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PAGA Administrator

Via Certified Mail

Echo & Rig Sacramento, LLC
500 J Street, STE 150
Sacramento, CA 95814

Subject: *Stadrionne D. Banks v. Echo & Rig Sacramento, LLC*

Dear Representative:

This office represents Stadrionne Dion Banks ("Mr. Banks") for Labor Code violation claims in conjunction with his employment with Echo & Rig Sacramento, LLC ("ERS"), between February 20, 2018 through December 3, 2020. The violations alleged in this notice are ongoing, and the PAGA period therefore extends beyond the date of this notice.

Mr. Banks intends to seek PAGA penalties on behalf of himself and all employees of ERS who were employed by and were subjected to the Labor Code violations listed below. This letter is sent pursuant to the requirement of Labor Code section 2699.3. The PAGA Period as defined herein is from one year prior to the filing of this PAGA notice through the date of final disposition of any action filed pursuant to this PAGA notice.

Violation of Labor Code sections 226.7 and 512 – Meal and Rest Break Premiums

California Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than 5 hours per day without providing an uninterrupted meal period of not less than 30 minutes. Labor Code section 226.7 provides that every employer shall authorize and permit all employees to take rest periods based on the total hours worked daily at the rate of 10 minutes net per four 4 hours or major fraction thereof. Section 226.7 further provides that no employer shall require an employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission, and that if an

employer fails to provide an employee a meal period or rest period, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.

While Labor Code section 512(a) simply states that an employee shall not work more than five (5) hours without a 30-minute meal period, it is silent as to when that break must occur. Notwithstanding this fact, Labor Code section 512 makes two things clear: (1) an employee must actually perform work prior to taking a break; and (2) an employee cannot work more than five (5) hours without receiving a 30-minute uninterrupted meal period. In *Donohue v. AMN Services, LLC.*, the Court noted that the 30-minute meal period requirement was partially created to address the noneconomic burdens on an employee's health when they are required to work for longer than five (5) hours without a 30-minute meal period. Employees who are denied compliant meal periods "'face greater risk of work-related accidents and increased stress' and lose valuable time 'free from employer control that is often needed to be able to accomplish important personal tasks.'" ((2021) 275 Cal. Rptr. 3d 422, 431) (Citing *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal. 4th 1094, 1113). "Shortening or delaying a meal period by even a few minutes may exacerbate risks associated with stress or fatigue, especially for workers who are on their feet most of the day or who perform manual labor or repetitive tasks." *Donohue, Supra* 275 Cal.Rptr. 3d 422, 431). "The legislative history [of the IWC Wage Orders] indicates that the meal period provisions are not 'aimed at protecting or providing employees' wages. Instead [they are] primarily concerned with ensuring the health and welfare of employees by requiring that employers provide meal... periods as mandated by the IWC." (*Id.*, at 431-432). "The premium pay scheme reflects the Legislature's and the IWC's determination that infringements on meal period requirements threaten employees' health and safety whenever they occur." (*Id.*, at 432).

In this case, **ERS** *never* allowed Mr. Banks and the Aggrieved employees to take uninterrupted 10-minute rest breaks. Further, **ERS** had a policy of requiring Mr. Banks and the Aggrieved Employees to clock out for their meal period *immediately after* clocking-in for the start of their scheduled shifts. As an initial matter then, the 30-minutes that Mr. Banks and the Aggrieved Employees took could not constitute a break from work, designed to provide for their health and safety, since they had not performed *any work whatsoever* prior to taking their purported meal period. More importantly, **ERS'** policy simply attempts to sidestep the mandates of the Labor Code and has the effect of putting Mr. Banks and the Aggrieved Employees at "greater risk of work-related accidents and increased stress."

ERS' policy also violates Labor Code section 512 on its face. Mr. Banks and the Aggrieved Employees regularly work eight (8) hour shifts, seven-and-one-half (7.5) of which occur without a break under **ERS'** policy. Given that **ERS'** policy violates both the letter and the spirit of the Labor Code and IWC Wage Orders, there can be no doubt that their policy subjects them to liability. Thus, **ERS** failed to provide Mr. Banks and the Aggrieved Employees with compliant meal periods every shift they worked. Moreover, **ERS** failed to provide Mr. Banks and the Aggrieved Employees with premium pay for those non-compliant meal periods every shift they worked.

Because **ERS** did not provide compliant rest and meal breaks and did not pay Mr. Banks and the Aggrieved Employees the proper premium pay for all non-compliant breaks, the civil penalties in Labor Code section 2699 apply.

Violation of Labor Code Sections 201 – 203 – Waiting Time Penalties

Labor Code sections 201 – 203 require that an employer provide an employee with all wages due and payable either: (a) immediately upon termination, or (b) within 3 days of the employee's resignation. When an employer fails to comply with the above, the employee is entitled to the equivalent of a day's wage at their regular rate of pay for each day the employer is late; these penalties cap at 30 days.

Since **ERS** failed: (1) to provide legally compliant meal and rest periods to Mr. Banks and the Aggrieved Employees, and (2) to provide Mr. Banks and the Aggrieved Employees with premium pay for their non-compliant meal and rest periods, **ERS** has necessarily failed to provide Plaintiff and the Aggrieved Employees with all wages due and payable at the culmination of their employer/employee relationship. Accordingly, **ERS** is subject to the civil penalties listed in Labor Code section 2699.

Violation of Labor Code Sections 226– Wage Statement Violations

Labor Code section 226 requires **ERS** to provide Mr. Banks and the Aggrieved Employees with wage statements that *accurately* show, among other things: (1) the total amount of wages earned; (2) the total amount of hours they worked; and (3) all applicable hourly rates in effect and the number of hours worked at those hourly rates.

First, **EHC** has failed to provide Mr. Banks and the Aggrieved Employees with compliant meal and/or rest periods and failed to provide them premium pay for those missed meal and/or rest periods, it follows that **ERS** failed to provide Mr. Banks and the Aggrieved employees with *accurate* wage statements.

Based on the foregoing wage statement violations, the civil penalties listed in Labor Code section 226.3 apply.

Violation of Labor Code Sections 6401 and 6403

Labor Code section 6403 provides, among other things:

“No employer shall fail or neglect to do any of the following:

(a) To provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.”

Pursuant to Labor Code section 6306 subdivision (b), the terms “[s]afety device’ and ‘safeguard’ shall be given a broad interpretation so as to include any practicable method of mitigating or preventing a specific danger.”

Defendant owns and operates restaurants, and the nature of Defendant's workplace is such that slipping on oil or some other liquid is an ever-present danger. In fact, the threat of slipping is so prevalent that Defendant's policies require the use of "slip resistant" or "skid-spool" shoes "for safety reasons." Therefore, the threat of slip and fall accidents in Defendant's workplace is a specific danger as contemplated by Labor Code section 6306.

For this reason, Defendant required its employee to wear slip resistant shoes in order to mitigate or prevent the specific danger of slip and fall accidents, consistent with Labor Code section 6306. However, pursuant to Labor Code sections 6401 and 6403, Defendant had an obligation to pay for the slip resistant shoes. As set forth above, Labor Code section 6403 requires an employer to "provide" safety devices and safeguards to its employees. In addition, Labor Code section 6401 makes clear that "[e]very employer shall furnish and use safety devices and safeguards..." In *Bendix Forest Products Corp. v. Division of Occupational Safety & Health* (1979) 25 Cal. 3rd 465, the California Supreme Court interpreted the words "provide" and "furnish" as used in Labor Code sections 6401 and 6403 as requiring an employer to pay for the safety equipment.

Rather than pay for the slip resistant shoes as required by Labor Code sections 6401 and 6403, Defendant required its Plaintiffs and the Aggrieved Employees to purchase their own slip resistant shoes. Therefore, any time that Defendant required Plaintiffs and the Aggrieved Employees to purchase and use their own slip resistant shoes, they violated Labor Code sections 6401 and 6403.

a) PAGA Application for Violation of Labor Code Sections 6401 and 6403

There is no private right of action for violation of Labor Code sections 6401 and 6403, however PAGA allows an Aggrieved Employee to impose civil penalties on their employer for violations of the Labor Code generally. Since there is no specified civil penalty associated with Labor Code sections 6401 and 6403, the PAGA penalties imposed for violating these Labor Codes are set forth in Labor Code section 2699 subdivision (f), or \$100 for initial violations and \$200 for subsequent violations. It is Plaintiffs' contention that for every pay period that an employee of Defendant was required to wear a slip resistant shoe which was not provided by the Defendant, a violation occurred.

Violation of Labor Code Section 2802 – Indemnification for Expenses and Losses

Labor Code section 2802 states that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties..."

As a threshold matter, Defendant's company policies clearly required members of the class to purchase their own slip resistant shoes. Therefore, members of the class purchased these shoes in obedience to the directions of their employer, and these expenses should have been reimbursed pursuant to Labor Code section 2802.

However, in addition, and as set forth above, the use of slip resistant shoes were required of the Defendant's employees pursuant to Labor Code sections 6401 and 6403. Therefore, the

purchase of slip resistant shoes was a necessary expenditure, and the Defendant was required to bear the cost of the shoes.

For these reasons, Defendant violation Labor Code section 2802 in that it imposed work related expenses on the class members. The class is therefore entitled to reimbursement of the cost of all slip resistant shoes purchased by them during the relevant time period.

Furthermore, PAGA penalties also apply as a result of Defendant's violation of Labor Code section 2802. Since there is no specified civil penalty associated with Labor Code sections 2802, the PAGA penalties imposed for violating these Labor Codes are set forth in Labor Code section 2699 subdivision (f), or \$100 for initial violations and \$200 for subsequent violations. It is Plaintiffs' contention that for every pay period where an Aggrieved Employee purchased a slip resistant shoe in connection with their employment by Defendant, a civil penalty should be imposed.

Violation of Labor Code Section 3752

As set forth above, Plaintiffs and the Aggrieved Employees are required by the Defendant to purchase and wear their own slip resistant shoes. The basis behind Defendant's policy requiring its employees to wear slip resistant shoes is so that employees are less likely to have a slip and fall accident while at work.

The practical effect of Defendant's employees having less slip and fall related accidents at work is that Defendant's workers' compensation costs are inevitably lower. This is true for a number of reasons. First, fewer workers' compensation claims reduce the amount of money Defendant's must pay towards deductibles. Second, fewer workers' compensation claims results in lower monthly premiums. These are both direct benefits that Defendant's enjoy as a result of requiring Plaintiff and the Aggrieved Employees to purchase slip resistant shoes.

Pursuant to Labor Code section 3752, "[l]iability for [workers'] compensation shall not be reduced or affected by any insurance, contribution or other benefit whatsoever due to or received by the person entitled to such compensation..." As set forth above, Defendant's workers' compensation liability is directly reduced as a result of requiring their employees to wear slip resistant shoes. However, this reduction in workers' compensation liability is the result of contributions by Defendant's employees in the form of slip resistant shoe purchases. As a result, Defendant is in violation of Labor Code section 3752 by requiring its employees to purchase slip resistant shoes and thereby contribute to a reduction in workers' compensation liability.

a) PAGA Application for Violation of Labor Code Section 3752

There is no private right of action for violation of Labor Code section 3752, however PAGA allows an Aggrieved Employee to impose civil penalties on their employer for violations of the Labor Code generally. Since there is no specified civil penalty associated with Labor Code section 3752, the PAGA penalties imposed for violating these Labor Codes are set forth in Labor Code section 2699 subdivision (f), or \$100 for initial violations and \$200 for subsequent

violations. It is Plaintiffs' contention that for every pay period that an employee of Defendant was required to wear a slip resistant shoe which was not provided by the Defendant, a violation occurred.

Very Truly Yours,

/s/ Daniel Ginzburg

Daniel Ginzburg, Esq.