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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**
10 **STANLEY MOSK COURTHOUSE**

11 JOEL LANUZA, as representative of the State of
12 California on behalf of himself and all other
13 aggrieved employees of Tower Wav LLC,

14 Plaintiff,

15 v.

16 TOWER WAV LLC, a California limited
17 liability company, and DOES 1 through 20,
18 inclusive,

19 Defendants.

Case No. **25STCV26177**

**PLAINTIFF JOEL LANUZA'S
REPRESENTATIVE ACTION
COMPLAINT AGAINST DEFENDANT
TOWER WAV LLC FOR PAGA
PENALTIES UNDER LABOR CODE §
2698 ET SEQ. FOR LATE PAYMENT OF
GRATUITIES OR TIPS EARNED IN
VIOLATION OF CALIFORNIA LABOR
CODE § 351**

20 Plaintiff, JOEL LANUZA, as representative of the State of California on behalf of himself
21 and all other aggrieved employees of Defendant TOWER WAV LLC ("TOWER WAV"), brings this
22 representative action under the Private Attorneys General Act of 2004 ("PAGA"), California Labor
23 Code ("Labor Code") § 2698 et seq., against the Defendants, TOWER WAV and DOES 1 - 20,
24 inclusive, for all applicable PAGA penalties for TOWER WAV's late payment of gratuities or tips
25 earned in violation of Labor Code § 351.

26 **NATURE OF THE ACTION**

27 1. Plaintiff's claims in this representative action arise from Defendants' uniform,
28 systematic practice of late payment of the gratuities or tips earned by Plaintiff and all other aggrieved

1 employees on a monthly basis in violation of Labor Code §§ 351. As used herein, the term “aggrieved
2 employees” is defined as all persons (including the Plaintiff) who were employed by TOWER WAV
3 as non-exempt, hourly rate employees, worked from any of TOWER WAV’s offices located in the
4 State of California, and provided transportation services to customers of Uber at any time within the
5 time period of March 13, 2025 (the date of Plaintiff’s submission of the original New PAGA Claim
6 Notice to TOWER WAV and the Labor and Workforce Development Agency [“LWDA”]) up to and
7 through the date of the trial of this action (hereinafter referred to as “the liability period”). Plaintiff
8 alleges upon information and belief that there are at least 500 aggrieved employees, as defined herein.

9 **THE PARTIES**

10 2. Plaintiff is an adult male who resides, and at all times relevant to this action has
11 resided, in Glendale, Los Angeles County, California.

12 3. Plaintiff alleges upon information and belief that TOWER WAV is, and at all times
13 relevant to this action has been, a California limited liability company that conducts business
14 throughout the State of California including in Los Angeles County through its office located at 1428
15 Wilcox Avenue, Los Angeles, California 90028, where Plaintiff worked during his employment by
16 TOWER WAV.

17 4. Plaintiff alleges upon information and belief that, according to the California Secretary
18 of State, TOWER WAV’s registered agent for service of process in the State of California is Andres
19 Munoz, 134 Alhambra St., San Francisco, California 94123.

20 5. Plaintiff alleges upon information and belief that one of the primary business purposes
21 of TOWER WAV is, and at all times relevant to this action was, to provide transportation services to
22 customers of Uber who required wheelchair assistance. Plaintiff alleges upon information and belief
23 that TOWER WAV contracted with Uber to provide such services.

24 6. Plaintiff alleges upon information and belief that, at all times relevant to this action,
25 DOES 1 to 20, inclusive, were the agents and/or employees of one or more of the Defendants and in
26

doing the things alleged in this Complaint were acting within the course and scope of that agency and/or employment.

7. Plaintiff does not know the true names and capacities, whether individual, corporate, associate or otherwise, of Defendants sued herein as DOES 1 to 20, inclusive, and therefore sues them by those fictitious names under California Code of Civil Procedure § 474. Plaintiff alleges upon information and belief that each defendant designated herein as a DOE defendant is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of each defendant designated herein as a DOE defendant when such identities become known.

JURISDICTION AND VENUE

8. The California Superior Court has jurisdiction in this matter due to Defendants' aforementioned violations of California statutory law and/or related common law principles. There is no federal question at issue in this action, as the issues herein are based solely on California statutes and law.

9. The California Superior Court also has jurisdiction in this matter because both the individual and aggregate monetary damages and restitution sought herein exceed the minimal jurisdictional limits of the California Superior Court and will be established at trial, according to proof.

10. This Court has personal jurisdiction over Defendants because they have transacted business in the State of California such that they reasonably anticipated being subject to personal jurisdiction before the courts of this State.

11. Pursuant to California Code of Civil Procedure § 395, venue is proper in this Court because, among other reasons, each of the Defendants conducts business in and/or resides in Los Angeles County, California, and a substantial part of the acts and omissions giving rise to the claims alleged herein occurred in Los Angeles County, California.

12. Plaintiff alleges upon information and belief that there are five (5) previously filed class actions and representative PAGA actions against TOWER WAV pending in California Superior Courts. Plaintiff further alleges upon information and belief that those five (5) previously filed class actions and representative PAGA actions against TOWER WAV have the following captions, case numbers, and dates of filing: (1) *Leticia Haynes v. Tower WAV LLC* (San Francisco Superior Court Case No. CGC-22-603761 filed on 12/30/22); (2) *Carol Martinez v. Tower WAV LLC* (San Francisco Superior Court Case No. CGC-23-608253 filed on 8/9/23); (3) *Deborah Hooker v. Tower Wav LLC et al.* (San Francisco Superior Court Case No. CGC23610064 filed on 10/30/23); (4) *Leticia Haynes and & Ezell Young v. Tower Wav LLC* (San Francisco Superior Court Case No. CGC-23-610504 filed on 11/17/23); and (5) *David Villatoro v. Tower Wav LLC* (Los Angeles Superior Court Case No. 24STCV03367 filed on 2/8/24).

13. In *Leticia Haynes v. Tower WAV LLC* (San Francisco Superior Court Case No. CGC-22-603761 filed on 12/30/22), Plaintiff alleges the following causes of action in her Class Action Complaint: (1) Failure to Pay Minimum and Straight Time Wages (Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197) (First Cause of Action); (2) Failure to Pay Overtime Wages (Cal. Lab. Code §§ 1194 and 1198) (Second Cause of Action); (3) Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7, 512) (Third Cause of Action); (4) Failure to Authorize and Permit Rest Periods (Cal. Lab. Code §§ 226.7) (Fourth Cause of Action); (5) Failure to Timely Pay Final Wages at Termination (Cal. Lab. Code §§ 201-203) (Fifth Cause of Action); (6) Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code § 226) (Sixth Cause of Action); (7) Failure to Indemnify Employees for Expenditures (Cal. Lab. Code § 2802) (Seventh Cause of Action); and (8) Unfair Business Practices (Cal. Bus. & Prof. Code §§ 17200, et seq.) (Eighth Cause of Action). In addition, Plaintiff alleges in paragraph 1 of her Complaint as follows: “Plaintiff brings this action against Defendant TOWER WAV LLC, and DOES 1 through 10 (hereinafter collectively referred to as ‘Defendants’) for California Labor Code violations and unfair business practices stemming from Defendant’s failure to pay for all hours worked (minimum, straight time, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay final wages, failure to furnish

1 accurate wage statements, and failure to indemnify employees for expenditures.”

2 14. In *Carol Martinez v. Tower WAV LLC* (San Francisco Superior Court Case No. CGC-
3 23-608253 filed on 8/9/23), Plaintiff alleges the following causes of action in her Class Action
4 Complaint for Damages: (1) Violation of Labor Code §§ 510 and 1198 (Unpaid Overtime – First
5 Cause of Action); (2) Violation of Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums
6 – Second Cause of Action); (3) Violation of Labor Code § 226.7 (Unpaid Rest Period Premiums –
7 Third Cause of Action); (4) Violation of Labor Code §§ 1194 and 1197 (Unpaid Minimum Wages –
8 Fourth Cause of Action); (5) Violation of Labor Code §§ 201 and 202 (Final Wages Not Timely Paid
9 – Fifth Cause of Action); (6) Violation of Labor Code § 226(a) (Non-Compliant Wage Statements –
10 Sixth Cause of Action); (7) Violation of Labor Code §§ 2800 and 2802 (Unreimbursed Business
11 Expenses – Seventh Cause of Action); (8) Violation of Labor Code § 2698, et seq. (Private Attorneys
12 General Act of 2004 – Eighth Cause of Action); and (9) Violation of California Business &
13 Professions Code § 17200, et seq. (Ninth Cause of Action). In addition, as to Plaintiff’s prayer for
14 relief for her Eighth Cause of Action for PAGA penalties, she alleges in paragraph 46 of her
15 Complaint as follows: “For civil penalties pursuant to Labor Code section 2699 et seq., for
16 Defendants’ violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3,
17 226.7, 246, 432.5, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802[.]”

18 15. In *Deborah Hooker v. Tower Wav LLC et al.* (San Francisco Superior Court Case No.
19 CGC23610064 filed on 10/30/23), Plaintiff alleges in paragraph 2 of her Complaint for Enforcement
20 Action Under the Private Attorneys General Act, Cal. Labor Code §§ 2698 et seq., as follows:
21 “Plaintiff alleges that Defendants hired Plaintiff and Aggrieved Employees but failed to properly pay
22 them all wages owed for all time worked (including minimum wages, straight time wages, and
23 overtime wages), failed to provide them with all meal periods and rest periods and associated
24 premium wages to which they were entitled, failed to timely pay them all wages due during their
25 employment, failed to timely pay them all wages due upon termination of their employment, failed
26 to provide them with accurate itemized wage statements, failed to maintain accurate payroll records,
27 and failed to reimburse them for necessary business expenses.” Additionally, Plaintiff alleges in

1 paragraph 3 of her Complaint as follows: “As a result, Defendants violated California Labor Code
2 sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800,
3 and 2802, and the applicable Industrial Welfare Commission (‘IWC’) Wage Order. Through this
4 action, Plaintiff seeks to recover all available remedies under PAGA, including, but not limited to,
5 civil penalties and attorney’s fees and costs.”

6 16. In *Leticia Haynes and Ezell Young v. Tower Wav LLC* (San Francisco Superior Court
7 Case No. CGC-23-610504 filed on 11/17/23), Plaintiff alleges in paragraph 1 of her PAGA
8 Representative Action Complaint as follows: “Plaintiffs bring this action individually, and on behalf
9 of the State of California and other aggrieved persons, against Defendants Tower Wav LLC and
10 DOES 1 through 10 (collectively referred to as ‘Defendants’) for civil penalties under the Private
11 Attorneys General Act of 2004, California Labor Code §§ 2698 et seq. (‘PAGA’) stemming from
12 Defendants’ failure to pay for all hours worked (minimum, straight time, and overtime wages), failure
13 to provide meal periods, failure to authorize and permit rest periods, failure to pay all earned wages
14 twice per month, failure to maintain accurate records of hours worked and meal periods, failure to
15 timely pay final wages, failure to furnish accurate wage statements, failure to indemnify employees
16 for expenditures, and failure to produce requested employment records.”

17 17. In *David Villatoro v. Tower Wav LLC* (Los Angeles Superior Court Case No.
18 24STCV03367 filed on 2/8/24), Plaintiff alleges the following causes of action in her Class Action
19 Complaint for Damages and Restitution: Failure To Pay Overtime Wages (First Cause Of Action);
20 Failure To Pay Sick Leave (Second Cause Of Action); Failure To Provide Meal Periods (Third Cause
21 Of Action); Failure To Provide Rest Periods (Fourth Cause Of Action); Failure To Pay All Wages
22 Upon Termination (Fifth Cause Of Action); Failure To Provide Accurate Wage Statements (Sixth
23 Cause Of Action); and Unfair Competition (Seventh Cause Of Action). In addition, Plaintiff alleges
24 in paragraph 8 of his Complaint as follows: “Plaintiff, on behalf of himself and all other similarly
25 situated employees, brings this action pursuant to, including but not limited to, California Labor Code
26 SS200.201,202,203,226, 226.7,233,246,246.5, 510, 512, and California Code of Regulations. Title 8,
27 §11070, seeking unpaid overtime wages, premium wages for non-compliant meal and rest periods,

1 unpaid sick leave pay, failure to pay regular rate, penalties, and reasonable attorney's fees and costs.”

2 18. Plaintiff alleges upon information and belief that it is well established under California
3 law that gratuities are not wages. *See, e.g.,* Labor Code 351 (providing in part: “Every gratuity is
4 hereby declared to be the sole property of the employee or employees to whom it was paid, given, or
5 left for.”); *Searle v. Wyndham International, Inc.* (2002) 102 Cal.App.4th 1327, 1332 (“The purpose
6 of [Labor Code] section 351, as spelled out in the language of the statute, is to prevent an employer
7 from collecting, taking, or receiving gratuity income or any part thereof, as his own part of his daily
8 gross receipts, from deducting from an employee's wages any amount on account of such gratuity,
9 and from requiring an employer to credit the amount of the gratuity or any part thereof against or as
10 a part of his wages. And the legislative intent reflected in the history of the statute, was to ensure that
11 employees, not employers, receive the full benefit of gratuities that patrons intend for the sole benefit
12 of those employees who serve them.”) (quoting *Leighton v. Old Heidelberg, Ltd.* (1990) 219
13 Cal.App.3d 1062, 1068 and citing *Henning v. Industrial Welfare Com.* (1988) 46 Cal.3d 1262, 1265
14 and *Industrial Welfare Com. v. Superior Court of Kern County* (1980) 27 Cal.3d 690, 730); *Industrial*
15 *Welfare Com.*, 27 Cal.3d at 731 (describing tips as a type of “non-wage benefit” and observing that
16 “tips are paid by customers, not the employer”).

17 19. Plaintiff alleges upon information and belief that none of the operative Complaints in
18 any of the aforementioned five (5) previously filed actions against TOWER WAV involve any
19 allegation or claim for (a) late payment of gratuities or tips or (b) any violation of Labor Code § 351.

20 20. Plaintiff alleges upon information and belief that his PAGA claim alleged herein is
21 entirely distinct (factually and legally) from all of the claims in the aforementioned five (5) previously
22 filed class actions and representative PAGA actions against TOWER WAV.

23 **GENERAL ALLEGATIONS**

24 21. Plaintiff was employed by TOWER WAV from April 7, 2022, to January 17, 2025.
25 TOWER WAV terminated Plaintiff's employment on January 17, 2025.

22. Plaintiff alleges upon information and belief that all other aggrieved employees were employed by TOWER WAV within the timeframe of March 13, 2025 (the date of Plaintiff's submission of the New PAGA Claim Notice to TOWER WAV and the LWDA) up to and through the date of the trial of this action.

23. Plaintiff provided transportation services to customers of Uber who required wheelchair assistance throughout his employment by TOWER WAV.

24. Plaintiff alleges upon information and belief that all other aggrieved employees provided transportation services to customers of Uber who required wheelchair assistance throughout their employment by TOWER WAV.

25. Plaintiff alleges upon information and belief that he was employed by TOWER WAV as a non-exempt employee throughout his employment by TOWER WAV.

26. Plaintiff alleges upon information and belief that all other aggrieved employees were employed by TOWER WAV as non-exempt employees throughout their employment by TOWER WAV.

27. Plaintiff worked on a full-time basis throughout his employment by TOWER WAV (except for the limited time period of October 19 to 28, 2024).

28. Plaintiff regularly worked 5 days per week (Mondays, Tuesdays, Wednesdays, Saturdays and Sundays) and 40+ hours per week throughout his employment by TOWER WAV.

29. Plaintiff was paid multiple hourly rates during his employment by TOWER WAV. His initial hourly rate was \$17.00. His most recent hourly rate was \$19.50.

30. Plaintiff alleges upon information and belief that all other aggrieved employees were paid one or more hourly rates throughout their employment by TOWER WAV.

1 31. Plaintiff earned gratuities or tips (in addition to his hourly wages) on at least a weekly
2 basis throughout his employment by TOWER WAV.

3 32. Plaintiff alleges upon information and belief that all other aggrieved employees earned
4 gratuities or tips (in addition to their hourly wages) on at least a weekly basis throughout their
5 employment by TOWER WAV.
6

7 33. TOWER WAV's payroll period was on a weekly basis throughout Plaintiff's
8 employment by TOWER WAV. More specifically, Plaintiff was paid on Fridays via traditional
9 paychecks or on Thursdays via direct deposit (as he was paid throughout most of his employment by
10 TOWER WAV).

11 34. Plaintiff alleges upon information and belief that TOWER WAV's payroll period was
12 on a weekly basis throughout all other aggrieved employees' employment by TOWER WAV.
13

14 35. Throughout Plaintiff's employment by TOWER WAV, the vast majority of the
15 gratuities or tips he earned were collected by TOWER WAV via credit card payments made by its
16 customers.

17 36. Plaintiff alleges upon information and belief that, throughout all other aggrieved
18 employees' employment by TOWER WAV, the vast majority of the gratuities or tips they earned
19 were collected by TOWER WAV via credit card payments made by its customers.
20

21 37. Throughout Plaintiff's employment by TOWER WAV, TOWER WAV's uniform,
22 systematic practice was to pay him the gratuities or tips he earned (and TOWER WAV collected via
23 its customers' credit card payments) on a monthly basis.

24 38. Plaintiff alleges upon information and belief that, throughout all other aggrieved
25 employees' employment by TOWER WAV, TOWER WAV's uniform, systematic practice was to
26
27
28

1 pay them the gratuities or tips they earned (and TOWER WAV collected via its customers' credit
2 card payments) on a monthly basis.

3 **FIRST CAUSE OF ACTION**

4 **(BY PLAINTIFF, AS REPRESENTATIVE OF THE STATE OF CALIFORNIA ON**
5 **BEHALF OF HIMSELF AND ALL OTHER AGGRIEVED EMPLOYEES, AGAINST ALL**
6 **DEFENDANTS FOR PAGA PENALTIES UNDER CALIFORNIA LABOR CODE § 2698 ET**
7 **SEQ. FOR LATE PAYMENT OF GRATUITIES OR TIPS EARNED IN VIOLATION OF**
8 **CALIFORNIA LABOR CODE § 351)**

9 39. Plaintiff, as representative of the State of California on behalf of himself and all other
10 aggrieved employees, incorporates by reference paragraphs 1 – 38 of this Complaint as if fully set
11 forth herein.

12 40. Labor Code § 350 defines the term “gratuity” in part as “any tip, gratuity, money, or
13 part thereof that has been paid or given to or left for an employee by a patron of a business over and
14 above the actual amount due the business for services rendered[.]”

15 41. Labor Code § 351 provides:

16 No employer or agent shall collect, take, or receive any gratuity or a part thereof
17 that is paid, given to, or left for an employee by a patron, or deduct any amount
18 from wages due an employee on account of a gratuity, or require an employee to
19 credit the amount, or any part thereof, of a gratuity against and as a part of the
20 wages due the employee from the employer. Every gratuity is hereby declared to
21 be the sole property of the employee or employees to whom it was paid, given, or
22 left for. An employer that permits patrons to pay gratuities by credit card shall pay
23 the employees the full amount of the gratuity that the patron indicated on the credit
24 card slip, without any deductions for any credit card payment processing fees or
costs that may be charged to the employer by the credit card company. Payment of
gratuities made by patrons using credit cards shall be made to the employees not
later than the next regular payday following the date the patron authorized the credit
card payment.

25 42. Throughout Plaintiff's employment by TOWER WAV, he earned gratuities or tips on
26 at least a weekly basis. However, TOWER WAV's uniform, systematic practice was to pay him the
27 gratuities or tips he earned -- and TOWER WAV collected via its customers' credit card payments -

- on a monthly basis in clear violation of the time limit provided in Labor Code § 351 (i.e., “not later than the next regular payday following the date the patron authorized the credit card payment.”) This practice is evidenced by Plaintiff’s paystubs for the time period of February 12, 2024, to January 17, 2025, which show, *inter alia*:

<u>Pay Period</u>	<u>Pay Date</u>	<u>Tips</u>	<u>Year-To-Date Tips</u>
2/12 – 2/18/24	2/23/24	\$0	\$161.30
2/19 – 2/25/24	3/1/24	\$0	\$161.30
2/26 – 3/3/24	3/8/24	\$74.90	\$236.20
3/4/24 – 3/10/24	3/15/24	\$0	\$236.20
3/11 – 3/17/24	3/22/24	\$0	\$236.20
3/18 – 3/24/24	3/29/24	\$0	\$236.20
3/25 – 3/31/24	4/5/24	\$144.06	\$380.26
4/1 – 4/7/24	4/12/24	\$0	\$380.26
4/8 – 4/14/24	4/19/24	\$0	\$380.26
4/15 – 4/21/24	4/26/24	\$0	\$380.26
4/22 – 4/28/24	5/3/24	\$0	\$380.26
4/29 – 5/5/24	5/10/24	\$51.96	\$432.22
5/6 – 5/12/24	5/17/24	\$0	\$432.22
5/13 – 5/19/24	5/24/24	\$0	\$432.22
5/20 – 5/26/24	5/31/24	\$0	\$432.22
5/27 – 6/2/24	6/7/24	\$82.55	\$514.77
6/3 – 6/9/24	6/14/24	\$0	\$514.77
6/10 – 6/16/24	6/21/24	\$0	\$514.77
6/17 – 6/23/24	6/28/24	\$0	\$514.77
6/24 – 6/30/24	7/5/24	\$128.70	\$643.47
7/1 – 7/7/24	7/12/24	\$0	\$643.47
7/8 – 7/14/24	7/19/24	\$0	\$643.47
7/15 – 7/21/24	7/26/24	\$0	\$643.47
7/22 – 7/28/24	8/2/24	\$0	\$643.47
7/29 – 8/4/24	8/9/24	\$108.67	\$752.14
8/5 – 8/11/24	8/16/24	\$0	\$752.14
8/12 – 8/18/24	8/23/24	\$0	\$752.14
8/19 – 8/25/24	8/30/24	\$0	\$752.14
8/26 – 9/1/24	9/6/24	\$0	\$752.14
9/2 – 9/8/24	9/13/24	\$0	\$752.14
9/9 – 9/15/24	9/20/24	\$157.64	\$909.78
9/16 – 9/22/24	9/27/24	\$0	\$909.78
9/23 – 9/29/24	10/4/24	\$126.55	\$1,036.33
9/30 – 10/6/24	10/11/24	\$0	\$1,036.33
10/7 – 10/13/24	10/18/24	\$0	\$1,036.33
10/14 – 10/20/24	10/22/24	\$0	\$1,036.33
10/14 – 10/20/24	10/25/24	\$0	\$1,036.33

1	10/21 – 10/27/24	11/1/24	\$0	\$1,036.33
	10/28 – 11/3/24	11/8/24	\$86.98	\$1,123.31
2	10/28 – 11/3/24	11/9/24	\$0	\$1,123.31
	11/11 – 11/17/24	11/16/24	\$0	\$1,123.31
3	11/11 – 11/17/24	11/22/24	\$0	\$1,123.31
	11/18 – 11/24/24	11/29/24	\$0	\$1,123.31
4	11/25 – 12/1/24	12/6/24	\$70.73	\$1,194.04
	12/2 – 12/8/24	12/13/24	\$0	\$1,194.04
5	12/9 – 12/15/24	12/20/24	\$0	\$1,194.04
	12/16 – 12/22/24	12/27/24	\$0	\$1,194.04
6	12/23 – 12/29/24	1/3/25	Not stated	Not stated
	12/30/24 – 1/5/25	1/10/25	\$318	\$318
7	1/6 – 1/12/25	1/14/25	\$0	\$318
8	1/6 – 1/12/25	1/17/25 ¹	\$0	\$318

43. Plaintiff alleges upon information and belief that TOWER WAV paid the gratuities or tips that all other aggrieved employees earned on at least a weekly basis in the same fashion it paid the gratuities or tips earned by him (i.e., on a monthly basis). In that regard, Plaintiff alleges upon information and belief that all other aggrieved employees and he were affected equally by Tower Wav's uniform, systematic practice alleged herein.

44. Labor Code § 558(a) provides: "Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter [i.e., Labor Code §§ 500-558] or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: [¶] (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. [¶] (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. [¶] (3) Wages recovered pursuant to this section shall be paid to the affected employee."

45. Labor Code § 2699(a) provides: "Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies,

¹ Tower Wav's termination of Mr. Lanuza's employment was effective January 17, 2025.

1 or employees, for a violation of this code, may, as an alternative, be recovered through a civil action
2 brought by an aggrieved employee on behalf of the employee and other current or former employees
3 against whom a violation of the same provision was committed pursuant to the procedures specified
4 in Section 2699.3.” Pursuant to Labor Code § 2699(a), Plaintiff, as representative of the State of
5 California on behalf of himself and all other aggrieved employees, seeks recovery of all applicable
6 civil penalties.

7 46. Labor Code § 2699(f) provides:

8 For all provisions of this code except those for which a civil penalty is specifically
9 provided, there is established a civil penalty for a violation of these provisions, as
10 follows:

11 (1) If, at the time of the alleged violation, the person does not employ one or more
12 employees, the civil penalty is five hundred dollars (\$500).

13 (2) If, at the time of the alleged violation, the person employs one or more
14 employees, the civil penalty is as follows:

15 (A) One hundred dollars (\$100) for each aggrieved employee per pay period, except
16 that:

17 (i) If, at the time of the alleged violation, the person employs one or more
18 employees, and the alleged violation is a violation of paragraphs (1) to (7),
19 inclusive, or paragraph (9) of subdivision (a) of Section 226, the only civil penalty
20 applicable under this part is twenty-five dollars (\$25) for each aggrieved employee
21 per pay period if the employee could promptly and easily determine from the wage
22 statement alone the accurate information specified by subdivision (a) of Section
23 226. If the alleged violation is a violation of paragraph (8) of subdivision (a) of
24 Section 226, the civil penalty applicable under this part for the violation is twenty-
25 five dollars (\$25) for each aggrieved employee per pay period if the employee
26 would not be confused or misled about the correct identity of their employer or, if
27 their employer is a farm labor contractor, the legal entity that secured the services
28 of that employer. This subdivision does not apply if the employer has failed to
provide an itemized payroll statement during any of the pay periods at issue.

(ii) The civil penalty is fifty (\$50) for each aggrieved employee per pay period if
the alleged violation resulted from an isolated, nonrecurring event that did not
extend beyond the lesser of 30 consecutive days or four consecutive pay periods.

(B) The civil penalty is two hundred dollars (\$200) for each aggrieved employee
per pay period if either of the following are met:

(i) Within the five years preceding the alleged violation, the agency or any court
issued a finding or determination to the employer that its policy or practice giving
rise to the violation was unlawful.

(ii) The court determines that the employer’s conduct giving rise to the violation
was malicious, fraudulent, or oppressive.

(3) If the alleged violation is a failure to act by the Labor and Workforce
Development Agency, or any of its departments, divisions, commissions, boards,

1 agencies, or employees, there shall be no civil penalty.

2
3 47. Pursuant to Labor Code § 2699(f)(2), Plaintiff, as representative of the State of
4 California on behalf of himself and all other aggrieved employees, seeks recovery of all applicable
5 civil penalties.

6 48. Labor Code § 2699(k)(1) provides:

7 Except as provided in paragraph (2), an aggrieved employee may recover the civil
8 penalty described in subdivision (f) and may be awarded injunctive relief in a civil
9 action pursuant to the procedures specified in Section 2699.3 filed on behalf of the
10 employee and other current or former employees against whom a violation of the
11 same provision was committed. Any employee who prevails in any action shall be
12 entitled to an award of reasonable attorney's fees and costs, including any filing fee
13 paid pursuant to subparagraph (B) of paragraph (1) of subdivision (a) or
14 subparagraph (B) of paragraph (1) of subdivision (c) of Section 2699.3. Nothing in
15 this part shall operate to limit an employee's right to pursue or recover other
16 remedies available under state or federal law, either separately or concurrently with
17 an action taken under this part.

18 49. Pursuant to Labor Code § 2699(k)(1), Plaintiff seeks recovery of reasonable attorney's
19 fees and costs.

20 50. Labor Code § 2699.3(a) provides in part: "A civil action by an aggrieved employee
21 pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section
22 2699.5 shall commence only after the following requirements have been met: [¶] (1) (A) The
23 aggrieved employee or representative shall give written notice by online filing with the Labor and
24 Workforce Development Agency ["LWDA"] and by certified mail to the employer of the specific
25 provisions of this code alleged to have been violated, including the facts and theories to support the
26 alleged violation."

27 51. In this representative action, Plaintiff, as representative of the State of California on
28 behalf of himself and all other aggrieved employees, alleges violations of Labor Code § 351, one of
the provisions listed in Labor Code § 2699.5. As such, Labor Code § 2699.3(a) applies to this action,
and Labor Code § 2699.3(b) and Labor Code § 2699.3(c) do not apply to this action.

52. More than 65 calendar days prior to the filing of this Complaint and in accordance with Labor Code § 2699.3(a)(1), Plaintiff's counsel gave written notice by online filing with the LWDA as well as by certified mail to the LWDA and TOWER WAV of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. True and correct copies of such notices are attached hereto as **Group Exhibit 1** and incorporated herein by reference.

53. Labor Code § 2699.3(a)(2)(A) provides: “The agency shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation within 60 calendar days of the postmark date of the notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided within 65 calendar days of the postmark date of the notice given pursuant to paragraph (1), the aggrieved employee may commence a civil action pursuant to Section 2699.”

54. As of the filing of this Complaint, Plaintiff has not received any notification from the LWDA that it does not intend to investigate the alleged violations, and more than 65 calendar days have passed since the postmark date of Plaintiff's written notice to the LWDA and TOWER WAV in accordance with Labor Code § 2699.3(a)(1). Therefore, Plaintiff has exhausted the notice requirements and administrative remedies as required by Labor Code § 2699 and has standing and capacity to sue as a representative of the State of California.

55. As a result of Defendants' unlawful conduct as alleged herein, Plaintiff is entitled to recover, as representative of the State of California on behalf of himself and all other aggrieved employees, the maximum civil penalties permitted by the PAGA, Labor Code § 2698 et seq., from Defendants for all civil violations of Labor Code § 351 as well as reasonable attorney's fees and costs.

56. Plaintiff, as representative of the State of California on behalf of himself and all other aggrieved employees, is entitled to recover any and all penalties for each and every violation of the Labor Code in an amount according to proof, as to those penalties that are otherwise only available in public agency enforcement actions. By this Cause of Action, Plaintiff, as representative of the State

1 of California on behalf of himself and other aggrieved employees, seeks to recover any and all such
2 penalties.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff, as representative of the State of California on behalf of himself and
5 all other aggrieved employees, requests the following relief:

6 A. As to the First Cause of Action, Plaintiff, as representative of the State of California
7 on behalf of himself and all other aggrieved employees, requests that the Court enter an Order against
8 all Defendants for: (a) the maximum civil penalties permitted by PAGA for Defendants' uniform,
9 system failures to timely pay Plaintiff and all other aggrieved employees their gratuities or tips earned
10 in violation of Labor Code § 351; (b) reasonable attorney's fees and costs; and (c) any other and
11 further relief that the Court considers proper;

12 B. That the Court award Plaintiff his costs and expenses, as well as reasonable attorneys'
13 fees, in prosecuting this action;

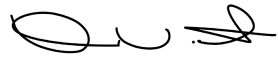
14 C. That the Court award Plaintiff pre-judgment and post-judgment interest; and

15 D. That the Court award Plaintiff such further relief as the Court deems just and
16 appropriate.

17 Dated: September 8, 2025

LAW OFFICES OF DANIEL V. SANTIAGO, P.C.

18 By:



Daniel V. Santiago, Esq.

Attorney for Plaintiff, Joel Lanuza

GROUP EXHIBIT 1

Thank you for submission of your PAGA Case.

noreply@salesforce.com on behalf of

LWDA DO NOT REPLY<lwdadonotreply@dir.ca.gov>

To:dvs@dvslawoffices.com

3/13/2025

LWDA Case No. LWDA-CM-1085936-25

Law Firm : Law Offices of Daniel V. Santiago, P.C.

Plaintiff Name : Joel Lanuza

Employer: Tower Wav LLC

Filing Fee : \$75.00

IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

Please note that a PAGA Notice is not a complaint within the meaning of Division 5 (Labor Code §§6300 et seq.). To file a complaint about workplace safety and health hazards with Cal/OSHA, please visit: <https://www.dir.ca.gov/dosh/complaint.htm>

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

Law Offices of Daniel V. Santiago, P.C.
355 South Grand Avenue, Suite 2450
Los Angeles, California 90071
Phone: (760) 652-9801
E-mail: dvs@dvslawoffices.com

March 13, 2025

VIA CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

State of California Labor and Workforce Development Agency
Attention: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, California 94102

Tower Wav LLC
Attention: Andres Munoz (Registered Agent)
134 Alhambra St.
San Francisco, California 94123

Re: *Joel Lanuza, as representative of the State of California on behalf of himself and
all other aggrieved employees of Tower Wav LLC v. Tower Wav LLC*
Los Angeles Superior Court, Case No. TBD

New PAGA Claim Notice

Dear Sir or Madam:

I represent Joel Lanuza, a former employee of Tower Wav LLC ("Tower Wav"). Mr. Lanuza has retained me to prosecute his representative action claims under the Private Attorneys General Act ("PAGA"), California Labor Code ("Labor Code") § 2698 et seq., against Tower Wav. Mr. Lanuza's PAGA claims arise from Tower Wav's late payment of gratuities or tips earned by all aggrieved employees of Tower Wav (himself included) in violation of Labor Code § 351.

In accordance with Labor Code § 2699.3(a)(1), this correspondence provides written notice to the State of California Labor and Workforce Development Agency ("LWDA") and Tower Wav of, *inter alia*, the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Please note that, in accordance with Labor Code § 2699.3(a)(1), the information contained in this correspondence has been submitted to the LWDA via online filing with the LWDA.

I. SUMMARY OF MR. LANUZA'S PAGA CLAIMS

Mr. Lanuza, as representative of the State of California on behalf of himself and all other aggrieved employees, is prepared to prosecute claims for civil penalties under the PAGA, Labor Code § 2698 et seq., against Tower Wav arising from its late payment of gratuities in violation of Labor Code § 351 (hereinafter, "Section 351"). "Gratuity" is defined in part in Labor Code § 350 as "any tip, gratuity, money, or part thereof that has been paid or given to or left for an employee by a patron of a business over and above the actual amount due the business for services rendered[.]" In addition, as used herein, the term "aggrieved employees" is defined as all persons who were employed by Tower Wav as non-exempt, hourly rate employees and worked from its office located at 1428 Wilcox Avenue, Los Angeles, California 90028 at any time within the last year. Mr. Lanuza's good faith estimate is that there are at least 100 aggrieved employees (80 current and 20 former), as defined.

Please note that the facts and legal authorities supporting Mr. Lanuza's claims against Tower Wav are set forth in his Representative Action Complaint ("the Complaint") enclosed herein and incorporated herein by reference. Please also note that Mr. Lanuza is prepared to file the Complaint in the Los Angeles County Superior Court after 65 calendar days have passed since the submission of this New PAGA Claim Notice to the LWDA and Tower Wav of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations, in accordance with Labor Code § 2699.3(a)(1).

Section 351 provides:

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, or deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Every gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for. An employer that permits patrons to pay gratuities by credit card shall pay the employees the full amount of the gratuity that the patron indicated on the credit card slip, without any deductions for any credit card payment processing fees or costs that may be charged to the employer by the credit card company. Payment of gratuities made by patrons using credit cards shall be made to the employees not later than the next regular payday following the date the patron authorized the credit card payment.

As indicated above, Section 351 provides that every gratuity or tip is "declared to be the sole property of the employee or employees to whom it was paid, given, or left for." In addition, Section 351 provides that the time limit for employers to pay out gratuities or tips collected via credit card is "not later than the next regular payday following the date the patron authorized the credit card payment."

Throughout Mr. Lanuza's employment, he earned gratuities or tips on at least a weekly basis. However, Tower Wav's uniform, systematic practice was to pay him the gratuities or tips he earned -- and Tower Wav collected via its customers' credit card payments -- on a monthly basis in clear violation of the time limit provided in Section 351 (i.e., "not later than the next

regular payday following the date the patron authorized the credit card payment.”) This practice is evidenced by Mr. Lanuza’s weekly paystubs for the time period of February 12, 2024, to January 17, 2025, which show, *inter alia*:

<u>Pay Period</u>	<u>Pay Date</u>	<u>Tips</u>	<u>Year-To-Date Tips</u>
2/12 – 2/18/24	2/23/24	\$0	\$161.30
2/19 – 2/25/24	3/1/24	\$0	\$161.30
2/26 – 3/3/24	3/8/24	\$74.90	\$236.20
3/4/24 – 3/10/24	3/15/24	\$0	\$236.20
3/11 – 3/17/24	3/22/24	\$0	\$236.20
3/18 – 3/24/24	3/29/24	\$0	\$236.20
3/25 – 3/31/24	4/5/24	\$144.06	\$380.26
4/1 – 4/7/24	4/12/24	\$0	\$380.26
4/8 – 4/14/24	4/19/24	\$0	\$380.26
4/15 – 4/21/24	4/26/24	\$0	\$380.26
4/22 – 4/28/24	5/3/24	\$0	\$380.26
4/29 – 5/5/24	5/10/24	\$51.96	\$432.22
5/6 – 5/12/24	5/17/24	\$0	\$432.22
5/13 – 5/19/24	5/24/24	\$0	\$432.22
5/20 – 5/26/24	5/31/24	\$0	\$432.22
5/27 – 6/2/24	6/7/24	\$82.55	\$514.77
6/3 – 6/9/24	6/14/24	\$0	\$514.77
6/10 – 6/16/24	6/21/24	\$0	\$514.77
6/17 – 6/23/24	6/28/24	\$0	\$514.77
6/24 – 6/30/24	7/5/24	\$128.70	\$643.47
7/1 – 7/7/24	7/12/24	\$0	\$643.47
7/8 – 7/14/24	7/19/24	\$0	\$643.47
7/15 – 7/21/24	7/26/24	\$0	\$643.47
7/22 – 7/28/24	8/2/24	\$0	\$643.47
7/29 – 8/4/24	8/9/24	\$108.67	\$752.14
8/5 – 8/11/24	8/16/24	\$0	\$752.14
8/12 – 8/18/24	8/23/24	\$0	\$752.14
8/19 – 8/25/24	8/30/24	\$0	\$752.14
8/26 – 9/1/24	9/6/24	\$0	\$752.14
9/2 – 9/8/24	9/13/24	\$0	\$752.14
9/9 – 9/15/24	9/20/24	\$157.64	\$909.78
9/16 – 9/22/24	9/27/24	\$0	\$909.78
9/23 – 9/29/24	10/4/24	\$126.55	\$1,036.33
9/30 – 10/6/24	10/11/24	\$0	\$1,036.33
10/7 – 10/13/24	10/18/24	\$0	\$1,036.33
10/14 – 10/20/24	10/22/24	\$0	\$1,036.33
10/14 – 10/20/24	10/25/24	\$0	\$1,036.33
10/21 – 10/27/24	11/1/24	\$0	\$1,036.33
10/28 – 11/3/24	11/8/24	\$86.98	\$1,123.31
10/28 – 11/3/24	11/9/24	\$0	\$1,123.31
11/11 – 11/17/24	11/16/24	\$0	\$1,123.31
11/11 – 11/17/24	11/22/24	\$0	\$1,123.31

11/18 – 11/24/24	11/29/24	\$0	\$1,123.31
11/25 – 12/1/24	12/6/24	\$70.73	\$1,194.04
12/2 – 12/8/24	12/13/24	\$0	\$1,194.04
12/9 – 12/15/24	12/20/24	\$0	\$1,194.04
12/16 – 12/22/24	12/27/24	\$0	\$1,194.04
12/23 – 12/29/24	1/3/25	Not stated	Not stated
12/30/24 – 1/5/25	1/10/25	\$318	\$318
1/6 – 1/12/25	1/14/25	\$0	\$318
1/6 – 1/12/25	1/17/25 ¹	\$0	\$318

Notably, Mr. Lanuza is informed and believes that Tower Wav paid the gratuities or tips that all other aggrieved employees earned on at least a weekly basis in the same fashion it paid the gratuities or tips earned by him (i.e., on a monthly basis). In that regard, Mr. Lanuza is informed and believes that all other aggrieved employees and he were affected equally by Tower Wav's uniform, systematic practice.

II. MR. LANUZA'S REPRESENTATIVE ACTION COMPLAINT

Labor Code § 2699.3(a) provides in part:

“(2)(A) The agency [i.e., LWDA] shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation within 60 calendar days of the postmark date of the notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided within 65 calendar days of the postmark date of the notice given pursuant to paragraph (1), the aggrieved employee may commence a civil action pursuant to Section 2699.”

Please be advised that, after receiving notification from the LWDA that it does not intend to investigate the alleged violations described in the enclosed Complaint, or after 65 days of the postmark date of giving notice to the LWDA if no response has been received from the LWDA, Mr. Lanuza will have exhausted the administrative remedies as required by Labor Code § 2699 and, therefore, he will have standing and capacity to sue as a representative of the State of California on behalf of himself and all other aggrieved employees. Thereafter, Mr. Lanuza plans to file the enclosed Complaint in the Los Angeles Superior Court and therein expressly allege exhaustion of the administrative remedies as required by Labor Code § 2699, standing and capacity to sue as a representative of the State of California on behalf of all aggrieved employees (himself included).

III. MR. LANUZA'S PAGA CLAIM IS ENTIRELY DISTINCT (FACTUALLY AND LEGALLY) FROM ALL OF THE CLAIMS IN THE 5 PREVIOUSLY FILED CLASS ACTIONS AND REPRESENTATIVE PAGA ACTIONS AGAINST TOWER WAV.

Mr. Lanuza is informed and believes that there are five (5) previously filed class actions

¹ Tower Wav's termination of Mr. Lanuza's employment was effective January 17, 2025.

and representative PAGA actions against Tower Wav pending in California Superior Courts. Those 5 previously filed class actions and representative PAGA actions against Tower Wav have the following captions, case numbers, and dates of filing: (1) *Leticia Haynes v. Tower WAV LLC* (San Francisco Superior Court Case No. CGC-22-603761 filed on 12/30/22)²; (2) *Carol Martinez v. Tower WAV LLC* (San Francisco Superior Court Case No. CGC-23-608253 filed on 8/9/23)³; (3) *Deborah Hooker v. Tower Wav LLC et al.* (San Francisco Superior Court Case No. CGC23610064 filed on 10/30/23)⁴; (4) *Leticia Haynes and & Ezell Young v. Tower Wav LLC* (San

² In *Leticia Haynes v. Tower WAV LLC* (San Francisco Superior Court Case No. CGC-22-603761 filed on 12/30/22), Plaintiff alleges the following causes of action in her Class Action Complaint: (1) Failure to Pay Minimum and Straight Time Wages (Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197) (First Cause of Action); (2) Failure to Pay Overtime Wages (Cal. Lab. Code §§ 1194 and 1198) (Second Cause of Action); (3) Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7, 512) (Third Cause of Action); (4) Failure to Authorize and Permit Rest Periods (Cal. Lab. Code §§ 226.7) (Fourth Cause of Action); (5) Failure to Timely Pay Final Wages at Termination (Cal. Lab. Code §§ 201-203) (Fifth Cause of Action); (6) Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code § 226) (Sixth Cause of Action); (7) Failure to Indemnify Employees for Expenditures (Cal. Lab. Code § 2802) (Seventh Cause of Action); and (8) Unfair Business Practices (Cal. Bus. & Prof. Code §§ 17200, et seq.) (Eighth Cause of Action). In addition, Plaintiff alleges in paragraph 1 of her Complaint as follows: “Plaintiff brings this action against Defendant TOWER WAV LLC, and DOES 1 through 10 (hereinafter collectively referred to as ‘Defendants’) for California Labor Code violations and unfair business practices stemming from Defendant’s failure to pay for all hours worked (minimum, straight time, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay final wages, failure to furnish accurate wage statements, and failure to indemnify employees for expenditures.”

³ In *Carol Martinez v. Tower WAV LLC* (San Francisco Superior Court Case No. CGC-23-608253 filed on 8/9/23), Plaintiff alleges the following causes of action in her Class Action Complaint for Damages: (1) Violation of Labor Code §§ 510 and 1198 (Unpaid Overtime – First Cause of Action); (2) Violation of Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums – Second Cause of Action); (3) Violation of Labor Code § 226.7 (Unpaid Rest Period Premiums – Third Cause of Action); (4) Violation of Labor Code §§ 1194 and 1197 (Unpaid Minimum Wages – Fourth Cause of Action); (5) Violation of Labor Code §§ 201 and 202 (Final Wages Not Timely Paid – Fifth Cause of Action); (6) Violation of Labor Code § 226(a) (Non-Compliant Wage Statements – Sixth Cause of Action); (7) Violation of Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses – Seventh Cause of Action); (8) Violation of Labor Code § 2698, et seq. (Private Attorneys General Act of 2004 – Eighth Cause of Action); and (9) Violation of California Business & Professions Code § 17200, et seq. (Ninth Cause of Action). In addition, as to Plaintiff’s prayer for relief for her Eighth Cause of Action for PAGA penalties, she alleges in paragraph 46 of her Complaint as follows: “For civil penalties pursuant to Labor Code section 2699 et seq., for Defendants’ violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802[.]”

⁴ In *Deborah Hooker v. Tower Wav LLC et al.* (San Francisco Superior Court Case No. CGC23610064 filed on 10/30/23), Plaintiff alleges in paragraph 2 of her Complaint for Enforcement Action Under the Private Attorneys General Act, Cal. Labor Code §§ 2698 et seq., as follows: “Plaintiff alleges that Defendants hired Plaintiff and Aggrieved Employees but failed to properly pay them all wages owed for all time worked (including minimum wages, straight time wages, and overtime wages), failed to provide them with all meal periods and rest periods and associated premium wages to which they were entitled, failed to timely pay them all wages due during their employment, failed to timely pay them all wages due upon termination of their employment, failed to provide them with accurate itemized wage statements, failed to maintain accurate payroll records, and failed to reimburse them for necessary business expenses.” Additionally, Plaintiff alleges in paragraph 3 of her Complaint as follows: “As a result, Defendants violated California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198,

Francisco Superior Court Case No. CGC-23-610504 filed on 11/17/23)⁵; and (5) *David Villatoro v. Tower Wav LLC* (Los Angeles Superior Court Case No. 24STCV03367 filed on 2/8/24)⁶.

It is well established under California law that gratuities are not wages. *See, e.g.*, Labor Code 351 (providing in part: “Every gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for.”); *Searle v. Wyndham International, Inc.* (2002) 102 Cal.App.4th 1327, 1332 (“The purpose of [Labor Code] section 351, as spelled out in the language of the statute, is to prevent an employer from collecting, taking, or receiving gratuity income or any part thereof, as his own part of his daily gross receipts, from deducting from an employee's wages any amount on account of such gratuity, and from requiring an employer to credit the amount of the gratuity or any part thereof against or as a part of his wages. And the legislative intent reflected in the history of the statute, was to ensure that employees, not employers, receive the full benefit of gratuities that patrons intend for the sole benefit of those employees who serve them.”) (quoting *Leighton v. Old Heidelberg, Ltd.* (1990) 219 Cal.App.3d 1062, 1068 and citing *Henning v. Industrial Welfare Com.* (1988) 46 Cal.3d 1262, 1265 and *Industrial Welfare Com. v. Superior Court of Kern County* (1980) 27 Cal.3d 690, 730); *Industrial Welfare Com.*, 27 Cal.3d at 731 (describing tips as a type of “non-wage benefit” and observing that “tips are paid by customers, not the employer”).

In addition, Mr. Lanuza is informed and believes that none of the operative Complaints in any of the aforementioned 5 previously filed actions against Tower Wav involve any allegation or claim for late payment of gratuities or tips.

2800, and 2802, and the applicable Industrial Welfare Commission (‘IWC’) Wage Order. Through this action, Plaintiff seeks to recover all available remedies under PAGA, including, but not limited to, civil penalties and attorney’s fees and costs.”

⁵ In *Leticia Haynes and Ezell Young v. Tower Wav LLC* (San Francisco Superior Court Case No. CGC-23-610504 filed on 11/17/23), Plaintiff alleges in paragraph 1 of her PAGA Representative Action Complaint as follows: “Plaintiffs bring this action individually, and on behalf of the State of California and other aggrieved persons, against Defendants Tower Wav LLC and DOES 1 through 10 (collectively referred to as ‘Defendants’) for civil penalties under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 et seq. (‘PAGA’) stemming from Defendants’ failure to pay for all hours worked (minimum, straight time, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to pay all earned wages twice per month, failure to maintain accurate records of hours worked and meal periods, failure to timely pay final wages, failure to furnish accurate wage statements, failure to indemnify employees for expenditures, and failure to produce requested employment records.”

⁶ In *David Villatoro v. Tower Wav LLC* (Los Angeles Superior Court Case No. 24STCV03367 filed on 2/8/24), Plaintiff alleges the following causes of action in her Class Action Complaint for Damages and Restitution: Failure To Pay Overtime Wages (First Cause Of Action); Failure To Pay Sick Leave (Second Cause Of Action); Failure To Provide Meal Periods (Third Cause Of Action); Failure To Provide Rest Periods (Fourth Cause Of Action); Failure To Pay All Wages Upon Termination (Fifth Cause Of Action); Failure To Provide Accurate Wage Statements (Sixth Cause Of Action); and Unfair Competition (Seventh Cause Of Action). In addition, Plaintiff alleges in paragraph 8 of his Complaint as follows: “Plaintiff, on behalf of himself and all other similarly situated employees, brings this action pursuant to, including but not limited to, California Labor Code SS200.201,202,203,226, 226.7,233,246,246.5, 510, 512, and California Code of Regulations. Title 8, §11070, seeking unpaid overtime wages, premium wages for non-compliant meal and rest periods, unpaid sick leave pay, failure to pay regular rate, penalties, and reasonable attorney's fees and costs.”

Further, Mr. Lanuza is informed and believes that none of the operative Complaints in any of the aforementioned 5 previously filed actions against Tower Wav involve any allegation or claim for any violation of Labor Code § 351.

For the foregoing reasons, Mr. Lanuza respectfully submits that his singular PAGA claim described herein and in the enclosed Complaint: (1) is entirely distinct (factually and legally) from all of the claims alleged in the aforementioned 5 previously filed actions against Tower Wav (including, but not limited to, claims for late payment of wages in violation of Labor Code § 204, unpaid wages in violation of Labor Code § 1194, and failure to timely pay wages upon termination of employment in violation of Labor Code §§ 201-203); (2) is not subsumed by any of the claims alleged in any of the aforementioned actions; and (3) is not encompassed within any of the claims alleged in any of the aforementioned actions.

Thank you for your prompt attention to this matter.

LAW OFFICES OF DANIEL V. SANTIAGO, P.C.

By: 

Daniel V. Santiago, Esq.

Thank you for your Amended PAGA Claim Notice Submission.

DIR PAGA Unit<no-reply@formassembly.com>

To:dvs@dvslawoffices.com

07/02/2025 10:24:17 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Amended PAGA Claim

Please note that a PAGA Notice is not a complaint within the meaning of Division 5 (Labor Code §§6300 et seq.). To file a complaint about workplace safety and health hazards with Cal/OSHA, please visit: <https://www.dir.ca.gov/dosh/complaint.htm>

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

Law Offices of Daniel V. Santiago, P.C.
355 South Grand Avenue, Suite 2450
Los Angeles, California 90071
Phone: (760) 652-9801
E-mail: dvs@dvslawoffices.com

July 2, 2025

VIA CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

State of California Labor and Workforce Development Agency
Attention: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, California 94102

Tower Wav LLC
Attention: Andres Munoz (Registered Agent)
134 Alhambra St.
San Francisco, California 94123

Jennifer A. Kearns, Esq.
Duane Morris LLP
750 B Street, Suite 2900
San Diego, California 92101-4681
(Counsel for Tower Wav LLC)

Re: *Joel Lanuza, as representative of the State of California on behalf of himself and all other aggrieved employees of Tower Wav LLC v. Tower Wav LLC*
LWDA Case No. LWDA-CM-1085936-25
Los Angeles Superior Court, Case No. TBD

Amended New PAGA Claim Notice

Dear Sir or Madam:

I represent Joel Lanuza, a former employee of Tower Wav LLC ("Tower Wav"). Mr. Lanuza has retained me to prosecute his representative action claims under the Private Attorneys General Act ("PAGA"), California Labor Code ("Labor Code") § 2698 et seq., against Tower Wav. Mr. Lanuza's PAGA claims arise from Tower Wav's late payment of gratuities or tips earned by all aggrieved employees of Tower Wav (himself included) in violation of Labor Code § 351.

In accordance with Labor Code § 2699.3(a)(1), this correspondence provides written notice to the State of California Labor and Workforce Development Agency ("LWDA") and Tower Wav of, *inter alia*, the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Please note that, in accordance with Labor

Code § 2699.3(a)(1), the information contained in this correspondence has been submitted to the LWDA via online filing with the LWDA.

I. SUMMARY OF MR. LANUZA'S PAGA CLAIMS

Mr. Lanuza, as representative of the State of California on behalf of himself and all other aggrieved employees, is prepared to prosecute claims for civil penalties under the PAGA, Labor Code § 2698 et seq., against Tower Wav arising from its late payment of gratuities in violation of Labor Code § 351 (hereinafter, "Section 351"). "Gratuity" is defined in part in Labor Code § 350 as "any tip, gratuity, money, or part thereof that has been paid or given to or left for an employee by a patron of a business over and above the actual amount due the business for services rendered[.]" In addition, as used herein, the term "aggrieved employees" is defined as all persons who were employed by Tower Wav as non-exempt, hourly rate employees, worked from any of its offices in the State of California, and provided transportation services to customers of Uber at any time from 3/13/25 (the date of Mr. Lanuza's submission of the original New PAGA Claim Notice) up to and through the date of the trial of this action. Mr. Lanuza's good faith estimate is that there are at least 500 aggrieved employees, as defined.

Please note that the definition of "aggrieved employees" as used in the original New PAGA Claim Notice has been revised in this Amended New PAGA Claim Notice (as set forth above) in the following two respects: (1) the definition of aggrieved employees in this Amended New PAGA Claim Notice has been expanded to include all persons who *worked from any of its offices in the State of California* (the definition of aggrieved employees in the original New PAGA Claim Notice was limited to persons who worked from Tower Wav's office located at 1428 Wilcox Avenue, Los Angeles, California 90028); and (2) the definition of aggrieved employees in this Amended New PAGA Claim Notice has been limited to all persons who *provided transportation services to customers of Uber* (the definition of aggrieved employees in the original New PAGA Claim Notice was not limited in this respect and, therefore, it applied to persons who provided transportation services to customers of Uber as well as Lyft and Waymo).

In addition, please note that the facts and legal authorities supporting Mr. Lanuza's claims against Tower Wav are set forth in his Representative Action Complaint ("the Complaint") enclosed herein and incorporated herein by reference. Please also note that enclosed Complaint reflects: (a) the aforementioned revisions to the definition of "aggrieved employees"; and (b) the recent amendments to the PAGA reflected in Labor Code § 2699, subdivisions (a), (f) and (k)(1).

Mr. Lanuza is prepared to file the enclosed Complaint in the Los Angeles County Superior Court after 65 calendar days have passed since the submission of this Amended New PAGA Claim Notice to the LWDA and Tower Wav of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations, in accordance with Labor Code § 2699.3(a)(1).

Section 351 provides:

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, or deduct any amount

from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Every gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for. An employer that permits patrons to pay gratuities by credit card shall pay the employees the full amount of the gratuity that the patron indicated on the credit card slip, without any deductions for any credit card payment processing fees or costs that may be charged to the employer by the credit card company. Payment of gratuities made by patrons using credit cards shall be made to the employees not later than the next regular payday following the date the patron authorized the credit card payment.

As indicated above, Section 351 provides that every gratuity or tip is “declared to be the sole property of the employee or employees to whom it was paid, given, or left for.” In addition, Section 351 provides that the time limit for employers to pay out gratuities or tips collected via credit card is “not later than the next regular payday following the date the patron authorized the credit card payment.”

Throughout Mr. Lanuza’s employment, he earned gratuities or tips on at least a weekly basis. However, Tower Wav’s uniform, systematic practice was to pay him the gratuities or tips he earned -- and Tower Wav collected via its customers’ credit card payments -- on a monthly basis in clear violation of the time limit provided in Section 351 (i.e., “not later than the next regular payday following the date the patron authorized the credit card payment.”) This practice is evidenced by Mr. Lanuza’s weekly paystubs for the time period of February 12, 2024, to January 17, 2025, which show, *inter alia*:

<u>Pav Period</u>	<u>Pav Date</u>	<u>Tips</u>	<u>Year-To-Date Tips</u>
2/12 – 2/18/24	2/23/24	\$0	\$161.30
2/19 – 2/25/24	3/1/24	\$0	\$161.30
2/26 – 3/3/24	3/8/24	\$74.90	\$236.20
3/4/24 – 3/10/24	3/15/24	\$0	\$236.20
3/11 – 3/17/24	3/22/24	\$0	\$236.20
3/18 – 3/24/24	3/29/24	\$0	\$236.20
3/25 – 3/31/24	4/5/24	\$144.06	\$380.26
4/1 – 4/7/24	4/12/24	\$0	\$380.26
4/8 – 4/14/24	4/19/24	\$0	\$380.26
4/15 – 4/21/24	4/26/24	\$0	\$380.26
4/22 – 4/28/24	5/3/24	\$0	\$380.26
4/29 – 5/5/24	5/10/24	\$51.96	\$432.22
5/6 – 5/12/24	5/17/24	\$0	\$432.22
5/13 – 5/19/24	5/24/24	\$0	\$432.22
5/20 – 5/26/24	5/31/24	\$0	\$432.22
5/27 – 6/2/24	6/7/24	\$82.55	\$514.77
6/3 – 6/9/24	6/14/24	\$0	\$514.77
6/10 – 6/16/24	6/21/24	\$0	\$514.77
6/17 – 6/23/24	6/28/24	\$0	\$514.77
6/24 – 6/30/24	7/5/24	\$128.70	\$643.47

7/1 – 7/7/24	7/12/24	\$0	\$643.47
7/8 – 7/14/24	7/19/24	\$0	\$643.47
7/15 – 7/21/24	7/26/24	\$0	\$643.47
7/22 – 7/28/24	8/2/24	\$0	\$643.47
7/29 – 8/4/24	8/9/24	\$108.67	\$752.14
8/5 – 8/11/24	8/16/24	\$0	\$752.14
8/12 – 8/18/24	8/23/24	\$0	\$752.14
8/19 – 8/25/24	8/30/24	\$0	\$752.14
8/26 – 9/1/24	9/6/24	\$0	\$752.14
9/2 – 9/8/24	9/13/24	\$0	\$752.14
9/9 – 9/15/24	9/20/24	\$157.64	\$909.78
9/16 – 9/22/24	9/27/24	\$0	\$909.78
9/23 – 9/29/24	10/4/24	\$126.55	\$1,036.33
9/30 – 10/6/24	10/11/24	\$0	\$1,036.33
10/7 – 10/13/24	10/18/24	\$0	\$1,036.33
10/14 – 10/20/24	10/22/24	\$0	\$1,036.33
10/14 – 10/20/24	10/25/24	\$0	\$1,036.33
10/21 – 10/27/24	11/1/24	\$0	\$1,036.33
10/28 – 11/3/24	11/8/24	\$86.98	\$1,123.31
10/28 – 11/3/24	11/9/24	\$0	\$1,123.31
11/11 – 11/17/24	11/16/24	\$0	\$1,123.31
11/11 – 11/17/24	11/22/24	\$0	\$1,123.31
11/18 – 11/24/24	11/29/24	\$0	\$1,123.31
11/25 – 12/1/24	12/6/24	\$70.73	\$1,194.04
12/2 – 12/8/24	12/13/24	\$0	\$1,194.04
12/9 – 12/15/24	12/20/24	\$0	\$1,194.04
12/16 – 12/22/24	12/27/24	\$0	\$1,194.04
12/23 – 12/29/24	1/3/25	Not stated	Not stated
12/30/24 – 1/5/25	1/10/25	\$318	\$318
1/6 – 1/12/25	1/14/25	\$0	\$318
1/6 – 1/12/25	1/17/25 ¹	\$0	\$318

Notably, Mr. Lanuza is informed and believes that Tower Wav paid the gratuities or tips that all other aggrieved employees earned on at least a weekly basis in the same fashion it paid the gratuities or tips earned by him (i.e., on a monthly basis). In that regard, Mr. Lanuza is informed and believes that all other aggrieved employees and he were affected equally by Tower Wav's uniform, systematic practice.

II. MR. LANUZA'S REPRESENTATIVE ACTION COMPLAINT

Labor Code § 2699.3(a) provides in part:

“(2)(A) The agency [i.e., LWDA] shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation within 60 calendar days of the postmark date of the notice

¹ Tower Wav's termination of Mr. Lanuza's employment was effective January 17, 2025.

received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided within 65 calendar days of the postmark date of the notice given pursuant to paragraph (1), the aggrieved employee may commence a civil action pursuant to Section 2699.”

Please be advised that, after receiving notification from the LWDA that it does not intend to investigate the alleged violations described in the enclosed Complaint, or after 65 days of the postmark date of giving notice to the LWDA if no response has been received from the LWDA, Mr. Lanuza will have exhausted the administrative remedies as required by Labor Code § 2699 and, therefore, he will have standing and capacity to sue as a representative of the State of California on behalf of himself and all other aggrieved employees. Thereafter, Mr. Lanuza plans to file the enclosed Complaint in the Los Angeles Superior Court and therein expressly allege exhaustion of the administrative remedies as required by Labor Code § 2699, standing and capacity to sue as a representative of the State of California on behalf of all aggrieved employees (himself included).

III. MR. LANUZA’S PAGA CLAIM IS ENTIRELY DISTINCT (FACTUALLY AND LEGALLY) FROM ALL OF THE CLAIMS IN THE 5 PREVIOUSLY FILED CLASS ACTIONS AND REPRESENTATIVE PAGA ACTIONS AGAINST TOWER WAV.

Mr. Lanuza is informed and believes that there are five (5) previously filed class actions and representative PAGA actions against Tower Wav pending in California Superior Courts. Those 5 previously filed class actions and representative PAGA actions against Tower Wav have the following captions, case numbers, and dates of filing: (1) *Leticia Haynes v. Tower WAV LLC* (San Francisco Superior Court Case No. CGC-22-603761 filed on 12/30/22)²; (2) *Carol Martinez v. Tower WAV LLC* (San Francisco Superior Court Case No. CGC-23-608253 filed on 8/9/23)³;

² In *Leticia Haynes v. Tower WAV LLC* (San Francisco Superior Court Case No. CGC-22-603761 filed on 12/30/22), Plaintiff alleges the following causes of action in her Class Action Complaint: (1) Failure to Pay Minimum and Straight Time Wages (Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197) (First Cause of Action); (2) Failure to Pay Overtime Wages (Cal. Lab. Code §§ 1194 and 1198) (Second Cause of Action); (3) Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7, 512) (Third Cause of Action); (4) Failure to Authorize and Permit Rest Periods (Cal. Lab. Code §§ 226.7) (Fourth Cause of Action); (5) Failure to Timely Pay Final Wages at Termination (Cal. Lab. Code §§ 201-203) (Fifth Cause of Action); (6) Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code § 226) (Sixth Cause of Action); (7) Failure to Indemnify Employees for Expenditures (Cal. Lab. Code § 2802) (Seventh Cause of Action); and (8) Unfair Business Practices (Cal. Bus. & Prof. Code §§ 17200, et seq.) (Eighth Cause of Action). In addition, Plaintiff alleges in paragraph 1 of her Complaint as follows: “Plaintiff brings this action against Defendant TOWER WAV LLC, and DOES 1 through 10 (hereinafter collectively referred to as ‘Defendants’) for California Labor Code violations and unfair business practices stemming from Defendant’s failure to pay for all hours worked (minimum, straight time, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay final wages, failure to furnish accurate wage statements, and failure to indemnify employees for expenditures.”

³ In *Carol Martinez v. Tower WAV LLC* (San Francisco Superior Court Case No. CGC-23-608253 filed on 8/9/23), Plaintiff alleges the following causes of action in her Class Action Complaint for Damages: (1) Violation of Labor Code §§ 510 and 1198 (Unpaid Overtime – First Cause of Action); (2) Violation of Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums – Second Cause of Action); (3) Violation of Labor Code § 226.7 (Unpaid Rest Period Premiums – Third Cause of Action); (4) Violation of Labor

(3) *Deborah Hooker v. Tower Wav LLC et al.* (San Francisco Superior Court Case No. CGC23610064 filed on 10/30/23)⁴; (4) *Leticia Haynes and Ezell Young v. Tower Wav LLC* (San Francisco Superior Court Case No. CGC-23-610504 filed on 11/17/23)⁵; and (5) *David Villatoro v. Tower Wav LLC* (Los Angeles Superior Court Case No. 24STCV03367 filed on 2/8/24)⁶.

Code §§ 1194 and 1197 (Unpaid Minimum Wages – Fourth Cause of Action); (5) Violation of Labor Code §§ 201 and 202 (Final Wages Not Timely Paid – Fifth Cause of Action); (6) Violation of Labor Code § 226(a) (Non-Compliant Wage Statements – Sixth Cause of Action); (7) Violation of Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses – Seventh Cause of Action); (8) Violation of Labor Code § 2698, et seq. (Private Attorneys General Act of 2004 – Eighth Cause of Action); and (9) Violation of California Business & Professions Code § 17200, et seq. (Ninth Cause of Action). In addition, as to Plaintiff’s prayer for relief for her Eighth Cause of Action for PAGA penalties, she alleges in paragraph 46 of her Complaint as follows: “For civil penalties pursuant to Labor Code section 2699 et seq., for Defendants’ violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802[.]”

⁴ In *Deborah Hooker v. Tower Wav LLC et al.* (San Francisco Superior Court Case No. CGC23610064 filed on 10/30/23), Plaintiff alleges in paragraph 2 of her Complaint for Enforcement Action Under the Private Attorneys General Act, Cal. Labor Code §§ 2698 et seq., as follows: “Plaintiff alleges that Defendants hired Plaintiff and Aggrieved Employees but failed to properly pay them all wages owed for all time worked (including minimum wages, straight time wages, and overtime wages), failed to provide them with all meal periods and rest periods and associated premium wages to which they were entitled, failed to timely pay them all wages due during their employment, failed to timely pay them all wages due upon termination of their employment, failed to provide them with accurate itemized wage statements, failed to maintain accurate payroll records, and failed to reimburse them for necessary business expenses.” Additionally, Plaintiff alleges in paragraph 3 of her Complaint as follows: “As a result, Defendants violated California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare Commission (‘IWC’) Wage Order. Through this action, Plaintiff seeks to recover all available remedies under PAGA, including, but not limited to, civil penalties and attorney’s fees and costs.”

⁵ In *Leticia Haynes and Ezell Young v. Tower Wav LLC* (San Francisco Superior Court Case No. CGC-23-610504 filed on 11/17/23), Plaintiff alleges in paragraph 1 of her PAGA Representative Action Complaint as follows: “Plaintiffs bring this action individually, and on behalf of the State of California and other aggrieved persons, against Defendants Tower Wav LLC and DOES 1 through 10 (collectively referred to as ‘Defendants’) for civil penalties under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 et seq. (‘PAGA’) stemming from Defendants’ failure to pay for all hours worked (minimum, straight time, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to pay all earned wages twice per month, failure to maintain accurate records of hours worked and meal periods, failure to timely pay final wages, failure to furnish accurate wage statements, failure to indemnify employees for expenditures, and failure to produce requested employment records.”

⁶ In *David Villatoro v. Tower Wav LLC* (Los Angeles Superior Court Case No. 24STCV03367 filed on 2/8/24), Plaintiff alleges the following causes of action in her Class Action Complaint for Damages and Restitution: Failure To Pay Overtime Wages (First Cause Of Action); Failure To Pay Sick Leave (Second Cause Of Action); Failure To Provide Meal Periods (Third Cause Of Action); Failure To Provide Rest Periods (Fourth Cause Of Action); Failure To Pay All Wages Upon Termination (Fifth Cause Of Action); Failure To Provide Accurate Wage Statements (Sixth Cause Of Action); and Unfair Competition (Seventh Cause Of Action). In addition, Plaintiff alleges in paragraph 8 of his Complaint as follows: “Plaintiff, on behalf of himself and all other similarly situated employees, brings this action pursuant to, including but not limited to, California Labor Code SS200.201,202,203,226, 226.7,233,246,246.5, 510, 512, and California Code of Regulations. Title 8, §11070, seeking unpaid overtime wages, premium wages for non-

It is well established under California law that gratuities are not wages. *See, e.g.*, Labor Code 351 (providing in part: “Every gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for.”); *Searle v. Wyndham International, Inc.* (2002) 102 Cal.App.4th 1327, 1332 (“The purpose of [Labor Code] section 351, as spelled out in the language of the statute, is to prevent an employer from collecting, taking, or receiving gratuity income or any part thereof, as his own part of his daily gross receipts, from deducting from an employee's wages any amount on account of such gratuity, and from requiring an employer to credit the amount of the gratuity or any part thereof against or as a part of his wages. And the legislative intent reflected in the history of the statute, was to ensure that employees, not employers, receive the full benefit of gratuities that patrons intend for the sole benefit of those employees who serve them.”) (quoting *Leighton v. Old Heidelberg, Ltd.* (1990) 219 Cal.App.3d 1062, 1068 and citing *Henning v. Industrial Welfare Com.* (1988) 46 Cal.3d 1262, 1265 and *Industrial Welfare Com. v. Superior Court of Kern County* (1980) 27 Cal.3d 690, 730); *Industrial Welfare Com.*, 27 Cal.3d at 731 (describing tips as a type of “non-wage benefit” and observing that “tips are paid by customers, not the employer”).

In addition, Mr. Lanuza is informed and believes that none of the operative Complaints in any of the aforementioned 5 previously filed actions against Tower Wav involve any allegation or claim for late payment of gratuities or tips.

Further, Mr. Lanuza is informed and believes that none of the operative Complaints in any of the aforementioned 5 previously filed actions against Tower Wav involve any allegation or claim for any violation of Labor Code § 351.

For the foregoing reasons, Mr. Lanuza respectfully submits that his singular PAGA claim described herein and in the enclosed Complaint: (1) is entirely distinct (factually and legally) from all of the claims alleged in the aforementioned 5 previously filed actions against Tower Wav (including, but not limited to, claims for late payment of wages in violation of Labor Code § 204, unpaid wages in violation of Labor Code § 1194, and failure to timely pay wages upon termination of employment in violation of Labor Code §§ 201-203); (2) is not subsumed by any of the claims alleged in any of the aforementioned actions; and (3) is not encompassed within any of the claims alleged in any of the aforementioned actions.

Thank you for your prompt attention to this matter.

LAW OFFICES OF DANIEL V. SANTIAGO, P.C.

By: 
Daniel V. Santiago, Esq.

compliant meal and rest periods, unpaid sick leave pay, failure to pay regular rate, penalties, and reasonable attorney's fees and costs.”