grady v. Merchant Exchanges*
6 *Production, Inc.*, 41 Cal.App.5th 771, 790 (a mandatory service charge can constitute a gratuity that
7 is intended for the employees providing the service).

8 11. Labor Code § 351 requires that, “No employer or agent shall collect, take, or receive
9 any gratuity or a part thereof that is paid, given to, or left for an employee by a patron...” In
10 addition to protecting the tipping public from fraud (*See* Lab. Code § 356), the law states that a
11 gratuity is the “sole property of the employee or employees to whom it was paid, given, or left for.”
12 Lab. Code § 351.

13 12. In *O’Grady*, the court held that the custom in the hospitality industry can determine
14 whether a mandatory service charge is a gratuity that a guest intends to be solely for the employee
15 providing the service. *Id.* It is customary in the food and beverage industry to charge a tip of 18-
16 22% and a service charge in that range can reasonably be interpreted as a tip that is intended for the
17 server. *Id.* at 774. DEFENDANTS’ confiscation of a percentage of mandatory service charges
18 when the guest intends it as a gratuity conflicts with the purpose of Labor Code Section 351. *Id.* at
19 790. By taking, collecting and receiving a percentage of service charges paid for the services of
20 aggrieved employees, DEFENDANTS violated Labor Code Section 351.

21 13. California law requires that employers authorize and permit non-exempt
22 employees to take a rest period that must, insofar as practicable, be taken in the middle of each
23 work period. The rest period is based on the total hours worked daily and must be at the
24 minimum rate of a net ten consecutive minutes for each four-hour work period, or major fraction
25 thereof. In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California
26 Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from
27 3½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours,
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1 and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029.)

2 14. During PLAINTIFF's employment, DEFENDANTS regularly failed to provide and
3 make duty free rest periods available to PLAINTIFF and all other similarly situated non-exempt
4 aggrieved employees they employed in their California hotels. DEFENDANTS regularly and
5 systematically required PLAINTIFF and other similarly aggrieved employees to work full shifts
6 without any or all legally required rest periods. DEFENDANTS knew or were on constructive
7 notice when PLAINTIFF and other similarly aggrieved employees worked shifts entitling them to
8 at least two rest periods and sometimes three rest periods.

9 15. Labor Code Section 226.7 and Section 12 of the applicable IWC Wage Order,
10 including Wage Order 5, requires DEFENDANTS to pay employees, when their rights to rest
11 breaks are violated, "one additional hour of pay at the employee's regular rate of compensation" for
12 each workday that the rest period is not provided. When rest breaks were not authorized, permitted
13 or otherwise made available, DEFENDANTS did not pay PLAINTIFF and the other similarly
14 situated aggrieved employees an additional hour of wages as premium pay, as required by
15 California law.

16 16. During the one year period before PLAINTIFF notified DEFENDANTS and the
17 LWDA of his claims, DEFENDANTS violated Labor Code § 226 on each and every wage
18 statement provided to PLAINTIFF and similarly situated non-exempt and exempt aggrieved
19 employees employed in their hotels in California by failing to provide the address for Dimension
20 Development Company, Inc., and G & B Hotel Employee leasing, LLC. Labor Code Section 226(a)
21 requires employers to list on an employee's wage statement, inter alia. "(8) the name and address of
22 the legal entity that is the employer."

23 17. During the one-year period before PLAINTIFF notified DEFENDANTS and the
24 LWDA of his claims, PLAINTIFF and other similarly situated aggrieved employees at
25 DEFENDANTS' hotels in California have been temporarily or permanently "discharged" by
26 DEFENDANTS or have resigned their employment.

1 18. Pursuant to Labor Code section 201 and 202, when Plaintiff and other aggrieved
2 employees experienced discharges or resigned, DEFENDANTS were required to pay them all
3 wages they were owed immediately in the case of discharges or resignations when the resigning
4 employee provided three or more days' notice of resignation, , or within 72 hours for those
5 employees who resigned and did not provide three days' notice of their resignation.

6 19. Upon their discharges and resignations, PLAINTIFF and other similarly situated
7 aggrieved employees were not timely paid all their unpaid wages as required by Labor Code
8 section 201 and 202 on account of DEFENDANTS' failure to pay all premium wages owed for
9 missed rest periods.

10 20. Upon discharges and resignations DEFENDANTS also failed to timely pay wages
11 as required by Labor Code section 201 and 202 by paying final earned wages that were
12 ultimately paid several days after their due date.

13 **COMPLIANCE WITH NOTIFICATION REQUIREMENTS**

14 21. On February 24, 2021, PLAINTIFF, through his counsel, sent a certified letter to
15 the California Labor and Workforce Development Agency ("LWDA") informing it that
16 DEFENDANTS failed to meet their obligations under California law with regard to the violations
17 alleged in this complaint ("PAGA Letter"). Attached hereto as **Exhibit A** is a true and correct
18 copy of the February 24, 2021 letter also sent to DEFENDANTS at the offices of their Agents for
19 Service of Process.

20 22. To date, and more than 65 days after the February 24, 2021 PAGA Letter was
21 submitted, the LWDA has not responded.

22 23. The PAGA Letter outlined PLAINTIFF's claims for violations of the California
23 Labor Code and the applicable wage orders on behalf of himself, the State of California and other
24 aggrieved employees.

25 24. Accordingly, PLAINTIFF exhausted administrative remedies as required by Labor
26 Code § 2699.3.

1 **FIRST CAUSE OF ACTION**

2 **CIVIL PENALTIES UNDER PAGA**

3 **(By PLAINTIFF, Aggrieved Employees, and the State of California against DEFENDANTS)**

4 25. PLAINTIFF incorporates all of the foregoing paragraphs of this Complaint as if fully
5 alleged herein.

6 26. Under the Private Attorney General Act, Labor Code §§ 2698-99 (“PAGA”), private
7 parties may recover civil penalties for violations of the California Labor Code, including sections
8 351, 201, 202, 203, 226, 226.7 and the Industrial Welfare Commission’s (“IWC”) Wage Orders,
9 including IWC Wage Order 5. PAGA penalties are in addition to any other relief available under
10 the Labor Code.

11 27. As set forth above, DEFENDANTS violated the California Labor Code by
12 consistently failing to employ PLAINTIFF and other similarly situated employees in compliance
13 with California law.

14 28. At all times relevant to this action, PLAINTIFF and other aggrieved employees were
15 employees of DEFENDANTS entitled to the benefits of the IWC Wage Orders, including Wage
16 Order 5.

17 **VIOLATION OF LABOR CODE § 351**

18 29. At all times relevant hereto, California Labor Code § 351 prohibited DEFENDANTS
19 from taking, collecting or receiving gratuities given to, left for, or paid to employees.

20 30. DEFENDANTS failed to comply with Labor Code § 351 by withholding from
21 aggrieved employees a percentage of the tips left for said employees.

22 **FAILURE TO PROVIDE REST BREAKS**

23 31. At all relevant times, PLAINTIFF and other aggrieved employees were employees
24 of DEFENDANTS covered by the rest period provisions of Labor Code Sections 226.7 and the
25 applicable wage orders, including Wage Order 5.

26 32. Pursuant to Labor Code Sections 226.7 and the applicable wage orders, PLAINTIFF
27 and other non-exempt aggrieved employees were entitled to a 10-minute rest period for shifts from
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1 3 ½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours,
2 three 10-minute rest periods for shifts of more than 10 hours up to 14 hours and one additional hour
3 of pay for every day that a timely rest period was not provided.

4 33. DEFENDANTS failed to provide PLAINTIFF and other non-exempt aggrieved
5 employees with uninterrupted, duty free rest periods in accordance with Labor Code Section 226.7
6 and the applicable wage orders. During the relevant period, DEFENDANTS maintained and
7 continue to maintain a policy or practice of requiring aggrieved employees, including PLAINTIFF,
8 to work full shifts without providing any or all legally required rest periods, as alleged above.

9 34. DEFENDANTS failed to provide PLAINTIFF and other non-exempt aggrieved
10 employees the additional hour of pay required by Labor Code Section 226.7 and the applicable
11 wage orders for the rest period violations alleged herein. PLAINTIFF is informed and believes and
12 thereon alleges that at all relevant times within the relevant period, DEFENDANTS maintained and
13 continue to maintain a policy or practice of not paying additional pay to employees for rest period
14 violations.

15 FAILURE TO TIMELY PAY ALL WAGES UPON DISCHARGE OR RESIGNATION

16 35. Pursuant to Labor Code Section 201 and 202, PLAINTIFF and other similarly
17 situated aggrieved employees who experienced discharges or resigned from DEFENDANTS'
18 employment in California were entitled upon their discharges and/or resignations to timely payment
19 of wages within the time parameters set forth in those Code sections.

20 36. DEFENDANTS failed to timely pay PLAINTIFF and other similarly situated
21 aggrieved terminated employees all wages earned and unpaid prior to discharge or resignation in
22 accordance with Labor Code Sections 201 and 202. PLAINTIFF is informed and believes and
23 thereon alleges that at all relevant times within the applicable limitations period, DEFENDANTS
24 maintained and continue to maintain a policy or practice of not timely paying employees who are
25 discharged or resign all their final wages pursuant to Labor Code Sections 201 and 202.

1 FAILURE TO ISSUE ACCURATE ITEMIZED WAGE STATEMENTS

2 37. At all relevant times, DEFENDANTS were required to provide PLAINTIFF and all
3 similarly situated aggrieved employees who received wage statements in California with accurate
4 itemized wage statements that included, “(8) the name and address of the legal entity that is the
5 employer.” Lab. Code § 226, subd. (a).

6 38. DEFENDANTS failed to provide PLAINTIFF and aggrieved employees with
7 accurate itemized wage statements in violation of Labor Code Section 226 by failing to include the
8 address for both Dimension Development Company, Inc., and G & B Hotel Employee Leasing,
9 LLC in each and every wage statement.

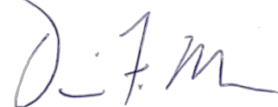
10 PRAYER FOR RELIEF

11 WHEREFORE, Plaintiff, on behalf of himself and all other aggrieved employees and the
12 State of California, prays for relief and judgment against Defendants as follows:

- 13 1. Civil penalties under Labor Code Section 2699 (75% payable to the LWDA and
14 25% payable to aggrieved employees);
15 2. Costs;
16 3. Reasonable attorney’s fees; and
17 4. Such other and further relief as this Court may deem just and proper.

18
19 Dated: May 5, 2021

MOSS BOLLINGER LLP

20
21 By: 

Dennis F. Moss

22 Attorneys for Plaintiff JUAN MIRELES
23
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27
28

Exhibit A



Moss Bollinger
LLP

Dennis F. Moss

310.982.2984/fax: 818.963.5954

dennis@mossbollinger.com

February 24, 2021

VIA PAGA ONLINE FILING

Secretary Julie Su
Labor & Workforce Development Agency
PAGA ADMINISTRATOR
1515 Clay Street, Ste. 801
Oakland, California 94612

**VIA U.S. CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Dimension Development Company, Inc.
Agent for Service of Process
CT Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

G & B Hotel Employee Leasing, LLC
Agent for Service of Process
CT Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

Re: Notice pursuant to Labor Code Section 2699.3(a)(1)
Labor Code Private Attorney General Act ("PAGA")

Employers: Dimension Development Company, Inc., G & B Hotel Employee Leasing, LLC

Employee: Juan Mireles, on behalf of himself and on behalf of all current and former non-exempt employees of Dimension Development Company, Inc., G & B Hotel Employee Leasing, LLC

Dear Secretary Su:

Pursuant to the Private Attorney General Act of 2004, California Labor Code § 2698 *et seq.* ("PAGA"), representative employee, Juan Mireles ("Mireles"), on behalf of himself and all other similarly situated non-exempt California employees ("Aggrieved Employees"), gives notice that his former joint employers, Dimension Development Company, Inc., and G & B Hotel Employee

February 24, 2021

Leasing, LLC (collectively “Employers”) violated the California Labor Code throughout Mireles’ employment and within the one year prior to the mailing of this letter.

General Facts

Employers operate hundreds of hotels throughout various states and at least fifteen hotels in California, including Hyatt Regency in Valencia, California. Juan Mireles is a former employee of Employers who was employed as a room service waiter delivering orders to hotel guests at the Hyatt Regency in Valencia. Mireles worked as a room service waiter from approximately 2016 to March 2020. As an element of the charges charged to patrons of Employers, Employers charged patrons a mandatory service charge for services of a variety of categories of employees, including room service waiters like Mireles, and banquet servers, among others.

During his employment by Employers, Mireles and similarly employed individuals regularly were subjected to the following violations of California law for which they are entitled to PAGA penalties.

Unpaid Gratuities

At all relevant times, Employers employed Mireles and other Aggrieved Employees subject to Labor Code Section 351.

Pursuant to Labor Code Section 351: “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...” The purpose of section 351 is “to ensure that employees, not employers, receive the full benefit of gratuities that patrons intended for the sole benefit of those employees who serve them” (*Searle v. Wyndham Interat., Inc.* (2002) 102 Cal.App.4th 1327, 1332.)

Employers charge a mandatory service charge to hotel guests that order room service among others. Aggrieved employees receive at the direction of Employers, per Employers’ policy, 80% of the service charges charged for the services they provide, and Employers take, collect and receive the remaining 20% in violation of Labor Code Section 351. *See O’Grady v Merchant Exchanges Production, Inc.*, 41 Cal.App.5th 771, 790 (a mandatory service charge can constitute a gratuity that is intended for the employees providing the service).

In *O’Grady*, the court held that the custom in the hospitality industry can determine whether a mandatory service charge is a gratuity that a guest intends to be solely for the employee providing the service. *Id.* It is actually customary in the food and beverage industry to charge a tip of 18-22% and a service charge in that range can reasonably be interpreted as a tip that is intended for the server. *Id.* at 774. Failure to provide the mandatory service charge when the guest intends it as a gratuity conflicts with the purpose of Labor Code Section 351. *Id.* at 790.

Throughout his employment, and within the one year prior to the mailing of this letter, Mireles delivered food and beverage to hotel guests and obtained payment from the guest, which included a 19% mandatory service charge. At times during his employment the service charge

was 18%. It is reasonable for a hotel guest to interpret this charge as a tip intended for Mireles as the employee providing the service. By taking, collecting and receiving 20% or any other percentage of service charges paid for the services of aggrieved employees, Employers violated Labor Code Section 351.

Pursuant to PAGA, Employers are liable for penalties of \$100 per pay period payable to each aggrieved employee for the first violation of Labor Code Section 351 they experienced within the statutory period, and \$200 per pay period for each additional violation.

Missed Rest Breaks

California law requires that employers authorize and permit non-exempt employees to take a rest period that must, insofar as practicable, be taken in the middle of each work period. The rest period is based on the total hours worked daily and must be at the minimum rate of a net ten consecutive minutes for each four-hour work period, or major fraction thereof. In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029.)

Within a year of the mailing of this letter, Employers regularly failed to provide and make duty free rest periods available to Mireles and other Aggrieved Employees in compliance with California law. Employers regularly and systematically required Mireles and other Aggrieved Employees to work full shifts without any or all legally required rest periods.

Employers knew or were on constructive notice when Mireles and other employees worked shifts entitling them to at least two rest breaks, and sometimes three rest breaks. When said rest breaks were not authorized and/or permitted (or made available), Employers did not pay rest break premium wages, as required by California Labor Code Section 226.7.

Employers are liable to each aggrieved employee for penalties of \$100 per pay period for the first pay period the employee experienced a rest break rights violation within the statutory period, and \$200 per pay period for each subsequent pay period with a rest break rights violation.

Inaccurate Wage Statements

Labor Code Section 226 requires employers to list on an employee's wage statement, inter alia, "(8) the name and address of the legal entity that is the employer." Lab. Code § 226, subd. (a). Employers violated this provision of section 226 on each and every wage statement provided to Mireles and other aggrieved employees during the one year prior to the mailing of this letter by failing to provide the address for both Dimension Development Company, Inc., and G & B Hotel Employee Leasing, LLC Mireles' wage statements do not list an address for either of the

February 24, 2021

Employers.

Employers are liable for penalties of \$100 per pay period for the first wage statement violation within the statutory period, and \$200 per pay period for each additional violation.

Unpaid Final Wages

Mireles and other Aggrieved Employees have, during the statutory period, experienced discharges from their employment by Employers in the form of layoffs and more permanent discharges. Upon discharges by layoffs, permanent discharges, and resignations during the statutory period (within one year of the writing of this letter) the Aggrieved Employees did not receive all wages owed at the time of their separations from employment in accordance with timing requirements of Labor Code §§ 201 and 202.

For example, Mireles and other Aggrieved Employees received a notice of discharge on March 16, 2020 via email but did not receive final wages on the last day they worked as required by Labor Code 201. Mireles and other Aggrieved Employees received their final wages several days late. Employers maintained a policy and/or practice of paying final wages without regard for the timing requirement of Labor Code Section 201 et seq. Pursuant to Labor Code Section 203, Mireles and other Aggrieved Employees are entitled to continuation of their wages, from the day of each discharge they experienced until all their the wages were paid, up to a maximum of thirty (30) days per discharge.

Moreover, Mireles and other aggrieved employees did not receive all premium wages for missed rest periods to which they were entitled. Mireles and those similarly situated, upon their discharge or resignation, did not receive all owed wages on the date of said discharge or within 72 hours if they resigned. Therefore, Employers violated and continue to violate Labor Code Sections 201 and 202, because they have not timely paid the aforementioned wages and wage premiums.

Employers are liable to each aggrieved employee for penalties of \$100 per pay period for the first violation of Labor Code §§ 201-202 they experienced within the statutory period, and \$200 per pay period for each additional violation.

Civil Penalties

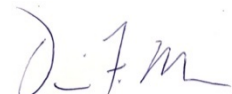
As a result of the foregoing, Employers are liable for civil penalties as provided for by California law. Consequently, Mireles and all other Aggrieved Employees of Employers are entitled to recover all penalties permitted by the Labor Code and penalties provided for under California law, including but not limited to Labor Code § 2698 *et seq.*

February 24, 2021

Conclusion

Employers violated and continue to violate the obligation to provide all gratuities to its employees, make available legally compliant rest breaks, issue legally compliant wage statements, and timely pay all final wages. Mireles requests the agency to investigate the above allegations and provide notice of the investigation and findings pursuant to PAGA's provisions. Alternatively, Mireles requests that the agency inform him if it does not intend to investigate these violations so that he may file a lawsuit with respect to the allegations discussed in this letter. Thank you for your immediate attention to this matter. If you have any questions, please do not hesitate to contact me at (310) 982-2984.

Sincerely,
MOSS BOLLINGER, LLP


Dennis F. Moss