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January 15, 2025

AMENDED NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE SETION §2698 et seq.

<u>VIA ELECTRONIC FILING</u>
LABOR AND WORKFORCE DEVELOPMENT AGENCY
Attn: PAGA Administrator
https://dir.tfaforms.net/266

RE: CLAUDIA PEREZ V. Meile Investment, LLC

JOSE GARAY, APLC represents the interests of Ms. ZULEMA CASTANEDA ("Employee" or "Complainant"), who is filing this amended LWDA/PAGA Notice regarding Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code section 2698 et seq. ("PAGA") on behalf of herself and other aggrieved employees. Claimant worked for Meile Investment, LLC (dba Doubletree Hilton Hotels) at 924 W Huntington Dr, Monrovia, CA 91016 from May 20th, 2024, to November 10th, 2024.

Meile Investment, LLC ("Employer") is a company that provides hotel services (hospitality) to its customers. It employs no less than 200 employees at its location, and it is estimated over 1000 current and former non-exempt employees throughout California.

Ms. Perez and other aggrieved employees perform the job duties of a non-exempt hourly employee in the personnel files Employer maintains. Employer has violated and continues to violate several California Labor Code provisions, which are listed below. Therefore, Employer is liable for civil penalties under PAGA. Moreover, Employer has been previously sued multiple times and willfully continues to violate the laws of California's PAGA and Wage & Hour laws. .

This correspondence serves as Claimant' written notice by online filing with the Labor and Workforce Development Agency ("LWDA") and by certified mail to the Employer of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations, as required by Labor Code § 2699.3(a)(1). The specific provisions of the Labor Code alleged to have been violated are as follows: Labor Code §§ 98.6, 98.7, 201, 202, 203, 204, 206, 210, 226, 226.3, 226.7, 432, 510, 512, 558, 558.5, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 2800 - 2802.

1. **FAILURE TO PAY ALL HOURS WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT-TIME WAGES, AND OVERTIME WAGES**

Employer has engaged in numerous unlawful practices which resulted in the failure to pay Claimant and Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight-time wages, and overtime compensation.

First, Employer regularly required Claimant and other Aggrieved Employees to work off-the-clock to complete their duties and responsibilities. This off-the-clock work included, amongst other things, requiring Claimant and other Aggrieved Employees to: (1) respond to Employer and work-related requests and perform work while clocked out for purported meal breaks; (2) perform work before clocking in for the start of their shift; (3) perform work after clocking out for the end of their shift; and (4) perform work during meal periods. Claimant and other Aggrieved Employees were not compensated for this off-the-clock work, resulting in a failure to pay minimum wages and straight-time wages. Moreover, this off-the-clock work typically caused Claimant and other Aggrieved Employees to work more than eight (8) hours in a day and forty (40) hours in a week, resulting in a failure to pay overtime compensation. The "off the clock work" or "working meal period(s)" was required by Employer.

Second, Employer also failed to accurately record the actual time Claimant and other Aggrieved Employees worked, which resulted in Employer's failure to pay for all hours worked, including minimum wages, straight-time wages, premium, overtime wages, sick pay, premium pay, bonus pay, and vacation pay.

Finally, and as a matter of policy and/or practice, Employer failed to pay overtime to Claimant and other Aggrieved Employees for the correct legal rate all overtime hours worked based on regular rates of pay including premium pay rates when applicable. Employer also failed to factor non-discretionary bonus pay into the regular rate of pay for Claimant and other Aggrieved Employees.

As a result of the foregoing practices, Employer has failed to pay Claimant and other Aggrieved Employees for all wages earned at the correct rates of pay, including non-discretionary bonus pay, minimum wages, straight-time wages, and overtime compensation. Accordingly, Employer violated the applicable IWC Wage Order and California Labor Code sections 204, 510, 1194, 1197, 1197.1 and 1198. Claimant, for herself and other Aggrieved Employees, will therefore seek PAGA default penalties; penalties pursuant to paragraph (20)(A) of the applicable IWC Wage Order; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; and attorneys' fees and costs.

2. **FAILURE TO PROVIDE MEAL PERIODS:**

Employer failed to provide Claimant and other Aggrieved Employees with legally compliant 30-minute meal periods. Employer required Claimant and other Aggrieved Employees to work more than five (5) hours per day but did not provide uninterrupted 30-minute meal periods. Further, Claimant and other Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employer regularly required Claimant and other Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5th) hour of work, and/or to take their second meal period after their tenth (10th) hour of work. On the occasions that Claimant and other Aggrieved Employees did take a meal period, their meal periods were frequently interrupted, cut short, and/or were "working meal periods." Moreover, Claimant and Aggrieved Employees were not credited with time on task even though they were required to be on call or on standby during meal periods.

Employer's excessive productivity demands, policies, practices, and procedures were responsible for the violations alleged above and prevented Claimant and other Aggrieved Employees from taking timely, complete and duty-free meal periods because, among other reasons: (1) Employer did not have legally-compliant policies regarding the provision and timing of meal periods or systematically disregarded its own purported meal period policies; (2) Employer's management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employer failed to adequately inform and train Claimant and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employer failed to adequately inform and train Claimant and other Aggrieved Employees about their right to premium wages for non-compliant meal periods; (5) Employer failed to ensure that there was adequate staffing to allow Claimant and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; (6) Employer required Claimant and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during meal periods, which included responding to in-person oral interruptions; and, (7) Employer's policy and culture prevented Claimant and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on meeting excessive productivity demands and/or completing job requirements over employees' right to receive timely, uninterrupted, and duty-free meal periods.

Aggrieved Employees were adversely and unlawfully impacted by Employer's meal period policies which discouraged them from taking legal breaks to meet Employer's productivity demands requirements.

Claimant and other Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for missed meal periods as required under California law. Accordingly, Employer violated the applicable IWC Wage Order and California Labor Code sections 226.7(a), 512(a), and 1198.

Claimant, for herself and other Aggrieved Employees, will therefore seek PAGA default penalties pursuant to Labor Code § 2699; penalties pursuant to paragraph (20)(A) of the applicable IWC Wage Order; California Labor Code sections 226.3, 558, 1197.1, and 1199 penalties; and attorneys' fees and costs.

3. **FAILURE TO PROVIDE REST PERIODS:**

Employer failed to authorize and permit Claimant and other Aggrieved Employees from taking legal 10-minute rest periods. Employer required Claimant and other Aggrieved Employees to work through rest periods or to remain on call or to standby to meet productivity requirements related, which were communicated verbally or via cell phones or radios. Claimant and other Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Claimant and other Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in day. In the rare event that a rest period was taken, it

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was frequently interrupted or cut short. Moreover, Claimant and other Aggrieved Employees were never completely relieved of duty as required by *Augustus v. ABM Security Services, Inc.,* 2 Cal.5th 257 (2016).

Employer excessive quotas, policies, practices, and procedures were responsible for the violations alleged above and prevented Claimant and other Aggrieved Employees from taking timely, complete, and duty-free rest periods because, among other reasons: (1) Employer did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employer's management at various levels, affecting all hourly-non-exempt warehouse employees, failed and refused to implement and enforce legally compliant rest period policies and practices and instead aggressively pushed Aggrieved Employees to meet excessive quotas; (3) Employer failed to adequately inform and train managers, leads, supervisors and foreman and Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employer failed to adequately inform and train Claimant and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employer failed to ensure that there was adequate staffing (except to utilize staffing agencies to replace employees who failed to meet production demands) to allow Claimant and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employer required Claimant and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during rest periods, recovery periods, and meal periods, which included responding to in-person oral interruptions; and, (7) Employer policy and culture prevented Claimant and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing quotas, productivity demands, and other job requirements over the employees' right to receive legal rest periods. Furthermore, Aggrieved Employees were adversely impacted by Employer's meal and rest period policies which discouraged them from taking legal breaks to meet Employer's productivity demands requirements.

Claimant and other Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the missed rest periods as required under California law. Accordingly, Employer violated the applicable IWC Wage Order and California Labor Code sections 226.7(a), 1198.

Claimant, for herself and other Aggrieved Employees, will therefore seek PAGA default penalties pursuant to Labor Code § 2699; penalties pursuant to paragraph (20)(A) of the applicable IWC Wage Order; California Labor Code sections 226.3, 558, 1197.1, and 1199 penalties; and attorneys' fees and costs.

4. **FAILURE TO PROVIDE RECOVERY PERIODS:**

Employer failed to provide recovery periods when requested by Aggrieved Employees or pay premium wages when a recovery period was not provided as required by Labor Code § 226.7. Employer in fact discouraged recovery periods and pressured Aggrieved Employees to utilize meal and rest period time as recovery periods and use of bathroom facility time.

When employees required a cooling down period or for any reason related to wellbeing, health and safety, or heat illness prevention, they were discouraged from taking recovery periods. Employer also failed to disclose to Claimant and Aggrieved Employees their right to recovery periods. If Aggrieved Employees complained or did not accede to Employer's unlawful policies, they were verbally reprimanded, written up negatively for performance, ranked as unproductive or ranked in low quartiles targeted for termination, terminated, and/or adversely impacted by Employer's productivity demands requirements. Furthermore, Employer's facilities are routinely subject to extreme heat/humidity and cold thereby increasing the need for recovery periods which Employer did not permit or provide.

5. **FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT.**

The employer failed to timely pay Complainant and other Aggrieved Employees all wages earned each pay period including, *inter alia*, overtime compensation, straight-time wages, and meal and rest period premiums. Accordingly, Employer violated California Labor Code § 204(a).

Claimant, for herself and other Aggrieved Employees, will therefore seek PAGA default penalties pursuant to Labor Code § 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

6. **FAILURE TO PAY ALL WAGES DUE TO SEPARATED EMPLOYEES.**

As to each pay period, Employer failed to timely pay all wages earned because Claimant and other Aggrieved Employees were not paid all the wages they were owed including, inter alia, overtime compensation, straight-time wages, and meal and rest period premiums. Accordingly, Employer violated California Labor Code § 201(a), 202(a) and 203(a).

Claimant, for herself and other Aggrieved Employees, will therefore seek PAGA default penalties pursuant to Labor Code § 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

7. **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS.**

As a result of the practices described above, the Employer issued inaccurate wage statements to Claimant and other Aggrieved Employees that failed to include the actual hours worked, the name and address of the legal employing entity, and the correct rates of pay. Accordingly, Employer violated California Labor Code § 226(a).

Claimant, for herself and other Aggrieved Employees, will therefore seek PAGA default penalties; penalties pursuant to California Labor Code § 226.3; and attorneys' fees and costs.

8. **FAILURE TO MAINTAIN & PROVIDE ACCURATE PAYROLL RECORDS.**

Employer failed to maintain accurate records relating to Claimant and other Aggrieved Employees' work periods, meal periods, rest periods, recovery periods, and/or total daily hours worked, and total hours worked per payroll period. Accordingly, Employer violated the applicable IWC Wage Order and California Labor Code sections 1198.5 and 1174(d). Employer's illegal and detrimental time rounding policy caused Claimant and other Aggrieved Employees' compensable work time to be improperly recorded, depriving them of their full compensation. These failures also caused Aggrieved Employees to receive sick pay, bonus pay, vacation pay, and premium pay below the lawful rate.

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Claimant and on behalf of Aggrieved Employees, will therefore seek PAGA default penalties pursuant to Labor Code § 2699; penalties pursuant to paragraph (20)(A) of the applicable IWC Wage Order; California Labor Code § 1174.5 penalties; and attorneys' fees and costs. Additionally, Claimant requested her wage statements and payroll records, and they were not provided timely or at all after they were requested pursuant to Labor Code §§ 226, 1198.5.

9. **FAILURE TO REIMBURSE NECESSARY EXPENDITURES.**

California Labor Code sections 2800 and 2802 require an Employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of her or her job duties or in direct consequence of her or her obedience to the directions of the Employer. The applicable IWC Wage Order requires Employer to provide employees with the tools or equipment necessary for the performance of their job. During the relevant time period, Claimant and other Aggrieved Employees incurred necessary business-related expenses and costs that Employer did not fully reimburse. These costs include but are not limited to the use of Claimant and other Aggrieved Employees' personal cell phones to send and receive messages and calls with supervisors to communicate their duties and the scope of work. Aggrieved Employees were also required to purchase items such as uniforms, accessories, and other sundry tools for the benefit of Employer without reimbursement. Accordingly, Employer violated IWC Order No. 5 and California Labor Code sections 2800 and 2802.

Claimant, for herself and other Aggrieved Employees, will therefore seek PAGA default penalties pursuant to Labor Code § 2699; penalties pursuant to paragraph (20)(A) of the applicable IWC Wage Order; and attorneys' fees and costs.

10. **FAILURE TO PAY VACATION TIME.**

Pursuant to California Labor Code § 227.3, "[W]henever a contract of employment or Employer policy provides for paid vacations, and an employee is terminated without having taken off her vested vacation time, all vested vacation shall be paid to her as wages at her final rate in accordance with such contract of employment or Employer policy respecting eligibility or time served." During the relevant time period, Employer failed to pay Claimant and other Aggrieved Employees for all earned and unused and accrued vacation time at their final rate of pay at the time of termination of their employment. Accordingly, Employer violated California Labor Code § 227.3.

Claimant, for herself and other Aggrieved Employees, will therefore seek PAGA default penalties pursuant to Labor Code § 2699; California Labor Code § 227 penalties; and attorneys' fees and costs.

Sincerely,

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José R. Garay, Esq.
JOSÉ GARAY, APLC

<u>EMPLOYER NOTICE PROVIDED BY CERTIIFED MAIL (RETURN RECEIPT REQUESTED)</u>

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