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Via Online Filing System (<https://dir.tfaforms.net/128>)

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Suite 801
Oakland, California 94612

Via Certified U.S. Mail – Ret. Receipt Requested

Agostini Restaurants, Inc.
Attn: Michael Agostini
40365 Brickyard Dr., #103
Madera, CA 93036

Re: Notice Pursuant to California Labor Code § 2699.3

Employee: Sabrina Sanders (“Employee”)
Employers: Agostini Restaurants (“Employers”)

To Whom It May Concern:

This office represents Sabrina Sanders (“Ms. Sanders”) a former employee of Agostini Restaurants, who was Ms. Sanders’s employers during the same period of employment. Accordingly, Ms. Sanders refers to each of the foregoing entities collectively as “Agostini” for purposes of this Notice.

Pursuant to California Labor Code Private Attorneys General Act of 2004 (Labor Code §§ 2698, *et seq.*) (“PAGA”), this letter sets forth the specific provisions of the Labor Code and Industrial Welfare Commission (“IWC”) Wage Order No. 5-2001, which Ms. Sanders alleges AGOSTINI has violated, including the facts and theories to support the alleged violations. Please be advised that this letter constitutes written notice required by Labor Code §§ 2699.3(a)(1)(A) and 2699.3(c)(1)(A) and may lead to immediate action against AGOSTINI in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against AGOSTINI. Under a separate cover, our office is sending a check in the amount of \$75.00 to the Accounting Unit of the Department of Industrial Relations for the requisite filing fee, pursuant to Labor Code §§ 2699.3(a)(1)(B) and 2699.3(c)(1)(B).

We are investigating a potential representative action on behalf of AGOSTINI's current and former non-exempt employees in the State of California regarding, among other things, the following violations: failure to provide meal and rest periods to employees in violation of Labor

Code §§ 226.7, 510, 512, 1194, and 1197 and IWC Wage Order No. 5-2001, §§ 11-12; failure to pay one additional hour of compensation at the employee's regular rate of pay for each work day that a meal or rest period is not provided in violation of Labor Code § 226.7 and IWC Wage Order No. 5-2001, §§ 11(B) and 12(B); failure to pay employees overtime wages in violation of Labor Code §§ 510, 1194, and 1198 and IWC Wage Order No. 5-2001, § 3; failure to timely pay employees all wages due in violation of Labor Code § 204; willful failure to pay discharged or quitting employees under Labor Code §§ 201-203; failure to provide accurate itemized wage statements to employees in violation of Labor Code §§ 226, 1174, and 1174.5; failure to maintain required records of employees pursuant to Labor Code §§ 1174 and 1174.5 and IWC Wage Order No. 5-2001, § 7; and unlawful deductions and withholdings from employees' wages in violation of Labor Code §§ 221, 223, and 224.

The allegations made by Ms. Sanders, on behalf of herself and all other similarly-situated current and former non-exempt employees of AGOSTINI in the State of California during the four years preceding the date of this notice, are based on the following facts and theories: rest periods were either less than ten minutes, not provided, interrupted, or late, as prescribed by California law; meal periods were either less than thirty minutes, late (starting after the fifth hour of work), not given at all (including second meal periods after ten hours of work), or interrupted; employees were not provided one hour of pay when meal and rest periods were not provided, were late, or were interrupted; employees were not properly paid for all hours worked; and they were not paid overtime compensation as required by California law.¹ Given the overtime, meal period and rest period violations and AGOSTINI's failure to compensate their employees fully, as set forth above, their employees' paychecks and itemized wage statements were inaccurate and failed to comply with California law. In short, AGOSTINI's unlawful employment practices and policies have deprived their employees of earned wages and other compensation which are still due and owed to them.

Failure to Provide Required Meal Periods

Pursuant to Labor Code §§ 226.7 and 512 and IWC Order No. 5-2001, § 11, employers are required to provide meal periods to their non-exempt employees. Employers are required to provide a meal period to any employee who works a shift of more than five (5) hours, and a second meal period to any employee who works a shift of more than ten (10) hours. Furthermore, employers are required to pay one extra hour of compensation for each day a meal period is not provided.

Additionally, if an employee is not relieved of all duty during a meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal period is permitted only when 1) the nature of the work prevents an employee from being relieved of all duty and 2) the parties have a written agreement agreeing to on duty meal periods.

Ms. Sanders and other aggrieved employees are entitled to the protections of California Labor Code §§ 226.7 and 512 and IWC Wage Order No. 5-2001, § 11. AGOSTINI did not allow their employees to take full thirty minute meal breaks. In fact, Ms. Sanders's and similarly-situated individuals' meal periods were short (less than thirty minutes), late (began after 5 hours of work), interrupted and/or missed. AGOSTINI consistently failed to provide Ms. Sanders and similarly-

¹ "[T]he statement that defendant has not provided its employees with proper rest periods states both the facts and the theory." (*Gutierrez v. California Commerce Club, Inc.* (2010) 187 Cal.App.4th 969, 979 n.5.)

situated individuals their statutorily required meal periods because Ms. Sanders and other aggrieved employees were given too much work to perform to take timely and fully uninterrupted meal breaks.

AGOSTINI further violated Labor Code§ 226.7 and IWC Wage Order No. 5-2001 by willfully failing to compensate Ms. Sanders and similarly-situated individuals, who were not provided with a meal period in accordance with California law, one additional hour of compensation at each employee's regular rate of pay for each workday that a meal period was not provided. Finally, AGOSTINI further violated Labor Code§ 226.7, 510, 1194, 1197, and IWC Wage Order No. 5-2001 by failing to compensate Ms. Sanders and similarly-situated individuals for all hours worked during their meal periods.

Failure to Provide Required Rest Periods

Pursuant to Labor Code§§ 226.7 and 512 and IWC Wage Order No. 5-2001, § 12, Employers are required to provide rest periods to their non-exempt employees. Employers are required to provide a ten (10) minute rest period for every four (4) hours worked or major action thereof. Furthermore, Employers are required to pay one extra hour of compensation for each day during which a rest period is not authorized and permitted.

Ms. Sanders and other aggrieved employees were and are non-exempt employees of AGOSTINI and are entitled to the protections of Labor Code§ 226.7 and IWC Wage Order No. 5-2001, § 12. AGOSTINI failed to authorize and permit their employees to take required rest periods because AGOSTINI did not allow Ms. Sanders and other aggrieved employees to take their rest breaks by fully relieving them of their duties. AGOSTINI consistently failed to authorize and permit Ms. Sanders and other aggrieved employees to take rest breaks because Ms. Sanders and other aggrieved employees were given too much work to perform to take timely and uninterrupted rest breaks.

AGOSTINI further violated Labor Code § 226.7 and IWC Wage Order No. 5-2001, § 12 by failing to pay Ms. Sanders and similarly-situated employees one additional hour of compensation at each employee's regular rate of pay for each workday that a rest period was not provided.

Failure to Pay Overtime Wages

Pursuant to California Labor Code §§ 510 and 1194 and IWC Wage Order No. 5-2001, § 3, employers are required to compensate their non-exempt employees for overtime hours worked, which is calculated at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive work day, with double time for all hours worked in excess of eight (8) hours on the seventh day of any workweek, or after twelve (12) hours in any workday.

Ms. Sanders and other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code§§ 510 and 1194 and IWC Wage Order No. 5-2001, § 3. AGOSTINI failed to compensate Ms. Sanders and other aggrieved employees for all overtime hours worked as required under the foregoing provisions of the Labor Code and IWC Wage Order by, among other things: failing to pay overtime at one and one-half (1 ½) times or double the regular rate of pay as provided by Labor Code §§ 510 and 1194 and IWC Wage Order

No. 5-2001, § 3; requiring, suffering or permitting Ms. Sanders and other aggrieved employees to work off-the-clock; requiring, suffering or permitting Ms. Sanders and other aggrieved employees to work through meal and rest periods but not compensating them for this time; failing to include this time in their compensable hours worked; illegally and inaccurately recording time in which Ms. Sanders and other aggrieved employees worked; failing to properly maintain Ms. Sanders's and other aggrieved employees' records through falsifying or inaccurately recording their hours worked; failing to provide accurate itemized statements for each pay period; and by other methods to be discovered.

In violation of California law, AGOSTINI has refused to perform their obligations to compensate Ms. Sanders and other aggrieved employees for all overtime wages earned and all hours worked. AGOSTINI's conduct violates Labor Code §§ 510, 1194, and 1198 and IWC Wage Order No. 5-2001, § 3.

Failure to Timely Pay All Wages Earned

Pursuant to Labor Code § 204, employers must pay non-exempt employees at least twice a month for all wages earned during the preceding pay period. Labor Code § 204 provides that labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. Employers using an alternate payday schedule must pay wages within seven calendar days of the end of the payroll period in which the wages were earned.

Ms. Sanders and other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 204. AGOSTINI failed to pay Ms. Sanders and similarly-situated individuals on their regularly scheduled payday for all work performed during the preceding pay period. Specifically, AGOSTINI required Ms. Sanders and other aggrieved employees to work through required meal and rest breaks without compensation. AGOSTINI additionally failed to pay Ms. Sanders and other aggrieved employees premium wages for all meal and rest periods that were missed, late, and/or interrupted.

Moreover, AGOSTINI failed to pay Ms. Sanders and other aggrieved employees for the overtime wages they earned in violation of Labor Code § 204. Labor Code § 204 requires AGOSTINI to pay overtime wages no later than the payday for the next regular payroll period following the payroll period in which the overtime wages were earned. AGOSTINI knew that they were required to pay overtime wages, yet on many occasions failed to pay Ms. Sanders and other aggrieved employees' overtime wages on their paydays.

AGOSTINI's failure to timely pay Ms. Sanders and other aggrieved employees their fully earned wages due to them on their regularly scheduled paydays is in violation of Labor Code § 204.

Failure to Pay All Wages Due Upon Separation

Pursuant to Labor Code §§ 201, 202, and 203, employers are required to pay all earned and unpaid wages to non-exempt employees upon separation. Labor Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of

discharge are due and payable immediately. Pursuant to Labor Code § 202, an employer is required to pay all accrued wages due to an employee no later than 72 hours after the employee quits his or her employment, unless the employee provided 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Furthermore, Labor Code § 203 provides that if an employer willfully fails to timely pay an employee all wages in full at the time of separation in accordance with Labor Code §§ 201 and 202, then the employer is liable for waiting time penalties in the form of a civil penalty owed to the former employee at the employee's daily rate of pay, until the employer pays the former employee all wages due and owing in full, for up to 30 days.

Ms. Sanders and other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 201, 202, and 203. AGOSTINI willfully failed to pay accrued wages and other compensation to Ms. Sanders and other aggrieved employees in accordance with Labor Code §§ 201 and 202. Because AGOSTINI required Ms. Sanders and other aggrieved employees to work through required meal and rest periods without compensation and failed to pay Ms. Sanders and other aggrieved employees the premium wages for all meal and rest periods that were missed, late, and/or interrupted, AGOSTINI failed and continues to fail to pay the full amount of accrued wages and other compensation due to Ms. Sanders and other aggrieved employees who have separated from their employment with AGOSTINI.

AGOSTINI's willful failure to pay the full amount of accrued wages and other compensation due to Ms. Sanders and other aggrieved employees upon separation entitles Ms. Sanders and other aggrieved employees to waiting time penalties in the form of civil penalties at their respective daily rates of pay for up to 30 days.

Failure to Maintain Required Records

Pursuant to Labor Code §§ 226 and 1174 and IWC Wage Order No. 5-2001, § 7, employers are required to maintain accurate records relating to their employees' wages earned and compensable and non-compensable hours worked including, but not limited to, the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; the start and end times of all meal periods; time records showing when each employee begins and ends each compensable work period; and accurate itemized wage statements.

Ms. Sanders and other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 226 and 1174 and IWC Wage Order No. 5-2001, § 7. Specifically, AGOSTINI had knowledge they were not providing their employees with proper rest and meal periods; nevertheless, AGOSTINI knowingly failed to include in the wage statements the extra compensable work hour for each missed meal period and rest period. As a result, AGOSTINI deprived Ms. Sanders and other aggrieved employees of their earned wages. Additionally, AGOSTINI had knowledge that they were not properly compensating their employees for all hours worked. AGOSTINI knowingly failed to include this time worked in the total amount of compensable hours worked by their employees.

AGOSTINI's willful failure to accurately maintain records of their employees' compensable and non-compensable hours is in violation of Labor Code §§ 226 and 1174 and IWC Wage Order No. 5-2001, § 7.

Failure to Furnish Accurate Itemized Wage Statements

Pursuant to Labor Code § 226 and IWC Wage Order No. 5-2001, § 7, employers are required to timely provide their employees itemized wage statements showing each employee's gross wages earned, total hours worked, all deductions made, net wages earned, the employer's legal name and address, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate.

Ms. Sanders and other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 226 and IWC Wage Order No. 5-2001, § 7. AGOSTINI failed to provide Ms. Sanders and other aggrieved employees with timely and accurate itemized wage statements in writing showing each employee's gross wages earned, total hours worked, all deductions made, net wages earned, the name and address of the legal entity or entities employing Ms. Sanders and other aggrieved employees, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate.

Specifically, AGOSTINI had knowledge they were not providing their employees with timely and uninterrupted rest and meal periods. AGOSTINI, nevertheless, knowingly failed to include the extra compensable hour for each missed meal break or rest break in their employees' wage statements. As a result, AGOSTINI deprived Ms. Sanders and other aggrieved employees of their earned wages. Additionally, AGOSTINI did not properly calculate Ms. Sanders's and other aggrieved employees' regular rates of pay. As a result, Ms. Sanders's and other aggrieved employees' wage statements failed to include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

AGOSTINI's willful failure to provide their employees accurate, itemized wage statements is in violation of Labor Code § 226 and IWC Wage Order No. 5-2001, § 7.

Failure to Indemnify Employees for Expenditures Incurred in Discharge of Duties

Labor Code § 2802(a) requires an employer to indemnify an employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.

Ms. Sanders and other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 2802(a). AGOSTINI failed to indemnify Ms. Sanders and other aggrieved employees for all business expenses and/or losses incurred in direct consequence of the discharge of their duties while working under the direction of AGOSTINI including, but not limited to, expenses for cell phone use, travel, and other employment-related expenses.

AGOSTINI's willful failure to reimburse their employees for all of their expenditures made in the discharge of their duties in violation of Labor Code § 2802(a).

This notice is hereby provided to and the allegations herein are made against AGOSTINI and any and all related and/or alter ego companies, corporations, partnerships, and/or business entities, as well as against any and all officers, owners, directors, managers, managing agents, or entities who are or may be liable under law for any of the violations alleged herein as to any locations or employees who worked at any time in the State of California.

This notice is made on behalf of all persons who are, were, or will be non-exempt employees of AGOSTINI, or any related or alter-ego company, corporation, partnership, and/or business entity at any time on or after a date four years prior to the date of this letter and at any location within the State of California.

This notice shall be construed as extending without limitation to any past, present, future, or continuing violation of the Labor Code, applicable IWC Wage Orders, or regulations there under which might be discovered as a result of a reasonable and diligent investigation made pursuant to this notice.

This notice shall further represent Ms. Sanders's reasonable attempt to settle its dispute with AGOSTINI prior to litigation. As such, and pursuant to *Graham v. DaimlerChrysler Corp.*(2004) 34 Cal.4th 553, this notice serves to apprise AGOSTINI of Ms. Sanders's aforementioned grievances and the proposed remedies as detailed below, while also affording AGOSTINI reasonable opportunity to meet Ms. Sanders's demands.

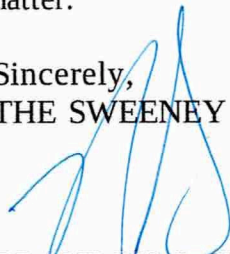
Demand is hereby made that AGOSTINI shall agree, in writing received at this office no later than 30 calendar days from the postmark date of this notice, to pay Ms. Sanders and all other similarly-situated persons employed by AGOSTINI at any time during the past 48 months back pay and compensation for the above-referenced violations. Additionally, demand is hereby made that AGOSTINI shall agree to comply with all California labor laws and ensure that its non-exempt employees are paid proper overtime compensation and given required meal and rest periods. Furthermore, the following demands are hereby made:

1. AGOSTINI shall agree to conduct a survey or interview all current and former non-exempt employees in California during the past 48 months to obtain information from them about the number of rest periods and meal periods each employee missed (including, but not limited to, a second meal period after ten hours of work), and about the number of employees who were required to pay for cell phone use or other expenditures in discharging their duties, with the investigation to be completed within 60 days.
2. AGOSTINI shall agree to pay each employee one hour of pay for every shift in which he or she was not provided one or more rest periods, as required by Labor Code § 226.7. AGOSTINI also shall agree to pay each employee one hour of pay for every shift in which he or she was not provided one or more and meal periods, as required by Labor Code § 226.7. In addition, AGOSTINI shall agree to pay waiting time penalties, equal to thirty days of pay, to each former employee who was not paid all wages due as described herein.
3. AGOSTINI shall agree to pay accrued interest to all employees at the rate of ten percent per annum for said unpaid wages.
4. AGOSTINI shall agree to pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above including, but not limited to, civil penalties pursuant to PAGA (Labor Code §§2698, *et seq.*) as well as those under Labor Code §§ 210, 225.5, 226.3, 558, 1174.5, 1197.1, 1199 and IWC Wage Order No. 5-2001, § 20.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please notify this office of that decision by certified mail addressed to The Sweeney Law Firm, 22647 Ventura Blvd., Suite 603, Woodland Hills, CA 91364.

Thank you for your prompt attention to this matter.

Sincerely,
THE SWEENEY LAW FIRM



BRANDON J. SWEENEY